

Staff Briefing Papers

Meeting Date August 2, 2018 Agenda Item *3

Company Electric, Electric Transmission, and Independent Power Producers

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

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

Issues Whether to publish the attached draft rules as proposed in the *State Register*

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✓ Relevant Documents

Date

Request for Comments, published in the State Register	December 10, 2012
Notice of Comment Period	March 23, 2017
Comments, Xcel Energy	May 8, 2017
Comments, Public Intervenors	May 8, 2017
Comments, ITC Midwest	May 8, 2017
Comments, Wisconsin Power and Light	May 8, 2017

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

 **Relevant Documents**

	Date
Comments, Great River Energy and Minnesota Power	May 8, 2017
Comments, Department of Commerce, Division of Energy Resources	May 8, 2017
Comments, Department of Commerce, Energy Environmental Review and Analysis	May 8, 2017
Comments, Just Change Law Offices	May 8, 2017
Comments, Marie McNamara	May 8, 2017
Reply Comments, Otter Tail Power Company	May 26, 2017
Reply Comments, ITC Midwest	May 31, 2017
Reply Comments, Public Intervenors	May 31, 2017
Reply Comments, Marie McNamara	May 31, 2017
Reply Comments, Department of Commerce, Energy Environmental Review and Analysis	May 31, 2017
Comments, Department of Agriculture	April 26, 2018
Rule Drafts	July 2018
Certificate of Need Legislative Changes	2005, 2014, and 2016
Siting and Routing Legislative Changes	2005

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I. Background

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

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

Many of the draft rule changes are intended to codify practices that have developed since authority over the siting and routing rules were first transferred to the Commission by the Legislature. Experience with ongoing dockets has led parties, stakeholders, and staff to develop and clarify procedures that provide the basis for the procedural framework incorporated into the attached drafts.

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

II. Advisory Committee

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

The committee included the following stakeholders:

- Department of Commerce, Energy Environmental Review and Analysis
- Department of Commerce, Division of Energy Resources
- Xcel Energy
- Just Change Law
- Midcontinent Independent Transmission System Operator
- Great River Energy
- No CapX 2020 and United Citizens Action Network
- Minnesota Power
- Department of Transportation
- North Route Group
- Chamber of Commerce
- Minnesota Wind Coalition

- Richard Savelkoul
- Barr Engineering
- David Aafedt
- Jerry Von Korff
- ITC Midwest LLC
- Jointly, Rochester Public Utilities, Southern Minnesota Municipal Power Agency, Missouri River Energy Services, Minnkota Power Cooperative, and Dairyland Power Cooperative, and Otter Tail Power Company.

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

Throughout the process, the committee identified issues and recommended changes to the drafts, which were updated in response to that input. And while the committee reached consensus on many issues, there are some issues on which the committee did not reach consensus.

III. Comment Period

The Commission considered the two rule drafts of Chapters 7849 and 7850 at its March 9, 2017 agenda meeting and subsequently issued a notice for comment on the February 2017 drafts of 7849 and 7850, and the following topics:

- Any issue arising from the February 2017 rule drafts of Chapters 7849 and 7850 as filed in the Commission’s electronic filing system in this docket.
- Any recommended change to the drafts, along with the rule part affected and the reason for the change.
- The economic effects of the drafts, including identifying any other federal or state regulations that may have a cumulative effect.
- The effect of existing law on the draft rule changes.
- Whether pre-application meetings under part 7850.1620 should be required only for route permit applications or also for site permit applications.
- Any issue arising from changing the definition of “associated facilities” in both rule chapters to include “natural gas pipelines directly associated with a large electric generating facility that is necessary to interconnect the plant to the transmission line.”
- Any issue arising from the new language in part 7850.1640, subpart 1 (P), (Q), and (R) concerning local zoning and use of eminent domain and in part 7850.1640, subpart 2 (Q) and (R) concerning use of eminent domain.

- Any issue arising from the new language in parts 7849.0208 and 7850.1710 on application completeness to require that incomplete applications be considered at “the earliest possible Commission agenda meeting for further review by the Commission, considering the applicant’s availability and request for additional time.”
- Any issue arising from the new language in parts 7849.0250 and .0260 requiring an applicant to consider “energy storage” as an alternative to the proposed facility.
- Any issue arising from the new language in part 7850.1500, subp. 1 (C) (4) to exempt from the permit requirements modification of a solar-powered plant “that is exempt from a certificate of need under Minn. Stat. § 216B.243, subd. 8(7), as long as the plant is not expanded beyond the developed portion of the plant site.”
- Any issue arising from the new language in part 7850.4400 (B) authorizing use of prime farmland for solar-powered plants only if the Commission approves a farm mitigation plan developed in consultation with the Department of Agriculture and if there is no local zoning ordinance prohibiting the construction of solar-powered plants on prime farmland.
- Any issue arising from the new language in part 7850.4925 giving authority to a local unit of government to file a complaint about alleged permit violations on behalf of its constituents.

In response to its March 9, 2017, Notice, the Commission received comments from:

- Xcel Energy;
- Marie McNamara;
- Public Intervenors;
- ITC Midwest;
- Wisconsin Power and Light Company;
- Great River Energy and Minnesota Power;
- The Department of Commerce, Division of Energy Resources;
- The Department of Commerce, Energy Environmental Review and Analysis;
- Just Change Law Offices of Paula Maccabee; and
- Otter Tail Power Company;

Their comments are addressed in Sections VII and VIII below.

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

A. Changes to Notice Plan Requirements

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

The committee discussed possible changes to the notice plan requirements and concurred that there is no longer a need to require applicants to file a notice plan *for approval prior to giving notice* of a proposed project. Under Minn. R. 7829.2550, an applicant must file its notice plan at least three months prior to filing a certificate of need application and must implement the approved notice plan within 30 days of Commission approval.

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

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

B. Notice Lists

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

There are five lists that will be maintained under this rule:

- the general contact list;
- the project contact list;
- the public agency contact list;
- the local and tribal government contact list; and
- the landowner list.

The Commission will maintain the first three lists. The applicant will maintain the last two lists. To align the procedures of both rule chapters, draft changes to Chapter 7850 establish the same notice lists.

The general list includes persons who want to be notified of *permit* applications under Chapter 7850. This list will be used to also notify people of certificate of need applications. The project

contact list includes anyone who has requested to receive notice of a specific project. The public agency list includes state and federal agencies that are likely to be interested in, and have regulatory responsibilities related to, certificate of need filings.

The local and tribal government list includes entities located in the project area. The landowner list includes those whose property is within a project footprint, or within a half-mile of the footprint, as well as landowners whose property is along a proposed transmission line.

C. Application Completeness Determination

Minn. Stat. § 216E.03, subd. 3, requires – *in permitting cases* – that the Commission make a completeness determination within 10 days, as follows:

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

The draft rule incorporates this statutory requirement by delegating to the Executive Secretary the authority to determine, within the 10-day time period, whether an application is complete. To align the procedures of both rule chapters, the draft rule requires the Commission to determine within 10 days whether a *certificate of need* application is complete. This change modifies the existing rule, which requires the Commission to notify applicants within 30 days if a certificate of need application is not substantially complete. The advisory committee concurred on incorporating the 10-day deadline.

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

D. Process Schedule

The draft rule requires development of a process schedule after a certificate of need application is filed and requires Commission staff to consult with the Department and the applicant to set a proposed schedule for completing the permitting process, considering applicable statutory deadlines. This approach furthers the policy goal of establishing, strengthening, and maintaining an open, orderly, and timely process that takes into consideration applicable statutory deadlines.

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

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

E. Independent Power Producers

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

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

F. Application Content Requirements

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

Because usage data for other classes, such as the irrigation and drainage pumping class, is required under the current rule but not relevant to all proposed projects, applicants have often requested, and the Commission has granted, exemptions from existing data requirements.

The advisory committee explored various approaches to updating the existing rules with the goal of ensuring that the most comprehensive and complete set of data relevant to questions of need is filed. Ultimately, the committee reached consensus on requiring a utility to file engineering data followed by a separate rule part governing the utility's forecast.

G. Environmental Report Process

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

In addition, the draft rule requires the Department to file a copy of its scoping decision with the Commission and to send notice of the decision to those who are on the project contact list, public agency contact list, local and tribal government contact list, and landowner list. The draft rule also updates the list of potential impacts that must be addressed in the Environmental Report, including on hydrological resources, ecological resources, and land use.

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

As discussed in the preceding section, applicants have the option to simultaneously file a certificate of need application and a permit application. The drafts of both chapters therefore clarify the process when multiple applications are filed. The changes address application completeness (proceedings will not begin until all applications are found to be complete) and require the Commission to decide whether to hold joint scoping meetings, joint public hearings, and joint evidentiary hearings.

In all cases, proceedings will be coordinated using a process schedule developed by Commission staff in conjunction with the Department and the applicant, considering applicable statutory deadlines.

A. Notice Lists

There are five lists that will be maintained under this rule:

- the general contact list;
- the project contact list;
- the public agency contact list;
- the local and tribal government contact list; and
- the landowner list.

The Commission will maintain the first three lists. The Applicant will maintain the last two lists. The draft changes to Chapter 7849 establish the same notice lists.

The general list is an existing list and includes persons who want to be notified of permit applications. The project contact list is also an existing list and includes anyone who has requested to receive notice of a specific project. The public agency list is a new list and includes state and federal agencies that are likely to be interested in permitting cases.

The landowner list is a new list and includes those whose property is within a project footprint, or within a half-mile of the footprint, as well as landowners whose property is along a proposed transmission line. The local and tribal government list is also a new list and includes entities located in the project area and is a new list

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

B. Preapplication Procedures

The committee concurred that it would be helpful to establish preapplication procedures by requiring: public outreach meetings; a draft permit application; comment periods on the draft application; and setting a process schedule.

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

1. Public Outreach Meetings

The draft rule requires an applicant to hold at least two public outreach meetings prior to filing a *route* permit application – not a site permit application. One of the meetings must be held in the county where a high-voltage transmission line would be located based on routes the applicant is actively considering or intending to propose in its application. It is common practice for applicants to hold public outreach meetings, and the draft codifies this practice to increase consistency and uniformity among applicants and to promote public participation early in the process.

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

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

2. Draft Applications

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

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

¹ Minn. Stat. § 216E.02, subd. 1.

3. Process Schedule

Once a draft application is filed, Commission staff must consult with the Department and the applicant to set a proposed process schedule, considering applicable statutory deadlines. Timeframes will be developed based on an applicant's projected date for filing the final application. A project-specific process schedule is a useful mechanism for alleviating inherent timing conflicts that currently exist in the rules and result from the transfer of authority over siting and routing from the EQB to the Commission.

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

Setting timeframes that are project-responsive, considering applicable statutory deadlines for completing the permitting process, will increase clarity and encourage effective participation.

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

C. Public Information and Scoping Meeting

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

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

D. Development of the Environmental Impact Statement or Environmental Assessment

The draft rule requires the draft EIS to be completed consistent with the process schedule. This increases clarity, while maintaining flexibility. Use of a schedule will increase orderliness and timeliness of the process and promote effective participation. And, establishing a project-responsive schedule provides needed flexibility to address project-specific issues.

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

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

F. Prime Farmland

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

G. Post-permitting Process

1. Compliance Filing

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

2. Project Changes

The draft rule modifies the existing rule to require persons requesting a change to the project to notify landowners whose property is along the portion of the route or adjacent to the site affected by the proposed change.

3. Amendment of Permit Conditions

The draft rule clarifies that anyone *affected by a permit condition* may request a change to a permit condition. Notice of a comment period on the change request will be given to landowners whose property is along the portion of the route or adjacent to the site affected by the proposed change.

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

4. Post-Permitting Reports

The draft rule requires a permittee to file monthly reports that summarize the complaints received during the preceding month and that provide the status of those complaints. The

² Minn. Stat. Ch. 13D.

reports must be filed monthly until the permittee completes the project and files a notice of project completion with the Commission.

VI. Housekeeping Changes

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

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

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

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

To remove unnecessary redundancy in the rules, the draft rule repeals parts 7850.2900 to 7850.3600, which restate procedures that are applicable to both the full permitting process and the alternative review process.

Under Minn. Stat. § § 216B.03 and 04, there are three major differences between the two forms of review: 1) the full permitting process requires an applicant to file at least two proposed sites or routes, whereas under the alternative review process an applicant must file only one proposed site or route; 2) the full permitting process requires that the record be developed using contested case proceedings, where under the alternative review process the Commission uses its informal process for developing the record; 3) the full permitting process requires an EIS, whereas the alternative review process requires an EA.

The draft rule distinguishes, as necessary, between the relevant differences and repeals parts that are redundant.

Xcel recommended clarifying that the rule changes would apply to applications filed after the effective date of the rules. Staff will work with the Revisor’s Office to address this issue.

There are a number of draft rule changes on which the Commission did not receive comments. As a result, some rule changes are not addressed in these briefing papers. Staff will, however, address each rule change in the Statement of Need and Reasonableness, which will be prepared after the Commission authorizes publication of proposed rules in the *State Register*.

VII. Comments on the Working Rules' Draft – Chapter 7849

7849.0010 DEFINITIONS.

Subpart 6a. Associated facilities.

ITC Midwest recommended expanding the definition of “associated facilities” by incorporating language from the definition of “high voltage transmission line.”

In the draft rule, the definition of “associated facilities” reads as follows:

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.

In the draft rule, the definition of “high voltage transmission” line reads as follows:

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

ITC Midwest recommended moving the language that would be repealed under “high voltage transmission line” into the definition of “associated facilities.” Under this change, the definition of “associated facilities” would include not only “buildings, equipment, and other physical structures that are necessary” to operate the line but also items “such as insulators, towers, substations, and terminals.”

Just Change Law also recommended including “substations” in the definition of “associated facilities.” Because buildings, equipment, and structures likely include insulators, towers, substations, and terminals, the draft rule does not incorporate this recommended change.

If, however, the Commission decides to incorporate this change, staff recommends that the definition of “associated facilities” in Chapter 7850 be similarly updated.

The Department responded to the Commission’s March 2017 Notice asking for input on whether to update this definition to include “natural gas pipelines directly associated with a large electric generating facility that is necessary to interconnect the plant to the transmission line.” The Department concurred that the certificate of need process should address any gas pipelines that are needed for a proposed project. The Public Intervenors concurred that

information on natural gas pipelines should be included but stated that such facilities should be treated as “associated facilities” *only* if they do not separately require a certificate of need.

Further Commission discussion on this issue would be helpful.

Subpart 12a. Independent power producer.

Wisconsin Power and Light recommended clarifying that “the provision of retail electric service to end users who are located in Minnesota will exclude an owner or operator of electric generation facilities from the definition.” The draft rule states that an independent power producer (IPP) does not include entities that provide retail electric service, and the draft rule therefore does not incorporate this change.

Subpart. 17. Minnesota service area.

Great River Energy and Minnesota Power recommended clarifying whether the term is intended to be consistent with “assigned service area” under Minn. Stat. § 216B.38 or is intended to include the location where transmission and distribution lines are located.

The term is used only in rule part 7849.0270, subp. 2, which the draft repeals. Because the term will no longer be used anywhere in the chapter, the draft rule repeals this term.

Subpart 31. Ultimate customers.

ITC Midwest recommended a technical clarification to use the term “ultimate consumers” instead of “end user customers” in two other definitions: “independent power producers” and “transmission company.” The draft rule includes this recommended change.

Subpart. 32. Utility.

Just Change Law, as well as No CapX 2020, United Citizens Action Network (U-CAN), North Route Group, and Goodhue Wind Truth (Public Intervenors) recommended modifying the draft definition of “utility” to remove any non-utility entities and list them instead in the definition of “independent power producer.” In particular, the Public Intervenors stated that including other entities in the definition inadvertently conveys to them the power of eminent domain.

In response to these comments, ITC Midwest stated that the draft rule definition is reasonable and does not convey eminent domain to the list of entities included in the definition, explaining that the definition of “utility” under the *permitting* statute (Minn. Stat. § 216E.01, sub. 10) conveys that authority, not the certificate of need rule’s definition, which is used to ensure that the entities listed comply with the requirement to obtain a certificate of need.

Some members of the advisory committee initially asked that the definition of “utility” be amended to incorporate additional entities because use of the term is applied generally and may be synonymous with “applicant.”

To avoid misinterpretation, there is no longer any recommended change to this definition. The draft rule leaves the existing definition in place.

Repeal of definitions.

The draft proposes repealing subparts 2, 3, 4, 5, 6, 10, 11, 16, 18, 19, 21, 22, 24, 25, 26, 27, 28, 30, and 33 because they will no longer be used in subsequent rule parts 7849.0270, .0280, and .0290.

Just Change Law recommended retaining these subparts —and the subsequent rule parts that use them—stating that they are relevant to analyzing the merits of an applicant’s forecast. The Public Intervenors concurred with this recommendation.

Changes to the affected rule parts that use these terms are separately discussed below.

7849.0030 SCOPE.

Subpart 2. Exemption.

Wisconsin Power and Light recommended adding language stating that a certificate of need is not required for project expansions. It is not clear how a “project expansion” is exempt under the statute, and the draft rule therefore does not incorporate this recommended change.

7849.0100 PURPOSE OF CRITERIA.

Just Change Law recommended, and the Public Intervenors concurred, that the rule retain the requirement that the Commission make a specific written finding with respect to the criteria listed. The draft removes this sentence because Commission orders are written in each case to sufficiently address questions of law, policy, and fact, considering the applicable criteria.

7849.0110 ALTERNATIVES CONSIDERATION.

ITC Midwest recommended changing the existing rule to allow the Commission to consider only those alternatives included in the scoping decision, instead of allowing the Commission to consider alternatives identified before the close of the public hearing. The draft rule does not include any substantive changes to the existing rule, only two housekeeping changes.

As a matter of practice, project alternatives are not typically developed at public hearings, but it is not necessary to explicitly prohibit the consideration of alternatives; the Commission will consider alternatives based on record evidence. For this reason, the draft does not incorporate this recommended change.

ITC Midwest also recommended a similar change to rule part 7849.0120 below, and for similar reasons, the draft does not incorporate this recommended change.

7849.0120 CERTIFICATE OF NEED CRITERIA.

The draft rule is aimed at removing redundancy and increasing clarity. It repeals criteria that are listed in the certificate of need statute because it is unnecessary to list criteria in the rule that

are now listed in the statute (the statute was amended after the existing rules were codified).³ The rule instead cites the statute, an approach that also helps prevent the rule from becoming outdated if the statute is subsequently amended. The draft rule also restructures the rule by showing the criteria as a list (similar to how the statute is structured), rather than as a list and sub-list of criteria.

Just Change Law recommended retaining the existing rule and its structure, but for the reasons stated above, the draft rule does not retain the existing rule language.

The draft rule requires consideration of regional need, consistent with the certificate of need statute, which *requires* the Commission to consider the benefits of increasing reliability of energy supply “in Minnesota and the region.” The statute also requires the Commission to consider the relationship of a proposed transmission line to regional energy need as identified in plans developed using MISO data.

Just Change Law recommended, however, clarifying that regional need for electricity may be considered but is not determinative. The draft rule is intended to incorporate the statutory requirement to consider regional need and therefore does not include this recommended change. The Commission will weigh consideration of regional need along with all other applicable factors on a case-by-case basis.

ITC Midwest recommended clarifying the language on alternatives under C to state that the Commission must consider whether the proposed project is more reasonable and prudent than any other alternative “included in the scoping decision under Minn. R. 78849.1425 and for which there exists substantial evidence on the record with respect to each of the criteria list in this part, 7849.0120.” The draft does not include this change because the consideration of alternatives will depend on the record developed in each case. To ensure flexibility for the Commission to consider the record on a case-by-case basis, the draft rule does not include this recommended change.

7849.0125 NOTICE LISTS.

Subpart 2. Project contact list.

ITC Midwest recommended removing the requirement that the Commission 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 draft rule is modeled after a nearly identical requirement in Chapter 7850.

Although the rule requires the Commission to include anyone on the project contact list who has requested to receive notice, it is possible that sign-in sheets at public meetings or other information may lead Commission staff to believe that other members of the public – or possibly other entities – may benefit from receiving notice about a project. Encouraging public participation in Commission proceedings is a cornerstone of both the certificate of need and

³ Minn. Stat. § 216B.243.

siting and routing statutes, and the flexibility to add names to a project contact list furthers this legislative priority. The draft rule therefore retains this requirement.

Subpart 3. Public agency contact list.

Great River Energy and Minnesota Power recommended adding the Federal Aeronautics Administration to the list. The draft rule has been modified to include this recommended change.

Subpart 4. Landowner list.

ITC Midwest recommended removing from the list landowners “who are reasonably likely to be affected by the proposed project.” The Company stated that the requirement is vague and unnecessary in light of the fact that the subpart also requires the list to include landowners whose property is along a proposed transmission line or within a proposed power plant’s project footprint; ITC Midwest recommended requiring notice to landowners “within or immediately adjacent to a route.”

The “reasonably likely to be affected” language is existing language under Minn. R. 7829.2550, which requires notice to “landowners reasonably likely to be affected by the proposed transmission line.” A landowner whose property is not along a proposed transmission line may still be affected, depending on proximity and distance. An applicant is therefore in the best position to identify landowners who are likely to be affected by a proposed project. And, broad public notice encourages public participation.

The EERA recommended replacing the phrase “along a transmission line” to “within a proposed transmission line route.” Xcel concurred that “along a transmission line” is unclear. The draft uses the term “along” because it is the term used in the permitting statute and corresponding permitting rules. Also, landowners near a proposed transmission line (specific *route* locations are not under active consideration in the certificate of need process) could be affected. For these reasons, the draft rule does not include these recommended changes.

The EERA also recommended replacing “proposed footprint” with “proposed site.” To ensure that the entire project area is included, the draft rule uses the term “footprint,” instead of “site.”

Subpart 5. Local and tribal government contact list.

Great River Energy and Minnesota Power recommended clarifying whether notice is required to governmental entities affected by project alternatives identified in the scoping process. They also noted that “project area” is used in this subpart but not defined.

To address these issues, subpart 6 of the draft rule has been updated to require that notice lists be updated to include landowners *and each governmental entity* located in the project area of a proposed alternative. And, subparts 5 and 6 have been updated to clarify that entities located in “the proposed facility’s project area” must be notified.

A change to the next draft rule, part 7849.0130, will require the applicant to include in the content of its notice the location and identification of the “project area” of the proposed facility

to ensure that anyone who is within the project area—as described by the applicant—will be notified of the proposed project.

ITC Midwest recommended stating that the contact list can include either chief executives “or clerks” of the local unit of government. As long as the list includes the head of the local unit of government, the notice is likely to be distributed to those who would want to be informed. The draft rule therefore does not include this recommended change.

Subpart 6. List maintenance.

As a clarification, the draft rule has been modified to include requirements on how lists must be maintained in this subpart, rather than in each individual subpart.

7849.0130 PROJECT NOTICE.

Subpart 3 C. Notice content.

The Commission’s March 23, 2017 notice inviting comments on the draft rule asked for input on whether to require applicants to include information on the intended use of eminent domain proceedings.

Xcel recommended against requiring an applicant to state whether it intends to retain the option to exercise eminent domain, explaining that although the Company tries to avoid use of the procedure, it is sometimes prudent to do so and that a rule requirement about the applicant’s intent is therefore unnecessary.

ITC Midwest similarly opposed the requirement, stating that its notices will clearly state that the applicant intends to retain its right to exercise eminent domain. The Company recommended that the draft rule be modified to remove the first requirement and instead modify subpart 3C (10) to include contact information for the applicant’s land agents.

Great River Energy and Minnesota Power recommended stating in the rule that eminent domain is an option, rather than requiring the applicant to state whether it is retaining the option to exercise eminent domain.

Otter Tail Power stated that it would not be in a position to determine, at this stage in the process, whether it would retain the right to exercise eminent domain but supports language making it clear that eminent domain is an option.

Based on the comments received, the attached draft does not include the eminent domain language at issue. The draft rule does, however, in subpart 3 C (10), require the notice to include 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.”

Subpart 5. Press release.

Just Change Law recommended that the press release, which is a new notice requirement, include information on the public advisor and to include a statement that the public will have opportunities to comment on the application.

Information on public participation, including the scoping process is included in the mailed notice that will go out to members of the public. Part 7849.1400, which governs notice of the public information and scoping meeting, has been modified to require the name and contact information for the Commission's public advisor and a description of the public advisor's role.

Great River Energy and Minnesota Power recommended requiring that a press release be "broadcast" into a county by a radio station rather than requiring that the notice be broadcast by a radio station that is located within the county, considering that not all counties have a radio station. If a county does not have a radio station, an applicant would not be in violation of the rule where compliance is not possible. To ensure that the rule is sufficiently flexible, however, the draft rule has been modified to include language stating that if there is no radio station within a county, the applicant must issue a press release to a radio station that broadcasts into the county.

Marie McNamara recommended requiring notice of the public information and scoping meeting as part of this notice. But rule part 7849.1400, subpart 2, governs notice requirements applicable to the public information and scoping meeting and requires two newspaper notices of that meeting. The draft rule therefore does not incorporate this recommended change.

Subpart 7. Good faith sufficient.

ITC Midwest recommended that the Commission authorize the Executive Secretary to modify the process schedule if notice is found to be defective. In the event the Commission is taking action to address defective notice, the Commission is in the best position, however, to also consider any necessary extension to the proceedings. The draft rule therefore does not incorporate this recommended change.

Great River Energy and Minnesota Power recommended stating "where project notice was deficient," but Minn. Stat. § 216E.04, subd. 4, uses the term "defective," which the draft rule also uses. The draft rule therefore does not incorporate this recommended change.

7849.0200 APPLICATION FORM AND MANNER OF FILING.**Subpart 2. Non-electronic filing.**

Just Change Law recommended retaining a requirement that applicants (who file paper copies) provide their applications to other state agencies "with regulatory responsibilities in connection with the proposed facility and to other interested persons who request copies." But under subpart 7, an applicant is required to serve a copy of its application on the Department and Office of the Attorney General and to provide broad notice of its filing to all notice lists. The draft rule therefore does not incorporate this recommended change.

Further, under changes to this subpart, applicants who do not file applications electronically will be required to file three copies, instead of 13. In light of the Commission's electronic filing system, it is unnecessary to receive numerous paper copies. Commission staff can simply e-file the original paper copy to make it electronically available to anyone via the Commission's publicly accessible e-docketing system. In practice, the Commission no longer receives paper applications, although the statute requiring electronic filings (Minn. Stat. § 216.17) does not prohibit all entities from making paper filings, and as a result, the draft rule retains language governing paper filings.

Subpart 5. Changes to application.

Great River Energy and Minnesota Power recommended clarifying whether changes to an application can be made electronically. Rarely will any applicant file paper copies. Further, applicants required to file electronically under Minn. Stat. § 216.17 must follow those procedures, which would apply not only to the original filing but to subsequent filings as well. The draft rule therefore does not include any further clarification.

Subpart 6. Exemptions.

Wisconsin Power and Light recommended retaining a deadline on the Commission's decision by extending the existing deadline of 30 days to 90 days. The Commission will make a decision as soon as possible, but the timing of that decision will depend in part on the filing, the comments received, and the complexity of issues raised. Further, the draft rule modifies the application content requirements to reduce the frequency of exemption requests. For these reasons, the draft rule does not incorporate this recommended change.

ITC Midwest recommended clarifying that a decision on the exemption request must be made "before beginning the contested case or informal hearing." Great River Energy and Minnesota Power also recommended clarifying the existing rule, which states that the Commission must state its reasons for granting or denying the exemption request "before beginning the hearing."

The draft rule does not propose any change to the existing language because the Commission does not begin any hearings on a certificate of need application prior to a decision on an exemption request, and there are no examples of any problems with the existing rule language.

Subpart 9. Joint applications.

ITC Midwest recommended clarifying that joint applications refer to a certificate of need application and a route permit application. But there are instances where a certificate of need application could be combined with a site permit application, and for this reason, the draft rule does not incorporate this recommended change.

The EERA recommended removing draft rule language stating that "after determining that all applications are complete" the Commission must decide whether to hold joint proceedings. The draft has been updated to incorporate this change because "all" applications would include draft permit applications; the Commission only makes a completeness determination on a final application.

The EERA also recommended removing a citation to rule part 7850.2140 to reflect a recommended renumbering of that rule. Staff will work with the Revisor's Office on renumbering and organizational issues as needed to increase clarity.

7849.0208 COMPLETENESS DETERMINATION.

Just Change Law stated that the rule unreasonably excludes public comment on completeness. But the draft rule is intended to align the procedures of both rule chapters by incorporating the same 10-day completeness determination timeline applicable to a permit under Minn. Stat. Ch. 216E to certificates of need. Draft rule part 7850.1710, governing *permit* applications, incorporates the statute's 10-day requirement. Applying the same requirement to 7849 and 7850 is reasonable because they are frequently invoked together and their requirements are similar. The draft rule therefore retains this 10-day decision requirement.

The Department stated that it is reasonable to include language in the draft rule stating that incomplete applications will be considered "at the earliest possible Commission agenda meeting for further review by the Commission, *considering the applicant's availability and request for additional time.*" The italicized language was included for comment in the Commission's March 23, 2017 Notice.

Commission staff has also added language to this rule part directing the Executive Secretary to designate a public advisor at this stage of the process.

7849.0210 FILING FEES AND PAYMENT SCHEDULE.

Subpart 2. Payment schedule.

Great River Energy and Minnesota Power recommended updating the existing payment schedule language to be consistent with current practice. They stated that applicants make an initial payment, with subsequent semi-annual invoices issued by the Commission and Department until payment in full is made.

Marie McNamara recommended modifying the rule to require that documentation of payments be electronically filed to ensure notice of rule compliance.

Staff is not aware of any compliance issues, and the draft rule therefore does not include any changes to the existing rule.

7849.0220 APPLICATION CONTENTS.

Subpart 1. All applicants.

Just Change Law opposed the citation to rule part 7849.0120, stating that it cites to a rule that unreasonably removes content requirements that are necessary for a substantive review of the application. Otter Tail opposed the recommended change, stating that the advisory committee concurred on the draft rule changes and that the rules comply with the certificate of need statute. Part 7849.0120 contains an accurate list of the factors the Commission must consider, and for this reason, the draft rule does not remove the citation.

Just Change Law also recommended adding a requirement that an applicant file studies relied upon in support of its application. Subpart 2 of the draft rule requires an application to include information on regional planning affecting the proposed project, and that subpart has been modified to require an applicant file *any* study relied upon.

Subpart 2. Regional transmission planning.

The draft incorporates Just Change Law's recommendation under subpart 1 that an applicant file any study relied upon to demonstrate that the project is needed.

ITC Midwest recommended clarifying whether this requirement is applicable to generation projects. But the draft rule states that it applies to all certificate of need applications and therefore no further clarification has been added to the draft rule.

Subpart 3. Joint proceedings.

The EERA recommended that the draft rule remove language on the intended timing of any related site or route permit application. The draft rule has been modified to require the applicant to state the intended date of filing, if known.

The EERA also recommended removing a citation to rule part 7850.2140 to reflect a recommended renumbering of that rule. Staff will work with the Revisor's Office to address renumbering and organizational issues as necessary to increase clarity.

7849.0250 PROPOSED LEGF AND ALTERNATIVES APPLICATION.

ITC Midwest recommended that A (6) of the rule require an applicant to file a map, instead of a map scale, showing the applicant's system. A map scale shows the relationship between the distance on a map and the corresponding ground distance; this method is likely to show a clearer depiction of the area, and the draft rule therefore does not incorporate this recommended change.

Applicants who do not own or operate an electric system are authorized to file a map of the area, in lieu of a map scale. ITC Midwest recommended clarifying that an "aerial map" may be filed. The draft rule does not prohibit use of an aerial map and therefore does not incorporate this recommended change.

ITC Midwest also recommended clarifying that "estimated losses" in D (8) should be "estimated system losses." This recommendation is consistent with a change made to part 7849.0260 A (3), and the draft rule therefore incorporates this recommended change.

7849.0255 INDEPENDENT POWER PRODUCER LEGF APPLICATION.

Wisconsin Power and Light recommended clarifying that this rule only applies to independent power producers who are not exempt from the certificate of need process. The statutory exemptions that are available are described in rule part 7849.0030 (governing the scope of chapter 7849), and the draft rule therefore does not incorporate this recommended change.

Great River Energy and Minnesota Power questioned what would happen if a power purchase agreement is subsequently not approved. Subpart 1 requires that an applicant include the docket number of the Commission proceeding in which the agreement was approved. If the applicant no longer has access to the data required, the applicant would, as a practical matter, need to file updates to its application, and the Commission could then consider, based on the facts of the case, whether and how the change affects the review process.

Subpart 1. Utility data.

Wisconsin Power and Light also recommended adding language to clarify that an independent power producer who has a power purchase agreement with a utility that serves end user customers “in Minnesota” must provide the required data. The Commission’s jurisdiction extends to applicants building facilities in Minnesota and the draft rule therefore does not incorporate this recommended change. In the event an unusual situation occurs in which it is not clear whether certain data is required, however, the applicant can use the Commission’s exemption process under part 7849.0200, subpart 6, to request an exemption from a specific data requirement.

Subpart 3. Relevant available data.

Wisconsin Power and Light recommended adding language stating that an applicant that does not have a PPA with a utility that serves customers “who are located in Minnesota” is not required to file the information. For the same reasons as described above, the draft rule does not incorporate this recommended change.

7849.0260 PROPOSED LHVTL AND ALTERNATIVES APPLICATION.

ITC Midwest recommended moving the requirement that an applicant consider lower voltage options under 100 kV, from C (8), into C (3), which requires an applicant to consider transmission lines with different design options. The draft rule incorporates this recommended change.

Great River Energy and Minnesota Power recommended clarifying B, which requires information on the most recent reliability report, to address a circumstance where there is no such report. Commission staff with technical expertise in this area stated that it is highly unlikely that such a report would be unavailable, considering MISO’s involvement in regional transmission planning. However, if the situation arises, an applicant has the option to request an exemption from this data requirement under part 7849.0200, subpart 6. The draft rule therefore does not incorporate this recommended change.

7849.0270 PEAK DEMAND AND ANNUAL CONSUMPTION FORECAST ENGINEERING DATA.

Just Change Law recommended retaining existing data requirements (and corresponding definitions in part 7849.0010, subparts 2, 3, 4, 5, 6, 10, 11, 16, 18, 19, 21, 24, 25, 26, 27, 28, 30, and 33), stating that they are necessary for analyzing whether a proposed project is needed. The Public Intervenor concurred.

The draft rule reorganizes and amends this rule part, which requires data on peak demand, forecast content, forecast methodology, and the assumptions made in preparing the forecast. The draft rule divides the rule into two separate rules. The first requires engineering data. The second part, renumbered as rule part 7849.0275, governs forecast methodology. These draft changes were made as part of the advisory committee process and with consensus among committee members.

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

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

The advisory committee explored various approaches to updating this rule with the goal of ensuring that a utility files the most comprehensive and complete set of data that is relevant to questions of need and that was relied upon by the utility in making its decision to file a certificate of need application. Ultimately, the committee reached consensus on requiring a utility to file engineering data followed by a separate rule part governing the utility's forecast.

Engineering data will include a base case model, such as a power flow study, that analyzes the system's capability to adequately support the existing load. The model filed must include detailed information such as changes made to the model, performance criteria, contingencies and conditions modeled, methods of power transfer simulated, and software input and output data. Commission staff with technical expertise worked closely with the advisory committee to identify specific and relevant data requirements that are included in the draft rule.

Further, subpart 3 of this rule requires an applicant to explain the correlation between the proposed project and the applicant's extended forecast filing under Department rules, Minn. R. 7610, which were modeled after the Commission's existing rules. In other words, utilities are required to file under Chapter 7610 the information currently required under this existing rule part. The Department's rules govern the annual forecasting, statistical, and informational reporting requirements as required by statute.⁴ There is no need to retain this redundancy. Instead, the draft rule requires an applicant to explain the correlation between data filed under 7610 and data filed in its certificate of need application.

⁴ See Minn. Stat. §§ 216C.17 and 216C.18.

7849.0275 FORECAST METHODOLOGY, DATA BASE, AND ASSUMPTIONS

Subpart 1. Forecast methodology.

Just Change Law recommended retaining existing language that the draft rule proposes to repeal, stating that a specific forecast methodology should be required. The Public Intervenors concurred.

As explained above (in the discussion of changes to part 7849.0270), the advisory committee reached consensus on changes to restructure this rule to better reflect industry changes. Since the rule was first implemented, the type of data that is relevant to specific projects has changed, leading to an outdated rule. As a result, applicants often request an exemption to this rule.

For example, the Commission recently granted Xcel and ITC Midwest (joint applicants) an exemption (under part 7849.0200, subpart 6) from the requirements of this provision and authorized the applicants to provide other data, including substation demand and forecasts for substations in the project area and data on congestion.⁵ In other words, the applicants sought to file data they relied on to demonstrate that the proposed project is needed. No one opposed the applicants' exemption request.

The advisory committee concurred on the changes included in the attached draft, which obtains relevant information without requiring information that may not apply.

Subpart 3. Assumptions and special information.

Just Change Law recommended retaining existing language requiring applicants to file data on electricity prices and the effects of conservation on long-term demand. The Public Intervenors concurred.

The committee concurred on the changes included in the attached draft, and for the reasons stated above, the draft rule does not incorporate this change.

7849.0280 SYSTEM CAPACITY.

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

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

⁵ In the Matter of the Application of Xcel Energy and ITC Midwest, LLC for the Huntley-Wilmarth 453 kV Transmission Line Project, Docket No. E-002,ET-6675/CN-17-184 (September 1, 2017).

instead provided data on the area affected by the proposed project, also described as the affected load center.

Commission staff with technical expertise worked closely with the advisory committee to identify specific and relevant data requirements. And Chapter 7610 requires utilities to file detailed forecasting information. The draft rule therefore does not incorporate further changes.

Great River Energy and Minnesota Power recommended clarifying under A of the draft rule what happens if an applicant does not have multiple “reserve margins.” An applicant can satisfy the rule by filing the information it has available, and the draft rule therefore does not incorporate further changes.

7849.0290 CONSERVATION PROGRAMS, APPLICATION.

ITC Midwest recommended clarifying that transmission companies are excluded from this rule’s filing requirement. The draft rule has not been modified to incorporate this recommended change. Further discussion of this issue would be helpful in clarifying whether all transmission companies should always be exempt from this rule requirement and whether they should also be exempt from other rule parts.

Just Change Law recommended modifying the draft rule to not only require consideration of conservation methods as an alternative to a proposed project, but to require consideration of the effects of conservation, along with other alternatives, on the scope, size, or timing of a proposed project.

The advisory committee originally concurred to modify the rule to require:

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

Upon further reflection of the draft rule, it appears that the most logical place for consideration of conservation methods as an alternative is in rule parts 7849.0250 and 7849.0260, which require consideration of alternatives. The draft rule therefore modifies the relevant rule parts, as described above.

7849.0300 CONSEQUENCES OF DELAY.

Just Change Law recommended retaining language on the three levels of demand, and the Public Intervenors concurred. The draft rule requires information on system impacts if the proposed project is delayed up to three years but strikes the reference to the three levels of demand, which are no longer used in part 7849.0270.

Commission staff with technical expertise worked closely with the advisory committee to identify specific and relevant data requirements. And Minn. R. 7610.1010 requires utilities to

annually file “forecast confidence levels or ranges of accuracy for annual peak demand and annual gas consumption.” Accordingly, the draft rule does not include this recommended change.

The Department recommended replacing the term “power pool” with “regional transmission organization,” or RTO. The Department noted that other references to “power pool” have been eliminated in the draft rule and that it is reasonable to update the rule to refer to the RTO. ITC Midwest concurred with the Department’s recommendation, as did the Public Intervenor. The draft rule has been modified to include this recommended change.

7849.0320 GENERATING FACILITIES.

Marie McNamara recommended adding a requirement that “inaudible infrasound” be considered. The Public Intervenor concurred. Further discussion of this issue may be helpful to better understand what is meant by the term, how the testing would be conducted, and what inaudible noise thresholds would be relevant.

7849.0340 NO-FACILITY ALTERNATIVE.

Just Change Law recommended retaining language requiring three levels of demand. The Public Intervenor concurred. Consistent with other changes to the draft rule that strike the reference to the three levels of demand, which are no longer used in part 7849.0270, the draft rule does not include this recommended change.

7849.0400 CERTIFICATE OF NEED CONDITIONS AND CHANGES.

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

Just Change Law recommended requiring notice to the Commission prior to implementation of any of the changes listed to ensure the opportunity for review. Otter Tail opposed the recommended change. Requiring review of these changes prior to their implementation was discussed among the advisory committee, and although there is some support for this approach, there is no pattern of compliance issues warranting prior Commission approval. The draft rule therefore does not incorporate this recommended change.

Great River Energy and Minnesota Power recommended clarifying under subpart 2 (D) the meaning of “a large transmission line length addition or subtraction made as a result of the route length approved by the commission.” The draft rule does not incorporate any additional clarification, and staff is unaware of any compliance issues warranting the need for further changes.

7849.1000 NOTICE AND COMMENTS; PETITION TO INTERVENE.

Subpart 4. Process schedule.

ITC Midwest recommended requiring the process schedule to be an established schedule, not a proposed schedule, and to include timeframes for contested case proceedings. Great River Energy and Minnesota Power recommended setting forth a process schedule that accounts for

contested case proceedings. Xcel emphasized the importance of a predictable process for all stakeholders.

The draft rule includes a proposed process schedule to ensure needed flexibility to enable the applicant, the Department, and Commission staff to set project-responsive timeframes. Otherwise, timeframes that need to be adjusted could require rule variances that add unnecessary delay to the proceedings.

The draft rule has been modified to include a statement that the applicant or the Department can request that the Commission review and modify the schedule. There is sufficient time in the attached schedule for contested case proceedings. However, the proposed schedule does not recommend timeframes for proceedings that are governed by the Office of Administrative Hearings. Further, the schedule can be modified as necessary to reflect the timing of such proceedings.

7849.1100 RECORD DEVELOPMENT.

Just Change Law recommended modifying the language to clarify that a case should be referred to the OAH for contested case proceedings if there are disputed issues of fact or if referral would facilitate public participation in a controversial matter or result in more effective record development. The Commission has such referral authority under Minn. R. 7829.1000, and the draft rule therefore does not incorporate this recommended change.

7849.1200 ENVIRONMENTAL REPORT.

Just Change Law recommended modifying the last sentence to include a reference to Minn. § 116D.04 to ensure that the Department is responsible for the accuracy and sufficiency of the Environmental Report. The draft does not incorporate this change, however, because the statute cited governs the process for developing an Environmental Impact Statement, not an Environmental Report.

7849.1400 PROCESS FOR ENVIRONMENTAL REPORT PREPARATION.

Just Change Law recommended requiring an Environmental Impact Statement for certificate of need projects instead of an Environmental Report. The Public Intervenors concurred. Otter Tail Power opposed the recommendation. ITC Midwest also opposed this recommendation, stating that the Environmental Report process is an approved alternative form of environmental review under Minn. Stat. § 116D.04.

The EQB approved the Environmental Report as an alternative form of environmental review, and the draft rule therefore does not incorporate a change to the rule's requirement.⁶

⁶ Minn. Stat. § 116D.04, subd. 4a, states that the Environmental Quality Board "shall by rule identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement in a more timely or more efficient manner to be utilized in lieu of an environmental impact statement." The environmental review portion of the

Subpart 2. Content of notice.

The EERA also recommended retaining notice content requirements that are shown in subpart 2 of the existing rule. The advisory committee discussed various approaches to notice requirements to both ensure that members of the public are given useful information early in the process and that they do not lose interest due to long notices that repeat much of the information provided in previous notices. Based on the input of EERA, however, the draft rule retains existing notice content requirements.

Subpart 3. Meeting notice recipients.

The EERA recommended modifying the draft to require one—not two—newspaper notices, stating that it is unnecessary to require more than one. Great River Energy and Minnesota Power raised the same issue in their comments, and Otter Tail concurred that one newspaper notice is sufficient. The draft rule incorporates the recommendation of other advisory committee members who requested two newspaper notices, and the draft rule therefore retains the two-notice requirement.

Subpart 4. Conduct of public information and scoping meeting.

The EERA recommended adding language to state that “a transcript of the meeting need not be maintained, although” the Commission “may elect” to keep an audio recording of the meeting. ITC Midwest recommended requiring the Commission to keep either an audio recording or transcript. Otter Tail Power concurred on removing the requirement that a transcript be made.

The draft rule does not propose any changes to the existing requirement that the Commission must keep an audio recording, and staff is not aware of any problems with the existing rule.

Great River Energy and Minnesota Power recommended clarifying whether the applicant is required to give a presentation at the meeting. Although the existing rule does not explicitly require a presentation by the applicant, subpart 5 requires that the applicant be available for questions. As a result, no further changes to the draft rule have been made.

Subpart 6. Scoping process.

ITC Midwest recommended authorizing people to identify possible adverse or “beneficial” impacts of the proposed facility. The rule does not prohibit a discussion of benefits. Further, the process is intended to mitigate adverse impacts, and as a result, it is likely that benefits that mitigate impacts will be identified in the scoping process; the draft rule therefore does not incorporate this recommended change.

Subpart 7. Comment period.

Just Change Law recommended increasing the scoping comment period from 20 to 45 days. Adding additional time to the comment period would, however, alter the process schedule, likely contributing to extension of a final Commission decision on a certificate of need

certificate of need rules (parts 7849.1000 to 7849.2100) were originally promulgated by the EQB and subsequently transferred in 2005 to the Commission by the Legislature.

application past the 12-month statutory deadline, and the draft rule therefore does not include this recommended change.

The EERA recommended reducing the comment period from 20 days to 10 days, consistent with the scoping meeting comment period for permitting projects that require an EIS under Chapter 7850. Otter Tail concurred with the EERA on its recommendation. The 20-day comment period is an existing requirement, however, and it is unclear why shortening the comment period would be beneficial. The draft rule therefore does not incorporate this recommended change.

7849.1410 NOTICE TO COMMISSION.

Great River Energy and Minnesota Power recommended clarifying whether the notice requirement applies to joint proceedings (when certificate of need and permit applications are combined). The rule governing joint proceedings (7849.2900) states that the Department has the option to prepare an environmental assessment or EIS, in lieu of an Environmental Report. As a result, this notice requirement would not apply; for this reason, the draft does not include any further clarification.

7849.1425 SCOPING DECISION.

Subpart 1. Scoping decision.

The EERA recommended removing the requirement that the scoping decision be made within 20 days after the close of the public comment period, stating that that is an insufficient amount of time. The existing rule requires that the decision be made within 10 days. Otter Tail stated that 20 days is reasonable. The draft rule increased this timeframe to 20 days based on input from the advisory committee, including the EERA. But to ensure needed flexibility, the draft rule has been modified to state that the decision will be issued consistent with the process schedule.

Subpart 2. Notice of decision.

The Public Intervenors and Great River Energy and Minnesota Power recommended requiring notice of the scoping decision to two additional lists: the landowner list and the local and tribal government contact list. The EERA concurred with this recommended change, and the draft rule incorporates it.

7849.1500 ENVIRONMENTAL REPORT CONTENT.

Subpart 1. Content of environmental report.

The EERA, Just Change Law, and Otter Tail recommended clarifying the language governing which alternatives—or which combination of alternatives—must be studied in the Environmental Report. And they recommended that the no-build alternative be included. The draft rule has been modified to clarify that all alternatives (including the no-build alternative) must be studied, including any combination of alternatives identified in the scoping decision.

Subpart 4. Incorporation of information.

The EERA recommended that the draft rule include language directly from Minn. R. 4410.2400 (cited in the rule) to allow the EERA to incorporate information from other documents “when it will reduce bulk without impeding governmental review of the project.” It is not necessary to incorporate the exact language from another rule, which is cited, and the draft rule therefore does not include this recommended change.

7849.1525 ENVIRONMENTAL REPORT; FILING.

Otter Tail recommended against removing the requirement that the Environmental Report be filed within four months of the application filing. The draft rule requires that a proposed process schedule be set in coordination with the Department and the applicant to ensure that the schedule reflects their input. And, the draft rule has been modified to authorize either the Department or the applicant to file a request for Commission review of the proposed process schedule. The draft rule therefore does not include further changes.

7849.1530 PUBLIC COMMENTS.

Marie McNamara recommended a longer comment period on the Environmental Report, stating that 10 days is insufficient.

The EERA recommended removing the comment period on the Environmental Report and instead requiring a comment period after the public hearing. Otter Tail concurred with this recommendation. Just Change Law also recommended incorporating a comment period following the public hearing that would give interested persons 30 days to comment.

In practice, there is no comment period after the Environmental Report—only after the public hearing. To reflect current practice, the draft rule has been modified to remove the rule and instead set forth a 30-day comment period following the public hearing, as discussed in part 7849.1550 below.

7849.1550 PUBLIC HEARING.**Subpart 2. Public hearing notice.**

Just Change Law recommended modifying subpart 2 to require that the notice be given at least 10 working days in advance of the hearing, that a 30-day public comment period follow the hearing, and that the public be allowed to ask questions and enter comments into the record.

The draft rule states that Commission staff will coordinate with the administrative law judge on details of the hearing. This ensures that the administrative law judge retains flexibility to exercise discretion in conducting the hearing consistent with the rules of the Office of Administrative Hearings. Subpart 1 of the draft rule therefore includes a citation to the statute that requires a hearing to be held. For this reason, subpart 2 of the draft rule does not incorporate the recommended change.

Subpart 4. Newspaper notice.

Marie McNamara recommended that notice of the meeting be given by press release, in addition to newspaper notice. The draft rule incorporates this recommended change as a new subpart 5.

Subpart 6. Comment period.

The EERA recommended that a public comment period follow the public hearing, that the comments be filed with the Administrative Law Judge presiding over the hearing, and the draft rule has been modified to include this recommended change.

The EERA also recommended that the rule state that the Commission is not required to supplement the Environmental Report in response to comments filed. The Commission is not required to supplement the Environmental Report, but if the Commission determines that further record development is warranted, the Commission will make that decision based on the facts of an individual case. The draft rule therefore does not include this recommended change.

7849.1800 ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.

Just Change Law recommended clarifying that comments made on the Environmental Report must be considered by the Commission when making a final decision on a certificate of need, and recommended clarifying how the process would work when a contested case proceeding is held.

The Commission will consider the entire record in making a final decision, and it is not necessary to prescribe how the Commission will weigh the evidence. If a contested case is held, the procedures of the Office of Administrative Hearings will apply. If the process schedule needs to be modified a result, the Commission can do so, although the sample process schedule contemplates time for public hearings, which could be coordinated with evidentiary hearings.

ITC Midwest recommended clarifying that only the draft EIS must be filed prior to Commission hearings on a certificate of need application. The rule refers to an EIS in the context of joint proceedings on both a certificate and a permit application. The joint review process is further addressed in a subsequent rule part, 7849.1900, which states that the provisions of Chapter 7850 apply to joint proceedings. Chapter 7850 is the most logical place for detailing that Chapter's environmental review procedures, and the draft rule therefore does not incorporate this recommended change.

7849.1900 JOINT PROCEEDING.

The EERA recommended clarifying that the Commission must determine whether joint proceedings will be held and that the Department may recommend joint hearings. The draft rule incorporates these recommended changes.

VIII. Comments on the Working Rules' Draft – Chapter 7850

7850.1000 DEFINITIONS.

Subpart 3. Associated facilities.

ITC Midwest recommended moving language from the definition of “high voltage transmission line” into the definition of “associated facilities.”

In the draft rule, the definition of “associated facilities” reads as follows:

Subp. 3. 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.

In the draft rule, the definition of high-voltage transmission line reads as follows:

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.~~

ITC Midwest recommended moving the language that would be repealed under “high voltage transmission line” into the definition of “associated facilities.” Under this change, the definition of “associated facilities” would include not only “buildings, equipment, and other physical structures that are necessary” to operate the line but also items “such as insulators, towers, substations, and terminals.”

Just Change Law also recommended including “substations” in the definition of associated facilities. Because buildings, equipment, and structures likely include insulators, towers, substations, and terminals, the draft rule does not incorporate this recommended change.

If, however, the Commission decides to incorporate this change, staff recommends that the definition of “associated facilities” in Chapter 7849 be similarly updated.

7850.1400 EXEMPT PROJECTS.

Just Change Law recommended modifying subpart 2, instead of repealing it, to state that an applicant for an exempt project must comply with applicable “environmental review

provisions,” as well as any other applicable law. The draft rule has been modified to include this recommended change.

7850.1500 EXCEPTIONS TO PERMITTING REQUIREMENTS FOR CERTAIN FACILITIES.

Subpart 2. Minor alteration.

The EERA recommended retaining use of the term “minor alteration” and its subsequent use in part 7850.4800. The draft rule has been modified to retain use of the term “minor alteration.”

The Public Intervenors recommended clarifying why solar projects are separately addressed and wind projects are not governed by this rule chapter. Chapter 7854 governs the siting of wind projects, and as a result, this rule part does not address wind siting.

7850.1610 NOTICE LISTS.

Subpart 1. General list.

Great River Energy and Minnesota Power recommended making the list publicly available. The draft rule has been modified to include this recommended change.

Subpart 2. Project contact list.

ITC Midwest recommended removing the requirement that the Commission 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, stating that the standard for determining when someone would like to receive notices is unclear.

This is an existing requirement that will be moved into this part, which was developed to set forth notice list requirements. The draft rule retains this language because it is possible that sign-in sheets at public hearings or other information may lead Commission staff to believe that other members of the public – or possibly other entities – may benefit from receiving notice about a project. Encouraging public participation in Commission proceedings is a cornerstone of both the certificate of need and siting and routing statutes, and the flexibility to add names to a project contact list to give broad public notice furthers this legislative priority.

Subpart 4. Landowner list.

Great River Energy and Minnesota Power recommended clarifying how often the list must be updated. They also recommended clarifying “along” any route. The EERA recommended using the term “within” any route, rather than “along” any route. Otter Tail concurred with the EERA’s recommended change. ITC Midwest recommended that the draft rule state that landowners “within or immediately adjacent to” a proposed route would sufficiently ensure broad notice to landowners who are reasonably likely to be affected. The Public Intervenors opposed use of a more restrictive term such as “within,” emphasizing the importance of broad public notice.

Minn. Stat. § 216E.03, subd. 4, requires notice to any owners whose property is “along any of the proposed routes for the transmission line.” The term “within” would not explicitly require

notice to landowners whose property is reasonably likely to be affected even though it is not within a proposed route. The draft rule therefore does not include this recommended change.

The draft rule does, however, clarify, in part 7850.2530, subp. 2, and 7850.3730, subp. 2, that the list must be updated to include new landowners affected by alternatives identified in the scoping process.

Subpart 5. Local and tribal government contact list.

ITC Midwest recommended stating that the contact list can include either chief executives “or clerks” of the local unit of government. As long as the list includes the head of the local unit of government, the notice is likely to be distributed to those who would want to be informed. The draft rule therefore does not include this recommended change.

7850.1620 PREAPPLICATION MEETING; TRANSMISSION LINES.

Subpart 1. Meetings required.

The Public Intervenors recommended requiring preapplication meetings for proposed power plants, as well as transmission line projects and reiterated the importance of early public notice.

Xcel recommended requiring that meetings be held in areas along routes that are under active consideration and that are convenient for people who live in the area, rather than requiring a meeting in each county where a proposed project would be located.

ITC Midwest also recommended removing the requirement that pre-application meetings be held in each county and instead require that at least one pre-application meeting be held in each area where the project would be located. The Company stated that it is not always feasible or efficient to hold meetings in each county, particularly in sparsely populated areas where the area affected is limited and is near another county.

Great River Energy and Minnesota Power recommended authorizing the applicant to determine the number and location of preapplication meetings, stating that flexibility to make that decision on a case-by-case basis is needed to effectively encourage public participation. Otter Tail concurred with the recommendation of Great River Energy and Minnesota Power that pre-application meetings should not be required in every county if the project is short or crosses a county line.

Based on concerns that requiring a meeting in every county might not be feasible or effective, and recognizing the need for flexibility, the draft rule has been modified to require that at least two public meetings be held. This ensures that more than one meeting time is available to those who are interested in attending a preapplication meeting. The draft rule has also been modified to include a requirement that the applicant work with members of the public to schedule additional meetings upon request and to file with the Commission the applicant’s schedule of preapplication meetings and its efforts to work with members of the public who have requested more meetings than scheduled by the applicant.

Just Change Law recommended requiring that the public advisor be appointed and be available to provide information on how to affect a route and request an advisory task force. Staff will be notified of the meetings and can attend, but the Commission will not yet have taken any formal action on the case, and the draft rule therefore does not incorporate this recommended change.

Subpart 3. Public input.

Great River Energy and Minnesota Power recommended clarifying whether Department and Commission staff will be designated at this stage of the process. Although Department and Commission staff must be notified in advance of the meetings to ensure that they can attend, the draft rule does not contemplate that the Commission will formally act on the case at this stage. The draft rule has, however, been modified to include a requirement that the applicant provide information on how to sign up to receive Commission notices.

Subpart 4. Meeting summary.

Just Change Law recommended requiring the meeting summary to include all comments and recommended alternatives. Great River Energy and Minnesota Power stated that it might be difficult to record all comments made at the meeting.

The draft rule is intended to ensure that comments and input received be noted, filed with the Commission, and considered. But to ensure that the rule language is reasonable, the draft rule has been modified to require that “the” comments received, rather than “all” comments received, be considered in an applicant’s decision on which routes to include in the application.

7850.1630 NOTICE OF INTENT TO FILE.

ITC Midwest recommended removing this draft rule, which incorporates by reference the statutory requirement that notice of intent be filed, except for projects that are eligible for the alternative review process. The Company stated that applicants often give such notice even for eligible projects and that the rule’s emphasis is not needed. To avoid unnecessary redundancy, the draft rule entirely removes this rule part.

7850.1640 DRAFT PERMIT APPLICATION REQUIRED.

Subpart 1. Draft permit application.

The EERA recommended requiring that the application clearly be marked as a draft and that it be marked as a draft when filed into the Commission’s electronic filing system. The draft rule has been modified to incorporate this recommended change.

The EERA also recommended that the rule state that the Commission will request comments on the draft and that the Commission may require changes to the draft based on the comments received. Issues related to the comment period are discussed in part 7850.1680 below.

Subpart 2. Draft site permit for LEFGP.

Xcel recommended against the draft rule change to subpart 2 (V) that requires an applicant to state whether it intends to retain its option to exercise eminent domain. The Company stated

although it tries to avoid using eminent domain, it would not waive its right to do so, and as a result, recommended against adding this language to the draft rule. Great River Energy and Minnesota Power stated that applicants make a good faith effort to avoid using eminent domain but do not waive the right to use it, and they also recommended against the draft language.

The EERA concurred that the draft language requiring an applicant to identify the amount of land it has obtained via contract/condemnation be removed, stating that it is not directly relevant to the Commission's decision under part 7850.4100, Factors Considered. Further, the EERA stated that it fosters a misperception among the public that granting the permit is inevitable and that public participation is not persuasive. Otter Tail stated that it is premature to identify at this stage of the process what portion of land along a route is eligible under § 216E.12, subd. 4 (known as the "Buy-the-Farm" statute) for Buy-the-Farm treatment.

The Public Intervenors supported requiring an applicant to identify the land the applicant intends to obtain but recommended a modification to require the applicant to identify the "acres of land an applicant would obtain, through contract or condemnation, to build the project, excluding contiguous land that may be acquired as a result of election of Minn. Stat. § 216E.12, subd. 4.

Based on the comments received, the attached draft does not include the eminent domain language at issue. The draft rule does, however, require notices to include a statement that "the applicant could exercise the power of eminent domain to acquire land necessary for the project, along with the phrase "your property could be within the final site or route selected."

The EERA recommended adding the word "application" to the subpart title and moving into this subpart all application content requirements listed in part 7850.1900 that are applicable to a route permit. The draft rule has been modified to include these recommended changes. Staff will also work with the Revisor's Office to rephrase headings as necessary to increase clarity.

The EERA also recommended requiring an applicant to include copies of the size-determination form and the Department's size-determination decision in the draft application. The Public Intervenors concurred with this recommendation, and the draft rule has been modified to include this recommended change.

Subpart 3. Draft route permit for HVTL.

Xcel stated that information on eminent domain and the "percentage of contiguous land within each proposed route" that is subject to the Buy-the-Farm statute is not likely relevant to factors the Commission must consider in deciding whether to issue a permit.

ITC Midwest also opposed the requirement that an applicant identify the percentage of property obtained under contract and the percentage of contiguous land that is subject to condemnation under the Buy-the-Farm statute. The Company stated that eminent domain proceedings are outside the Commission's jurisdiction, that landowners receive just compensation, and that without eminent domain, projects could be delayed or become much

more costly. Further, ITC Midwest stated that it is unlikely that applicants will know which land will be subject to eminent domain at this stage of the proceeding.

Great River Energy and Minnesota Power stated that they would not waive their right to exercise eminent domain and would always retain that right and they therefore recommended striking the language. They also recommended striking the language requiring the applicant to identify the percentage of contiguous land subject to the buy-the-farm statute, stating that those decisions are often resolved through court proceedings. Otter Tail concurred with these concerns. The EERA also recommended removing the language on use of contracts/condemnation to obtain land for the proposed project.

Based on the comments received, the attached draft does not include the eminent domain language at issue. The draft rule does, however, require notices to include a statement that “the applicant could exercise the power of eminent domain to acquire land necessary for the project, along with the phrase “your property could be within the final site or route selected.”

The EERA recommended adding the word “application” to the subpart title and moving into this subpart all application content requirements listed in part 7850.1900 that are applicable to a site permit. The draft rule has been modified to include the EERA’s recommended changes.

Subpart 4. Environmental information.

Just Change recommended including information on electric and magnetic fields, and the Public Intervenor concurred with this recommended change, which the draft rule incorporates.

7850.1650 NOTICE OF DRAFT APPLICATION.

Great River Energy and Minnesota Power recommended clarifying when the notice must be given. The draft rule has been modified to require that the applicant give notice at the time the draft application is filed with the Commission.

Subpart 1. Notice recipients.

The EERA recommended setting a timetable for sending notice of the draft application. But the draft rule requires the notice to be sent at the time the application is filed to ensure that interested persons have as much time as possible to study the draft application prior to the applicant’s subsequent filing. The draft rule therefore does not include this recommended change.

Subpart 2. Notice content.

The EERA recommended adding a statement that the entity making the final decision on the location of a site or route is the Commission, and making it clear that the notice recipient’s property could be impacted by the *site* or route. Otter Tail concurred with the EERA that the rule should state that the Commission makes the final determination on the route. The draft rule includes this recommended change.

The EERA also recommended removing the requirement that the applicant state the date on which it intends to file its application because the date is not likely to be known or accurate at

this stage of the process. The draft rule has been modified to require the applicant to state the intended date of filing, if known.

ITC Midwest recommended removing any notice of the draft application and subsequent rule part that authorizes the Commission to take comments on the draft application. The draft rule does not incorporate this recommended change, however, because notice of the draft rule furthers the legislative priority of ensuring early and broad public notice.

7850.1680 COMMENTS AND PROCESS.

Subpart 1. Comments.

ITC Midwest recommended that the rule request comments on the draft application, within 21 days of the filing, only from the Department. The draft rule has been modified to request comments from the general list *and* the project contact list on the completeness of the draft application. Because the statute does not contemplate an extended consideration of completeness, the draft rule does not require that the Commission send notice of the comment period to all contact lists.

The Department recommended clarifying that comments on a draft application could result in Commission action requiring changes to the application. If information is missing from the application, the Commission's Executive Secretary has the authority under rule part 7850.1710 to find that the application is incomplete.

The draft rule does, however, request comments on whether the Commission should appoint an advisory task force from *all* project lists.

Minn. Stat. § 216E.03, subd. 3 states:

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

To ensure that an advisory task force, if appointed, is established as early in the process as possible, it is important for the Commission to receive requests at this stage to effectively coordinate the advisory task force process and the scoping process.

Subpart 2. Notice of comment period.

Xcel recommended against a comment period on the draft application, stating that the comment period is too short to provide a full analysis of whether the application is complete and would, in effect, duplicate the effort seeking comments during the pre-application meeting process during which public comments can be made. Otter Tail concurred with Xcel and stated that preapplication meetings will give the public sufficient opportunity for input. Otter Tail also stated, however, that if the draft rule is retained that the comment periods should be enforced.

ITC Midwest echoed these concerns and recommended requiring comments only from the Department.

The EERA noted that this is the Commission's only opportunity to request and consider comments on the completeness of an application.

Comments on completeness will assist the Executive Secretary in subsequently determining whether there is any missing information in the application and evaluating completeness. To ensure, however, that an applicant has reasonably sufficient time to consider and file reply comments, the draft rule has been modified to extend the reply comment period from 14 to 21 days. And as stated above, comments on completeness will be requested from those on the general service list and the project contact list.

Subpart 3. Process schedule.

ITC Midwest recommended requiring the process schedule to be an established schedule, not a proposed schedule that could be adjusted only by an Administrative Law Judge for good cause. Just Change Law recommended setting the schedule only after completeness has been determined because there could be months between a draft and final application filing. Xcel emphasized the importance of a predictable process for all stakeholders.

The reason the draft rule includes a proposed process schedule is to ensure needed flexibility to enable the applicant, the Department, and Commission staff to set project-responsive timeframes. Otherwise, timeframes that need to be adjusted could require rule variances that would add unnecessary delay to the proceedings. The draft rule has, however, been modified to include a statement that the applicant or the Department can request that the Commission review and modify the schedule. The draft rule does not, however, require that the Commission set timeframes for contested case proceedings, which are governed by the rules of the Office of Administrative Hearings

The EERA recommended moving Commission consideration of joint proceedings to this point in the process, which governs the Commission's decision for referring cases to the Office of Administrative Hearings (from draft rule parts 7850.2120 and .2140). Staff will work with the Revisor's Office to ensure clear organization and renumbering as necessary to increase clarity, and the draft rule therefore does not incorporate this recommended change.

7850.1700 PERMIT APPLICATION AND MANNER OF FILING.

Subpart 1. Filing of application for permit.

Great River Energy and Minnesota Power recommended removing the requirement that applicants give actual copies of their applications to those persons on the general service list, stating that the requirement is overly burdensome. The EERA concurred on removing the requirement that a copy of the application be given to the general service list, stating that they will be notified of the availability of the draft application and can take further steps to access the final application. Otter Tail concurred with the EERA, and Great River Energy and Minnesota Power that the applicant should not be required to provide copies of the application to the entire general service list, or in the alternative, that the rule allow electronic service.

The draft rule has been modified to incorporate this change. In practice, applicants use the Commission's electronic filing system, e-dockets, to file their applications, and the draft rule is intended to ensure notice of the application filing, not to establish overly burdensome filing procedures.

Just Change Law recommended including a comment period on completeness, and the Public Intervenors concurred with this recommendation. Minn. Stat. § 216E.03, subd. 3, states that the Commission must "determine whether an application is complete and advise the applicant of any deficiencies within ten days of receipt." If the Commission incorporated a comment period on completeness, the Commission would not be in compliance with the 10-day statutory requirement, and the draft rule therefore does not incorporate this recommended change.

The EERA also recommended using the term "final" application in this subpart. The draft rule does not include this change because "application" is the final application, unless the word "draft" precedes it. But we will work with the Revisor's Office on this and similar issues to make changes as necessary to increase clarity.

7850.1710 APPLICATION COMPLETENESS; SCHEDULE.

Subpart 1. Completeness determination.

Just Change Law and the Public Intervenors reiterated their recommendation to extend the time period for determining completeness. For the reason stated above, the draft rule does not incorporate this recommended change.

The EERA recommended using the term "final" application in this subpart. The draft rule does not include this change because "application" is the final application, unless the word "draft" precedes it. But we will work with the Revisor's Office on this and similar issues to make changes as necessary to increase clarity.

Subpart 2. Incomplete applications.

Just Change Law recommended that the rule provide a comment period on completeness or allow people to request Commission review of completeness. The Public Intervenors concurred with this recommendation. For the reason stated in the discussion of part 7850.1700 above, the draft rule does not incorporate this recommended change.

Subpart 4. Process schedule update.

Just Change Law recommended setting the schedule at the time completeness is determined. The process schedule can be, if necessary, updated at this point in the process. But the initial process schedule will be set after the draft application is filed. This will increase clarity and further effective and timely completion of steps.

Subpart 5. Statutory deadline; extension.

Great River Energy and Minnesota Power recommended requiring the Commission to make a decision on extending the deadline for a permit decision in cases where the deadline will not be met. The Commission has the discretion to address scheduling issues as needed on a case-by-

case basis to address project-specific issues, and the draft rule therefore does not incorporate this recommended change.

7850.1800 PERMIT FEES.

Subpart 2. Initial payment.

Subpart 3. Additional payment.

Great River Energy and Minnesota Power recommended updating these subparts to codify existing practice in which applicants typically submit half the estimated fee with the application and then pay subsequent invoices from the Department. Staff is not aware of any compliance issues with fee payment, and the draft rule therefore does not include any recommended changes to this rule part.

Subpart 4. Final accounting.

Great River Energy and Minnesota Power recommended that the rule require this step to be completed at the end of the construction process, considering the ongoing review of Plan and Profile filings and subsequent construction reports. Staff is not aware of any compliance issues with this requirement, and the draft rule therefore does not include any recommended changes to this rule part.

Subpart 5. Payment documentation.

Marie McNamara recommended adding a rule requiring payment information to be filed in e-dockets. The Commission's electronic filing system is to ensure public access to the record in each case; if compliance under this rule becomes an issue, development of the record will include information in e-dockets. The draft rule therefore does not incorporate this recommended change.

7850.1900 APPLICATION CONTENTS.

Xcel recommended that the information required in subparts 1 and 2 (B-G) of the existing rule also be required in the draft application; the draft rule has been modified to include this recommended change (also recommended by the EERA in discussion of part 7850.1640 above).

Subpart 1. Site permit for LEPGP.

The EERA recommended adding the word "application" to the title of the subpart. The EERA also recommended moving the list of information required under this rule into part 7850.1640, which governs the draft site permit application, to ensure that the required information is filed as of part of both the draft application and updated in the final application. The draft rule incorporates these recommended changes.

Subpart 2. Route permit for HVTL.

ITC Midwest recommended removing the requirement that an applicant identify and explain any change to the application, stating that applicants should not be required to identify minor corrections or changes. The Company instead recommended that an applicant be required to identify changes to the routes proposed. The draft rule has been updated to require an applicant to identify and explain any material changes to the application.

Great River Energy and Minnesota Power recommended clarifying the need for making applications available in both government centers and public libraries. The draft rule is intended to codify existing practice and has been modified to clarify that the applicant must list the locations, including government centers and libraries where the project is available.

The EERA recommended adding the word “application” to the title of the subpart. The EERA also recommended moving the list of information into part 7850.1640 governing the draft route permit application, to ensure that the required information is filed in the draft application and updated in the final application. The draft rule incorporates these recommended changes.

7850.2100 NOTICE OF APPLICATION.

Subpart 1. Notice to persons on general list, to local officials, and to property owners.

Great River Energy and Minnesota Power questioned the need for certified mail to tribal and local government entities. Minn. Stat. § 216E.03, subd. 4, requires notice by certified mail to these entities, and the rule therefore does not include this recommended change.

The EERA recommended using the term “final” application in this subpart. The draft rule does not include this change because “application” is the final application, unless the word “draft” precedes it. But we will work with the Revisor’s Office on this and similar issues to make changes as necessary to increase clarity. Further, part 7850.1680, subp. 4, states that an applicant must follow these procedures after completing the draft application process.

Just Change Law recommended allowing the public to file comments on completeness and requiring completeness to be determined prior to any further action. For reasons stated above, the draft rule does not incorporate this recommended change.

Subpart 2. Content of notice.

The EERA recommended clarifying that persons subscribe to a “docket,” rather than “case,” in subpart 2 (D), and recommended stating that the Commission makes the final decision on a site or route. The draft rule incorporates these recommended changes.

Just Change Law recommended retaining notice content requirements stating that the Commission will hold a meeting on the proposed project and to include information on the environmental review process. The draft omits these items because they are included in a subsequent notice. Ensuring that notices are as clear and concise as possible is likely to increase their effectiveness and increase public participation. The draft rule therefore does not include this recommended change.

7850.2110 COMMENTS ON APPLICATION.

Subpart 1. Notice.

The EERA recommended removing this part, stating that it conflicts with Minn. Stat. § 216E.03, which requires a contested case proceeding for specific projects and that the Commission does not have discretion whether to refer those cases to the Office of Administrative Hearings for contested case proceedings. This rule is intended to ensure that interested persons have the opportunity to raise issues for Commission consideration once completeness has been determined. The draft rule has been modified to remove language concerning “contested case

hearings,” but retains language that requests comments on issues relevant to record development. This gives the Commission the opportunity to identify issues to be developed when it refers the case to the Office of Administrative Hearings.

ITC Midwest recommended that the Commission take comments on whether to appoint an advisory task force at this stage based on the final application—rather than on the draft application filed under 7850.1640. Just Change Law also recommended requiring this comment period to include comments on whether to appoint an advisory task force, unless that decision has already been made.

As explained in the discussion of rule part 7850.1640, it is important to coordinate the advisory task force process with the scoping process. To do so, it is necessary to ask for comments on a possible advisory task force at the draft application stage. The draft rule therefore does not request comments on whether to appoint an advisory task force at this stage of the process. This does not, however, preclude the Commission from doing so if project-specific issues warrant Commission consideration of a task force at this point in the process.

7850.2120 COMMISSION REFERRAL.

The EERA recommended moving this part to an earlier part, 7850.1680 to make the organization of the rules clearer. Staff will work with the Revisor’s Office on organizational and renumbering issues and make changes as necessary to increase clarity.

7850.2140 JOINT PROCEEDINGS.

The EERA recommended moving this rule part to an earlier rule part, 7850.1680, Comments and Process. Staff will work with the Revisor’s Office to ensure that the rules are clearly organized and appropriately numbered, and the draft rule therefore does not incorporate this recommended change.

ITC Midwest recommended clarifying that comments on joint proceedings involving projects eligible for alternative review should not address whether contested case proceedings should be held. The Company stated that the rule should instead ask for comments on the alternative review process, such as whether an administrative law judge should be assigned; whether a transcript of the proceeding be made; and whether the administrative law judge, if one is assigned, should be asked to prepare a report and recommendation to the Commission. Xcel also recommended modifying the draft to state that the Commission can take comments on whether to request that an administrative law judge be assigned and make recommendations, and on the type of report to be filed.

Issues of record development will be raised and addressed under (C), which requires the Commission to consider whether to hold joint proceedings to develop the record. No further change is therefore included.

7850.2200 PUBLIC ADVISOR.

The Public Intervenors recommended adding language stating that the public advisor will volunteer information and provide information about project schedules, along with opportunities for public comments and participation. As a matter of practice, the public advisor is as accessible as possible and shares as much information as possible. For this reason, the draft rule does not incorporate this recommended change.

7850.2300 PUBLIC INFORMATION AND SCOPING MEETING.**Subpart 2. Notice.**

ITC Midwest recommended removing the requirement that the newspaper of general circulation be the one “that is nearest” to the proposed project location, stating that the newspaper that is nearest is not always the most effective method for publishing notice. The draft rule has been modified to include this change.

Great River Energy and Minnesota Power recommended clarifying that the newspaper notice will be an abbreviated version of the Commission notice to avoid lengthy newspaper ads. The draft rule does not require the newspaper notice to be of the same length and content as the notice that is mailed, and as a result, the draft rule does not include further changes.

The EERA recommended removing language stating that the EERA could exclude alternatives not identified in the scoping process from later analysis. The EERA noted that it has authority to modify the scope of environmental review if there are substantial changes to the proposed project or new information regarding potential impacts or alternatives arise. The EERA also recommended clarifying in the rule that the Commission makes the final decision on the site or route location. The draft rule has been modified to include these recommended changes.

The EERA also recommended clarifying that notice of the public hearing will be sent separately from notice of the public information and scoping meeting, and the Public Intervenors concurred with this recommendation. The draft rule incorporates this recommended change.

Just Change recommended that notice of the meeting be given at least 30 days in advance. Otter Tail stated that the original time limit is reasonable and ensures that proposed alternatives are identified in a timely manner. The existing rule (under part 7850.2300, subpart 2) requires ten days’ notice, and the draft rule retains the existing timeframe.

Subpart 3. Notice content.

Just Change recommended language stating that “alternatives not identified in the scoping meeting or within 10 days after that meeting are likely to be excluded.” Otter Tail stated that the original time limit is reasonable and ensures that proposed alternatives are identified in a timely manner. ITC Midwest recommended language stating that “alternatives not identified in the scoping process may not be considered by the Commission in determining a route/site for the project.” The EERA explained that it has the authority to modify the scope of the environmental review if there are substantial changes or new information on impacts or alternatives arise.

Considering the EERA's authority to modify the scope of environmental review, the draft rule does not incorporate changes that limit that authority.

Subpart 4. Conduct of meeting.

Great River Energy and Minnesota Power recommended clarifying that Commission staff will conduct the informational portion of the meeting. This subpart states that "staff must explain the permitting process to the persons in attendance." The draft rule therefore does not include any further changes to describe the role of Commission staff.

Subpart 5. Applicant role.

Great River Energy and Minnesota Power recommended clarifying whether it is sufficient to have one available copy of the application at the meeting. The draft rule has been modified to state that the applicant must make "a copy" available.

7850.2400 CITIZEN ADVISORY TASK FORCE.**Subpart 1. Authority.**

Just Change Law recommended including a broader statement 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." Just Change Law also recommended language requiring the Commission to include on the task force "a broad spectrum of citizen participants, in accordance with Minn. Stat. § 216E.08." Just Change Law further recommended retaining but modifying language on when the Commission will make the decision.

The draft rule does not include these changes because the statute and rule are clear that the Commission has the authority to appoint an advisory task force and to identify the charge of the task force.

Subpart 3. Task force responsibilities.

Great River Energy and Minnesota Power recommended stating that the environmental review document could be either an Environmental Impact Statement "or Environmental Assessment." The EERA also recommended clarifying that sites, routes, or impacts identified by the task force could be evaluated in the EIS or EA. Otter Tail opposed any change that would require an EIS in place of an Environmental Assessment. The draft rule has been modified to use the term "environmental review" in place of either an EIS or Environmental Assessment.

Just Change Law recommended requiring the report to be filed upon completion of the task force and that it include "all routes, sites, and impacts identified and those recommended for evaluation." The draft rule has been modified to include this clarification.

Subpart 4. Termination of task force.

ITC Midwest recommended removing the draft rule language, stating that it appears to indefinitely extend the duration of a task force. According to ITC Midwest, a clear endpoint better fulfills the task force's purpose to identify any other sites or routes for Commission consideration. The draft rule is clear that of the methods by which the task force will conclude,

the first one to occur ends the work of the task force. This ensures that the task force does not continue indefinitely.

Great River Energy and Minnesota Power recommended adding “or Environmental Assessment.”

The EERA recommended stating that the task force terminates once the Commission designates the sites or routes that will be studied in the EIS or the EA. The EERA also recommended removing language stating that sites or routes “that will be considered at a public hearing” will be studied. The draft rule has been modified to include these changes.

Otter Tail opposed any changes that would require an EIS in place of an Environmental Assessment. The draft rule is not intended to require an EIS where an Environmental Assessment is required, and staff is not aware of any language that requires further clarification to address this issue.

7850.2500 EIS PREPARATION.

Subpart 2. Scoping process.

The EERA recommended replacing “environmental factors” with “potential human and environmental impacts and possible mitigation measures.” The draft rule has been modified to include this recommended change.

Subpart 3. Alternative sites or routes.

Just Change Law reiterated its recommendation to require earlier notice of the scoping meeting (such as 30 days), but the draft rule includes reasonable notice and is consistent with the existing rule requirement, as explained in discussion of part 7850.2300, subpart 2. For this reason, the draft rule does not incorporate this recommended change.

Subpart 4. Comment period.

Just Change recommended extending the time period for public comment on the scope of the EIS from 10 to 20 days. The draft rule was developed in careful consideration of the statutory timeframe for completing all steps of the process, including the Commission’s final decision on the permit. The draft rule therefore does not include further changes to the timeframe.

7850.2520 NOTICE TO COMMISSION.

ITC Midwest recommended clarifying that the scope of the EIS include any alternative identified by either the Commission “or the applicant.” The draft rule has been updated to clarify that any alternative identified by the applicant must be included in the scope of the EIS, consistent with Minn. Stat. § 216E, which requires consideration of alternatives recommended by an applicant.

The EERA recommended stating that the Commission meeting will be set forth in the process schedule. The draft rule therefore does not include this recommended change because

whether the Commission holds a meeting to consider changes to the scoping decision will be made on a case-by-case basis.

7850.2530 SCOPING DECISION.

Subpart 3. Notice of decision.

The EERA recommended requiring updates to the landowner list prior to the notice of the scoping decision and to include the language governing an applicant's supplemental filing (under 7850.2540, subp. 2) into this rule. The Public Intervenor concurred with the EERA, and the draft rule includes this recommended change.

Subpart 4. Changes to scoping decision.

Just Change Law recommended clarifying that the scope of the EIS may not change once the Commission has determined the scope and recommended that the public be given an opportunity to file comments with the Commission on the scope of the EIS. The Public Intervenor concurred and recommended clarifying that the scope cannot be changed without Commission approval.

The EERA clarified that it has authority to modify the scope of environmental review if there are substantial changes to the proposed project or new information regarding potential impacts or alternatives arise. Further, the public is provided the opportunity to comment on the scope at the scoping meeting and during the comment period that follows the scoping meeting. For these reasons, the draft rule does not incorporate these recommended changes.

7850.2540 SUPPLEMENTAL FILING BY APPLICANT.

Subpart 1. Supplemental filing.

ITC Midwest recommended clarifying the language "equivalent comparison," stating that it is unclear what information would be required. The routes or sites under consideration are evaluated using the applicable statutory and rule criteria, and the applicant would be required, as necessary, to ensure that any additional sites or routes can be similarly evaluated. To increase clarity, however, the draft rule has been modified to state "equivalent comparison of applicable permitting criteria."

Subpart 2. Landowner list.

The EERA recommended updating the landowner list prior to issuing notice of the scoping decision and recommended moving the requirement into part 7850.2530. The draft rule has been modified to include this recommended change, which is included in part 7850.2530, subp. 2.

7850.2550 DRAFT EIS.

Subpart 4. Environmental review meeting.

Xcel and ITC Midwest recommended clarifying that the public hearing and environmental review meeting can be combined. There is nothing preventing these meetings from being

combined, and this issue can be addressed as the process schedule is developed to ensure that project-specific issues are addressed on a case-by-case basis.

Great River Energy and Minnesota Power recommended clarifying if the meeting notice should go to others than just those on the project contact list. The EERA recommended sending notice of the meeting to all lists. The draft rule incorporates this recommended change.

7850.2570 PUBLIC HEARING.

Subpart 2. Notice.

The EERA recommended clarifying that the Commission makes the final decision on the site or route location, and the draft rule has been modified to include this recommended change.

Just Change Law recommended at least 20 days' notice of the public hearing. The Commission must give notice as required under Minn. Stat. § 216E.03, subd. 6, which requires that notice be given at least 10 days prior to the hearing but no sooner than 45 days. The draft rule states that notice of the hearing must be coordinated with the administrative law judge and be given as required by the statute. The draft rule therefore does not incorporate this recommended change.

Subpart 5. Issues excluded.

The EERA recommended adding a subpart 5 to reiterate that questions of need are not developed in the siting and routing process when a Commission decision on the certificate of need has already been made. Otter Tail concurred with the EERA to retain the requirement that prohibits an examination of need during the public hearing. The Public Intervenors opposed restricting questions of need in the permitting process, beyond the restriction set forth in Minn. Stat. § 216E.02, subd. 3.

The draft rule does not include the recommended change to retain existing language stating that questions of need will not be considered. The rule is clear (under parts 7850.2550 and 7850.3750) that questions of need are not developed during the siting and routing process when the Commission has already made a decision on a certificate of need. It is therefore unnecessary to repeat that statement in numerous rule parts. As a matter of practice, efforts can be made to clarify to parties and members of the public through written materials and in oral presentations that questions of need are not at issue.

7850.2650 FINAL EIS.

Subpart 2. Filing and public access.

Just Change Law recommended requiring that the final EIS be filed before the public hearing and evidentiary hearings are completed. Xcel opposed requiring that the final EIS be filed prior to the hearings, stating that it is not necessary to do so and would delay the process. The draft rule does not set forth a timing requirement governing the filing of the final EIS in relation to the public hearing, but the process schedule can establish applicable timeframes.

Subpart 3. Public comment.

Xcel and ITC Midwest recommended modifying the comment period to narrow the focus of comments to questions of adequacy. The EERA recommended clarifying that final comments must be on the adequacy of the EIS and that the comment period begins with notice of the availability of the final EIS in the EQB Monitor. The Public Intervenors concurred that it is reasonable to state that comments on the final EIS should address the adequacy of the EIS.

Just Change Law recommended requiring that comments be filed “before the close of the administrative record or within 25 days after the final EIS is filed, whichever comes later.”

Xcel recommended shortening the comment period to 20 days, and ITC Midwest recommended shortening it to 10 days.

Otter Tail concurred with the draft rule requirement that comments on adequacy be filed within 25 days after the final EIS is filed.

The comment period will be initiated by a Commission notice that will identify the issues on which the Commission seeks comment. To increase clarity, the draft rule has been modified to clarify that the 25-day comment period will be set by Commission staff in consultation with the administrative law judge.

7850.2675 PROCEDURE AFTER ADMINISTRATIVE LAW JUDGE REPORT.**Subpart 2. Participating agencies.**

ITC Midwest recommended clarifying that agencies may file exceptions to the ALJ’s report. Great River Energy and Minnesota Power recommended striking “participating” and instead apply the same deadline to all agencies, whether or not they participated throughout the proceeding.

But agencies such as the DNR do not necessarily intend to participate in the same manner as formal parties. To accommodate the fact that agencies participate in Commission proceedings as participants (as defined in Minn. R. 7829.0100, subp. 13 and Minn. Stat. § 216A.03, subd. 8), the draft rule does not incorporate this recommended change.

7850.3700 ENVIRONMENTAL ASSESSMENT PREPARATION.**Subpart 2. Scoping process.**

The EERA recommended replacing “environmental factors” with “potential human and environmental impacts and possible mitigation measures.” The draft rule includes this recommended change.

Subpart 3. Alternative sites or routes.

ITC Midwest recommended stating that the applicant will have the opportunity to respond to the “feasibility” of each requested alternative. The rule does not preclude an applicant from addressing the feasibility of an alternative. And, importantly, under subpart 2, the applicant

must be given the opportunity to respond to public input. This opportunity will enable the applicant to address the feasibility of alternatives.

Subpart 4. Public comment.

Just Change Law recommended extending the comment period to 20 days. The existing rule (7850.3700, subp. 2 A) requires a seven-day comment period, but the draft rule has extended the comment period to 10 days and therefore does not further extend the comment period to 20 days.

7850.3720 NOTICE TO COMMISSION.

The EERA recommended requiring that the Commission decision on the scoping process be set forth in the process schedule. The Commission is unlikely to know before any comments are received whether it is necessary to modify the Department's scoping decision. The draft rule therefore does not include this recommended change.

7850.3730 SCOPING DECISION.

Subpart 2. Notice of decision.

The EERA recommended requiring updates to the landowner list prior to the notice of the scoping decision and to include the language governing an applicant's supplemental filing (under 7850.2540, subp. 2) into this rule. The Public Intervenors concurred with the EERA. The draft rule has been modified to include these recommended changes.

7850.3740 SUPPLEMENTAL FILING BY APPLICANT.

Subpart 1. Supplemental filing.

ITC Midwest recommended rephrasing the language to require an applicant to file additional "publicly available desktop data to support comparison of all" routes under consideration. To ensure flexibility, the draft rule does not prescribe what must be filed. The applicable criteria the Commission must consider in evaluating an application are set forth in both rule and statute, and the applicant must file data to further record development on new site or route alternatives that will inform the Commission's permitting decision. The draft rule therefore does not include this recommended change.

Subpart 2. Landowner list.

The EERA recommended requiring that the landowner list be updated prior to issuance of the scoping decision by moving this subpart into the Scoping Decision, part 7850.3730. The draft rule includes these recommended changes. The Public Intervenors concurred on the importance of updating the landowner list.

7850.3750 ENVIRONMENTAL ASSESSMENT.

Subpart 5. No additional environmental review.

ITC Midwest recommended retaining the language shown for repeal to ensure that it is clear that no further environmental review is required.

Just Change Law recommended stating that no additional environmental review is required “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 Minn. Stat. § 116D.04, subd. 2a.”

Significant changes to a proposed project will be addressed on a case-by-case basis and there is no need to restate the statutory language that “the Environmental Assessment shall be the only state environmental review document required to be prepared on the project.”⁷

7850.3800 PUBLIC HEARING.

Subpart 1. Public hearing.

ITC Midwest recommended stating that the hearing must be held in a county where “a substantial portion of” the proposed project would be located. The draft rule has been updated to state that the hearing must be held “as required under Minn. Stat. § 216E.04, subd. 6,” which requires notice to be given in the same manner as under Minn. Stat. § 216E.03, subd. 6. The statute requires a “portion of the hearing to be held in the area where the power plant or transmission line is proposed to be located.” The draft rule has been modified to eliminate rule language stating that “a portion of the hearing must be held in a county where the proposed” project would be located.

This change establishes consistency between this rule and rule part 7850.2570, which governs the public hearing for cases being reviewed under the full permitting process. It also reduces redundancy between the rules and the statute; the statute contains specific public hearing requirements, and it is not necessary to repeat those requirements in the rules.

Subpart 2. Public hearing notice.

The EERA recommended clarifying that the Commission makes the final decision on the location of the site or route. The draft rule has been modified to include this recommended change.

Just Change Law recommended requiring notice of the public hearing to be given at least 20 days in advance. Minn. Stat. § 216E.03, subd. 6, states that the Commission must give notice “at least ten days in advance but no earlier than 45 days prior to the commencement of the hearing.” The draft rule requires notice to be given as required by the statute and therefore does not include further changes.

Subpart 4. Hearing examiner.

Great River Energy and Minnesota Power recommended clarifying whether “hearing examiner” means “administrative law judge.” The EERA recommended removing references to “hearing examiner” and replacing this language with “administrative law judge” because public hearings must be conducted by an administrative law judge. The draft rule has been modified to include this recommended change.

⁷ Minn. Stat. § 216E.04, subd. 5.

To protect the integrity of the record developed, Just Change Law recommended retaining the following: “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.” The Office of Administrative Hearings, which will conduct the hearing, follows its procedures and will do so to ensure that the record is properly maintained and filed with the commission. It is therefore unnecessary to retain the existing rule language.

Subpart 5. Hearing procedures.

The EERA recommended clarifying that Commission staff will participate in the hearing, and recommended clarifying in (B) that Department staff will introduce the EA and associated record information. The draft rule has been modified to include this recommended change.

Subpart 8. Public comment.

ITC Midwest recommended stating that public comments “on the Environmental Assessment and route decision” must be filed within 10 days after the close of the public hearing. Conversely, the EERA recommended removing this subpart because the public comment period is set forth in (E), which requires a comment period of at least 10 days following the hearing. The draft rule includes the EERA’s recommended change, which also effectively addresses ITC Midwest’s recommendation. The Public Intervenors opposed any removal of the comment period.

7850.4000 STANDARDS AND CRITERIA.

The EERA recommended retaining this part and replacing “requirements” with “purposes.” Just Change Law recommended retaining the existing rule language, particularly policy language that does not duplicate the statute. The Public Intervenors concurred with these recommendations.

The applicable factors are stated in Minn. Stat. § 216E.03, subd. 7, and the rule part below (.4100) includes a citation to the statute. The draft rule therefore repeals this part to avoid unnecessary redundancy.

7850.4100 FACTORS CONSIDERED.

Just Change Law recommended adding “electric and magnetic fields.” The Public Intervenors concurred with this recommendation, and the draft rule has been modified to include this recommended change.

7850.4200 FACTORS EXCLUDED.

The EERA recommended retaining the language excluding consideration of need in the permitting process when the Commission has made a certificate of need decision. The Public Intervenors disagree that the language needs to be retained, stating that the statute’s exclusion on questions of need in the permitting process is clear.

The rule is clear (under parts 7850.2550 and 7850.3750) that questions of need are not developed during the siting and routing process when the Commission has already made a decision on the certificate of need. It is therefore unnecessary to repeat that statement in

numerous rule parts. As a matter of practice, efforts can be made to clarify to parties and members of the public through written materials and in oral presentations that questions of need are not at issue.

7850.4400 PROHIBITED SITES.

Subpart 4. Prime farmland exclusion.

Xcel recommended stating that solar facilities (as defined under Minn. Stat. § 216E.01, subd. 9a) may be sited on prime farmland if they have a Commission-approved agricultural mitigation plan developed in consultation with the Department of Agriculture. Xcel recommended against language limiting the Commission's authority to site solar facilities if a local zoning language prohibits its construction, noting that Minn. Stat. § 216E.01 gives the Commission preemptive authority over "zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government."

The EERA recommended removing language on local zoning ordinances because it conflicts with the statutory goal of locating facilities "in an orderly manner compatible with environmental preservation and efficient use of resources." And, the EERA concurred with Xcel that Commission authority supersedes local regulations and that the draft rule language conflicts with this authority. The EERA emphasized that prime farmland is properly protected by the existing language that prohibits use of prime farmland unless there is no feasible and prudent alternative. Otter Tail concurred with the EERA's recommendation to clarify that local government ordinances do not supersede Commission authority.

The Public Intervenors supported recognizing the importance of local control.

The Department of Agriculture opposed the draft rule, stating that it insufficiently protects prime farmland by removing the requirement that prime farmland be used – including for solar projects – only if there is no prudent and feasible alternative. The agency recommended that the Commission further develop the issue by considering appointing a workgroup of stakeholders, including agricultural stakeholders, to discuss the following:

- What criteria should the PUC use to determine whether there are feasible and prudent alternatives to siting on prime farmland (e.g., distance from interconnects or percentage of land are dominated by prime farmland)?
- What types of alternatives should proposers present to the PUC: alternative sites; alternative technologies; alternative configurations (e.g., dispersed, multiple small sites)?
- What mechanisms can be used to ensure that a full spectrum of perspectives, including those of agricultural stakeholders, are considered in determining whether feasible and prudent alternatives exist to siting on prime farmland?

- Where no feasible and prudent alternatives are found to exist, what measures might lessen impacts of long-term conversion of farmland (e.g., co-location of agriculture)?

If the Commission ultimately adopts the draft rule language, the Commission would likely need to vary the rule to authorize use of prime farmland for a solar project where a local ordinance prohibits its use. The Commission previously considered local opposition to a proposed solar project in the Marshall Solar case.⁸ In that instance, the applicant proposed use of prime farmland for the site of a proposed solar project, and although there was no local ordinance prohibiting use of prime farmland, some people in the community opposed the project. The Commission applied the existing rule and issued the permit, finding that there was no feasible and prudent alternative.

Commission discussion of this issue would be helpful.

7850.4650 COMPLIANCE FILING.

Subpart 1. Plan and profile.

Great River Energy and Minnesota Power recommended clarifying that the design plan may be completed in segments. The draft rule has been modified to include this recommended change.

7850.4800 MINOR ALTERATION IN GENERATING PLANT OR TRANSMISSION LINE.

Subpart 1. Applicability.

The EERA recommended retaining “minor alteration” language, in lieu of using the term “change.” The EERA stated that a permit amendment (in pat 7850.4900) is not a type of change and that the two separate rule parts have worked well. The EERA stated that there are not ongoing problems that need to be remedied by using “change” in place of “minor alteration.”

The Public Intervenors also recommended retaining “minor alteration,” stating that “change” is broader and could include changes to ownership, for example.

Otter Tail recommended retaining “minor alteration,” and recommended defining the term.

The draft rule has been modified to retain “minor alteration,” which the existing rule specifically describes but does not explicitly define.

Subpart 2. Application for minor alteration of a site or route.

The EERA recommended clarifying that the Commission issues the notice of the comment period and that notice should go to landowners reasonably likely to be affected, to the public agency contact list, and to local and tribal units of government with jurisdiction over the area where the minor alteration is proposed. The draft rule has been modified to include this recommended change.

⁸ *In the Matter of the Application of Marshall Solar, LLC for a Site Permit for the Marshall Solar Energy Project and Associated Facilities in Lyon County*, Docket No. IP-6941/GS-14-1052.

Subpart 3. Commission decision.

Great River Energy and Minnesota Power recommended retaining a deadline on Commission action. The existing rule was formerly a rule of the Environmental Quality Board and requires a decision within 10 days. But the Commission is subject to the Open Meeting Law, which requires ten days' notice of Commission meetings. The draft rule therefore removes the 10-day decision deadline. And, inserting a different deadline could be problematic depending on the issues identified in the comments received and the level of record developed warranted. To ensure that there is sufficient time to develop the record and make a decision, the draft rule does not include a deadline on Commission action.

7850.4900 AMENDMENT OF PERMIT CONDITIONS.

Just Change Law recommended stating in the rule that permit conditions resulting in significant increases in the human or environmental impact of the facility are precluded. The Commission will determine, on a case-by-case basis, whether to grant a permit amendment considering all the evidence in the record. The draft rule therefore does not incorporate this recommended change.

Subpart 2. Process.

The EERA recommended clarifying that the Commission issues the notice of the comment period and recommended using "application" in place of "amendment request." Otter Tail concurred with the EERA's recommendation.

Staff is unaware of any problems with use of "amendment request," and the draft rule therefore does not incorporate this recommended change. Further, the Commission, in fact, always issues the notice and the draft rule therefore does not include a statement to that effect.

7850.4925 COMPLAINT PROCEDURES.**Subpart 2. Permittee complaint handling.**

Great River Energy and Minnesota Power recommended clarifying whether the one-business day requirement is only for substantial complaints, stating that non-substantial complaints are typically included in monthly reports.

The EERA noted that the language in this rule part could be construed as conflicting with language in the subsequent rule part, which also requires an applicant to submit data on complaints to the Commission. The distinction between complaints submitted within one day and complaints submitted on a monthly basis is unclear. Without any description of what a "substantial complaint" is, an applicant would not know what to file. The EERA recommended considering removing this rule part and adding language to draft permits to more clearly specify the applicant's responsibility.

To avoid confusion, the draft rule removes this rule part. Permit conditions that are project-responsive are likely to be a better method for identifying substantial complaints. Further, the

Commission's Consumer Affairs Office can investigate complaints, and the Commission's public advisor can ensure that the public has access to the Commission's contact information.

7850.4950 REPORTS.

Great River Energy and Minnesota Power recommended changing the monthly reporting requirement to eliminate the requirement that an applicant file monthly reports for one full year after construction has been completed. They instead recommended requiring monthly reports until construction is completed and then for twelve months thereafter, notice to the Commission of any complaints filed. The draft rule has been modified to include this recommended change.

7850.5000 PERMIT TRANSFER.

Subpart 2. Approval of transfer.

Just Change Law recommended retaining existing language authorizing the Commission to hold a meeting and recommended adding language to require Commission approval prior to any transfer or ownership change. The Commission cannot act except at a public meeting because the Commission is subject to the Open Meeting Law. As a result, it is unnecessary to require the Commission to hold a public meeting. Further, Commission approval prior to any transfer or ownership change is not required by statute, and it is not clear that using Commission resources for this purpose is necessary in every instance, even where no issues regarding the property transfer have been raised. The draft rule therefore does not incorporate this recommended change.

7850.5300 LOCAL REVIEW OF PROPOSED FACILITIES.

Subpart 3. Notice to commission.

Great River Energy and Minnesota Power recommended requiring an applicant to notify the Commission when either the applicant submits an application to a local unit of government, *or* at the time the local unit of government agrees to permit the project. Local environmental review can begin prior to the application filing and it is not clear that requiring notice at that stage is necessary. The draft rule therefore does not require such notice, although it is not prohibited.

7850.5400 ANNUAL PUBLIC HEARING.

Subpart 1. Annual public hearing.

Great River Energy and Minnesota Power recommended clarifying that an administrative law judge conducts the public hearing. In practice, the Commission ordinarily request that an administrative law judge be assigned, but the draft rule does not incorporate such a requirement.

Subpart 3. Report.

Great River Energy and Minnesota Power recommended clarifying whether the staff or the administrative law judge prepares the report. This rule part is an implementation of Minn. Stat.

§ 216E.07, and the draft rule modifies this part to increase clarity not to substantively change the rule, which accomplishes the purpose of the statute. The draft rule therefore does not incorporate this recommended change.

NEXT STEPS

The next steps in this rulemaking are as follows:

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

Alternatives for Commission Action

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

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

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

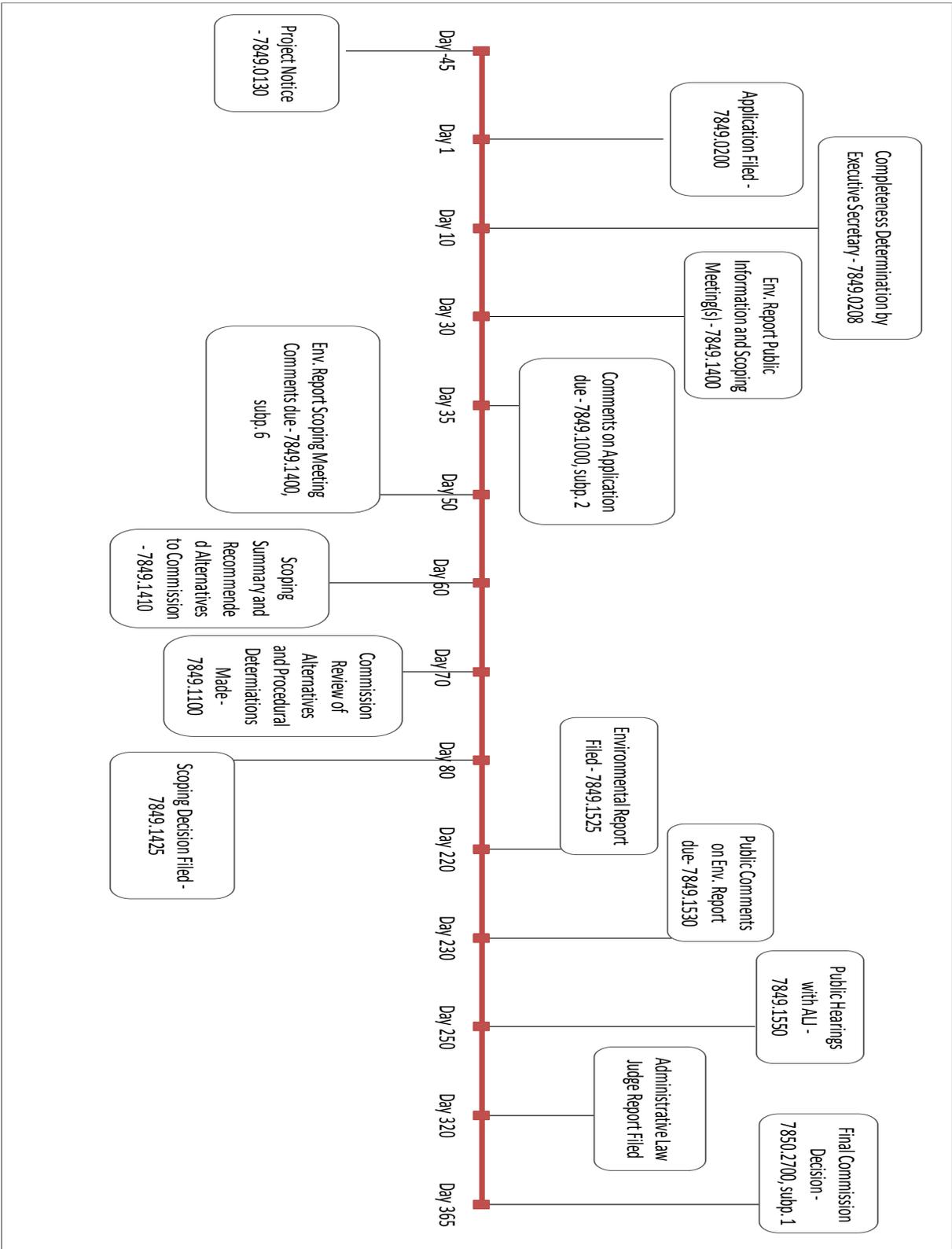
D. Delegate to Commissioner Tuma the authority to approve any necessary, non-

substantive edits to the draft prior to publication in the *State Register*.

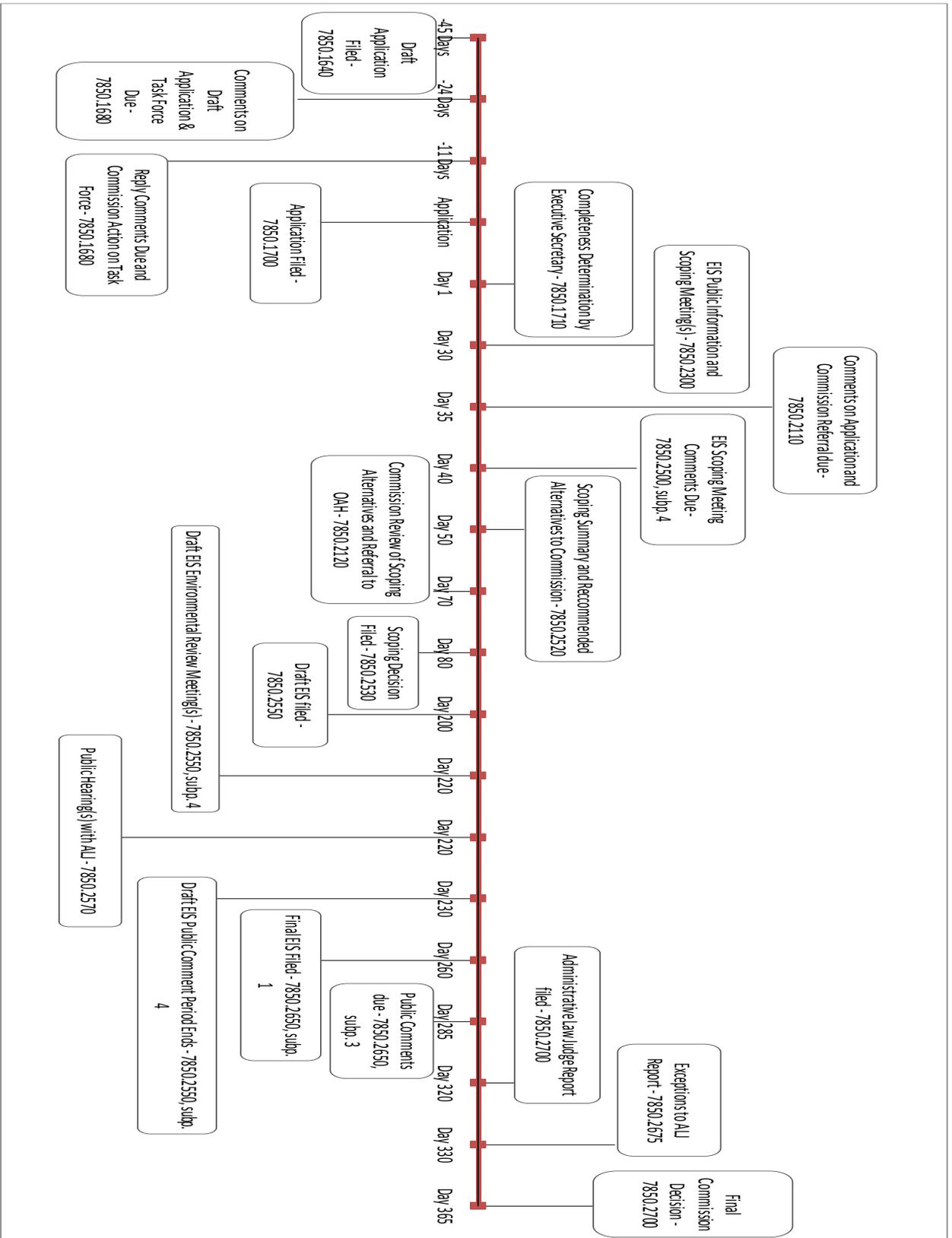
- E. Take other action as the Commission deems appropriate.

APPENDIX

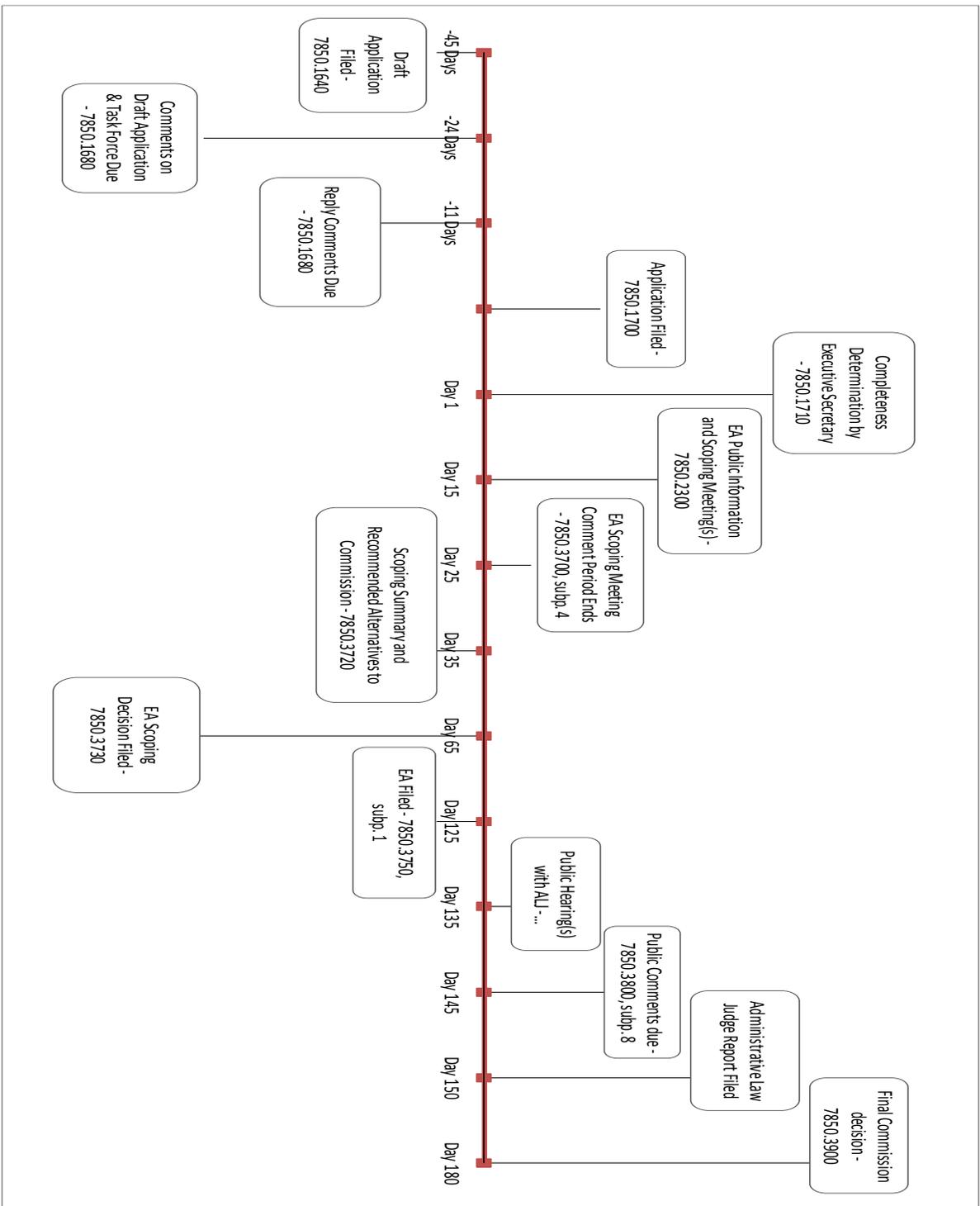
PROCESS SCHEDULE – CERTIFICATE OF NEED (7849)



SITING AND ROUTING – FULL PERMITTING PROCESS SCHEDULE (7850)



SITING AND ROUTING – ALTERNATIVE REVIEW PROCESS SCHEDULE (7850)



**Chapter 7849 – CERTIFICATES OF NEED
TABLE OF CHANGES MADE TO ATTACHED DRAFT RULE**

Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
<p>7849.0010 DEFINITIONS. Subpart 6a. Associated facilities.</p>	<p>ITC Midwest recommended moving language from the definition of “high voltage transmission line” into the definition of “associated facilities.” Just Change Law similarly recommended including “substations” in the definition of associated facilities.</p> <p>In response to the Commission’s notice asking for input on whether to include as associated facilities “natural gas pipelines directly associated with a large generating facility that is necessary to interconnect the plant to the transmission line,” the DOC-DER stated that the certificate process should address any gas pipelines that are needed for a proposed project. The Public Intervenors concurred that such facilities are “associated facilities” but only if they do not separately require a certificate of need.</p>	<p>N</p> <p>N (the draft rule does not include this language but staff recommends Commission discussion of this issue).</p>
<p>Subpart 12a. Independent power producer.</p>	<p>Wisconsin Power and Light recommended clarifying that “the provision of retail electric service to end users who are located in Minnesota will exclude an owner or operator of electric generation facilities from the definition.”</p>	<p>N</p>
<p>Subpart 17. Minnesota service area.</p>	<p>GRE/MP recommended clarifying whether the term is intended to be consistent with “assigned service area” under Minn. Stat. § 216B.38 or is intended to include the location where transmission and distribution lines are located.</p>	<p>N (the draft instead repeals the term because it will no longer be used in subsequent rule parts).</p>
<p>Subpart 31. Ultimate consumers.</p>	<p>ITC Midwest recommended using the term “ultimate consumers” instead of “end user customers” in the definitions of “independent power producer” and “transmission company.”</p>	<p>Y</p>
<p>Subpart 32. Utility.</p>	<p>Just Change Law recommended modifying the definition of “utility” to move any non-utility entities to the</p>	<p>Y (the draft retains the existing rule definition).</p>

**Chapter 7849 – CERTIFICATES OF NEED
TABLE OF CHANGES MADE TO ATTACHED DRAFT RULE**

Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
<p>7849.0010 DEFINITIONS. (continued) Subpart 32. Utility.</p>	<p>definition of “independent power producer.” The Public Intervenors concurred. ITC Midwest disagreed with the recommendation.</p>	
<p>Subpart 2. Adjusted net capacity. Subpart 3. Adjusted net demand. Subpart 4. Annual adjusted net demand. Subpart 5. Annual electrical consumption. Subpart.6. Annual system demand. Subpart 10. Firm purchases; firm sales. Subpart 11. Forecast years. Subpart 16. Load factor. Subpart 18. Net generating capacity. Subpart 19. Net reserve capacity obligation. Subpart 21. Participation power. Subpart 22. Participation purchases; participation sales. Subpart 24. Promotional practices. Subpart 25. Seasonal adjusted net demand. Subpart 26. Seasonal participation power. Subpart 27. Seasonal system demand. Subpart 28. Summer season. Subpart 30. System demand. Subpart 33. Winter season.</p>	<p>Just Change Law recommended retaining each of these definitions and the subsequent rule parts that use them. The Public Intervenors concurred.</p>	<p>N</p>
<p>7849.0030 SCOPE. Subpart 2. Exemption.</p>	<p>Wisconsin Power and Light recommended adding language stating</p>	<p>N</p>

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
	that a certificate of need is not required for project expansions.	
7849.0100 PURPOSE OF CRITERIA.	Just Change Law recommended retaining the sentence stating that the Commission will make a specific written finding with respect to each of the criteria. The Public Intervenors concurred.	N
7849.0110 ALTERNATIVES CONSIDERATION.	ITC Midwest recommended changing the existing rule to allow the Commission to consider only those alternatives included in the scoping decision – instead of allowing the Commission to consider alternatives identified before the close of the public hearing.	N
7849.0120 CERTIFICATE OF NEED CRITERIA.	Just Change Law recommended clarifying that regional need for electricity may be considered but is not determinative.	N
	Just Change Law recommended retaining the existing rule language. The Public Intervenors concurred.	N
	ITC Midwest recommended clarifying the language on alternatives under C to state that the Commission must consider whether the proposed project is more reasonable and prudent than any other alternative “included in the scoping decision under Minn. R. 78849.1425 and for which there exists substantial evidence on the record with respect to each of the criteria list in this part, 7849.0120.”	N
7849.0125 NOTICE LISTS. Subpart 2. Project contact list.	ITC Midwest recommended removing the requirement that the Commission add a person’s name to the list if the Commission has reason to believe that	N

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7849.0125 NOTICE LISTS. (continued)	the person would like to receive notices of a particular project.	
Subpart 3. Public agency contact list.	GRE/MP recommended adding the Federal Aeronautics Administration to the list.	Y
Subpart 4. Landowner list.	<p>ITC Midwest recommended removing from the list “landowners who are reasonably likely to be affected by the proposed project.”</p> <p>DOC-EERA recommended replacing the phrase “along a transmission line” to “<u>within</u> a proposed transmission line route.” ITC recommended that notice be provided to landowners “within or immediately adjacent to a route.” Xcel recommended using the phrase “within or immediately adjacent to a proposed route.”</p> <p>DOC-EERA recommended replacing the phrase “proposed footprint” with “proposed site.”</p>	<p>N</p> <p>N</p> <p>N</p>
Subpart 5. Local and tribal government contact list.	<p>GRE/MP recommended clarifying whether notice is required to governmental entities affected by project alternatives identified in the scoping process.</p> <p>GRE/MP also recommended clarifying the term “project area.”</p> <p>ITC Midwest recommended stating that the contact list can include either chief executives “or clerks” of the local unit of government.</p>	<p>Y (see changes under subpart 6, “list maintenance”).</p> <p>Y (a change to the next draft rule, part 7849.0130, requires the applicant to include in the content of its notice the location and identification of the “project footprint.”)</p> <p>N</p>

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<p>7849.0130 PROJECT NOTICE. Subpart 3. Notice content.</p>	<p>Xcel recommended removing the requirement that an applicant state whether it intends to retain the option to exercise eminent domain. Otter Tail concurred. ITC GRE/MP concurred and instead recommended making it clear that eminent domain is an option. ITC Midwest also concurred and recommended requiring the applicant to provide contact information for the applicant’s land agents.</p>	<p>Y (the draft rule requires a statement that the applicant could use eminent domain – the rule does not require the applicant to list contact information for its agents).</p>
<p>Subpart 5. Press release.</p>	<p>Just Change Law recommended that the press release include information on the public advisor and to include a statement that the public will have opportunities to comment on the application.</p> <p>GRE/MP recommended requiring a press release to be “broadcast” into a county, rather than at a radio station.</p> <p>Marie McNamara recommended notice of the public information and scoping meeting to be included in this notice, and the Public Intervenors concurred.</p>	<p>N</p> <p>Y (the draft rule makes it an option to broadcast into a county if there is no radio station within that county).</p> <p>N</p>
<p>Subpart 7. Good faith sufficient.</p>	<p>ITC Midwest recommended that the Commission authorize the Executive Secretary to modify the process schedule if notice is found to be defective.</p> <p>GRE/MP recommended that the draft rule state “where project notice was deficient,” rather than “where project notice was defective.”</p>	<p>N</p> <p>N</p>
<p>7849.0200 APPLICATION FORM AND MANNER OF FILING. Subpart 2. Non-electronic filing.</p>	<p>Just Change Law recommended retaining language that requires applicants to provide copies of the application to other state agencies and to others who request copies.</p>	<p>N</p>

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7849.0200 APPLICATION FORM AND MANNER OF FILING. (continued) Subpart 5. Changes to application.	GRE/MP recommended clarifying whether the changes to an application can be made electronically.	N
Subpart 6. Exemptions.	<p>Wisconsin Power and Light recommended retaining a deadline on the Commission’s decision by extending the existing deadline of 30 days to 90 days.</p> <p>ITC Midwest recommended clarify the existing rule to state that a decision on the exemption request must be made “before beginning the <u>contested case or informal hearing.</u>”</p> <p>GRE/MP also recommended that the Commission clarify which hearing the rule is describing.</p>	<p>N</p> <p>N</p>
Subpart 9. Joint applications.	<p>ITC Midwest recommended clarifying that joint applications refer to a certificate of need application and a route permit application.</p> <p>DOC-EERA recommended removing draft rule language stating that “after determining that all applications are complete” the Commission must decide whether to hold joint proceedings.</p> <p>DOC-EERA recommended removing a citation to rule part 7850.2140 to reflect a recommended renumbering of that rule. Otter Tail concurred.</p>	<p>N</p> <p>Y</p> <p>N</p>
7849.0208 COMPLETENESS DETERMINATION.	<p>Just Change Law recommended including a public comment period on completeness.</p> <p>DOC-DER supported a statement that incomplete applications will be considered “at the earliest possible Commission agenda meeting for further review by the Commission, considering the applicant’s availability and request for additional time.”</p>	<p>N</p> <p>Y (Staff recommends Commission discussion of this issue).</p>

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
<p>7849.0208 COMPLETENESS DETERMINATION. (continued)</p>		<p>Commission staff has also added language to this part directing the Executive Secretary to designate a public advisor at this stage of the process. And, to increase clarity, staff has also separated this part into two subparts.</p>
<p>7849.0210 FILING FEES AND PAYMENT SCHEDULE. Subpart 2. Payment schedule.</p>	<p>GRE/MP recommended updating the existing language to state that an applicant makes an initial payment, with subsequent semi-annual invoices issued by the Commission and Department until payment in full is made.</p> <p>Marie McNamara recommended modifying the rule to require that documentation of payments be electronically filed to ensure notice of rule compliance.</p>	<p>N</p> <p>N</p>
<p>7849.0220 APPLICATION CONTENTS. Subpart 1. All applicants.</p>	<p>Just Change Law recommended against the citation to rule part 7849.0120, stating that the list of criteria is not sufficiently specific. Otter Tail disagreed, stating that the draft changes were supported by the advisory committee and are consistent with the certificate of need statute.</p> <p>Just Change Law also recommended adding a requirement that an applicant file studies relied upon in support of its application.</p>	<p>N</p> <p>Y (added to subpart 2 of the rule).</p>
<p>Subpart 2. Regional transmission planning.</p>	<p>ITC Midwest recommended clarifying whether this requirement is applicable to generation projects.</p>	<p>N</p>

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<p>7849.0220 APPLICATION CONTENTS. (continued) Subpart 3. Joint proceedings.</p>	<p>DOC-EERA recommended removing the requirement that the applicant state its intended timing of any related site or route permit application.</p> <p>DOC-EERA also recommended removing a citation to rule part 7850.2140.</p>	<p>N (But the draft rule has been modified to require the applicant to state the intended date of filing, <i>if known</i>).</p> <p>N</p>
<p>7849.0250 PROPOSED LEGF AND ALTERNATIVES APPLICATION.</p>	<p>ITC Midwest recommended requiring an applicant to file a map, instead of a map scale, showing the applicant’s system.</p> <p>ITC Midwest also recommended clarifying that the applicant without access to a utility’s service area be required to file an “aerial” map of the area where the proposed facility would be located, instead of “a map.”</p> <p>ITC Midwest also recommended clarifying that estimated “system” losses be identified when comparing alternatives.</p>	<p>N</p> <p>N</p> <p>Y</p>
<p>7849.0255 INDEPENDENT POWER PRODUCER LEGF APPLICATION.</p>	<p>Wisconsin Power and Light recommended clarifying that this rule only applies to independent power producers who are not exempt from the certificate of need process.</p> <p>GRE/MP recommended clarifying what would happen if a power purchase agreement was subsequently not approved.</p>	<p>N</p> <p>N</p>

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<p>7849.0255 INDEPENDENT POWER PRODUCER LEGF APPLICATION. (continued) Subpart 1. Utility data.</p>	<p>Wisconsin Power and Light recommended adding language to clarify that an independent power producer who has a power purchase agreement with a utility that serves customers “in Minnesota” must provide the required data.</p>	<p>N</p>
<p>Subpart 3. Relevant available data.</p>	<p>ITC Midwest recommended using “ultimate consumer” in place of “end-user customer” in these two subparts.</p> <p>Wisconsin Power and Light recommended adding language stating that an applicant that does not have a PPA with a utility that serves customers “who are located in Minnesota” is not required to file the information.</p>	<p>Y</p> <p>N</p>
<p>7849.0260 PROPOSED LHVTL AND ALTERNATIVES APPLICATION.</p>	<p>ITC Midwest recommended relocating the requirement that an applicant consider lower voltage options under 100 kV to C (3) from C (8).</p> <p>GRE/MP recommended clarifying B, which requires information on the most recent reliability report, if there is no such report.</p>	<p>Y</p> <p>N</p>
<p>7849.0270 PEAK DEMAND AND ANNUAL CONSUMPTION FORECAST ENGINEERING DATA.</p>	<p>Just Change Law recommended retaining existing data requirements. The Public Intervenors concurred.</p>	<p>N</p>
<p>7849.0275 FORECAST METHODOLOGY, DATA BASE, AND ASSUMPTIONS. Subpart 1. Forecast methodology.</p>	<p>Just Change Law recommended retaining existing language that the draft rule proposes to repeal. The Public Intervenors concurred.</p>	<p>N</p>

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<p>7849.0275 FORECAST METHODOLOGY, DATA BASE, AND ASSUMPTIONS. (continued) Subpart 3. Assumptions and special information.</p>	<p>Just Change Law recommended retaining existing language requiring applicants to file data on electricity prices and the effects of conservation on long-term demand. The Public Intervenors concurred.</p>	<p>N</p>
<p>7849.0280 SYSTEM CAPACITY.</p>	<p>Just Change law opposed the draft rule changes and recommended retaining much of the existing language.</p> <p>GRE/MP recommended clarifying what happens if an applicant does not have “reserve margins.”</p>	<p>N</p> <p>N</p>
<p>7849.0290 CONSERVATION PROGRAMS, APPLICATION.</p>	<p>ITC Midwest recommended clarifying that transmission companies are excluded from this rule’s filing requirement.</p> <p>Just Change Law recommended modifying the draft rule to require consideration of the effects of conservation, along with other alternatives, on the scope, size, or timing of a proposed project. The Public Intervenors concurred.</p>	<p>N (Staff recommends Commission discussion of this issue).</p> <p>Y (the draft rule incorporates this change in parts 7849.0250 and 7849.0260).</p>
<p>7849.0300 CONSEQUENCES OF DELAY.</p>	<p>Just Change Law recommended retaining language on the three levels of demand. The Public Intervenors concurred.</p> <p>DOC-DER recommended replacing the term “power pool” with “regional transmission organization.” ITC Midwest concurred. The Public Intervenors also concurred with DOC-</p>	<p>N</p> <p>Y</p>

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7849.0300 CONSEQUENCES OF DELAY. (continued)	EERA that the change is reasonable. Marie McNamara recommended that the Commission use language that carefully considers the needs of Minnesota residents when weighing regional need.	
7849.0320 GENERATING FACILITIES.	Marie McNamara recommended adding a requirement that “inaudible infrasound” be considered. The Public Intervenors concurred.	N (Staff recommends Commission discussion of this issue).
7849.0340 NO-FACILITY ALTERNATIVE.	Just Change law recommended retaining language requiring three levels of demand. The Public Intervenors concurred.	N
7849.0400 CERTIFICATE OF NEED CONDITIONS AND CHANGES. Subpart 2. Proposed changes in size, type, timing, and ownership.	Just Change Law recommended requiring notice to the Commission prior to implementation of any of the changes listed to ensure the opportunity for review. Otter Tail opposed this recommendation. GRE/MP recommended clarifying under subpart 2 (D) the meaning of “a large transmission line length addition or subtraction made as a result of the route length approved by the commission.”	N N
7849.1000 NOTICE AND COMMENTS; PETITION TO INTERVENE. Subpart 4. Process schedule.	ITC Midwest recommended requiring the process schedule to be an established schedule, not a proposed schedule, and to include timeframes for contested case proceedings. GRE/MP recommended setting forth a process that includes contested case proceedings.	N (but the draft rule includes a change that authorizes the Department or the applicant to request Commission review/modification of the process schedule). N

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7849.1100 RECORD DEVELOPMENT.	Just Change Law recommended modifying the language to clarify that a case should be referred to the OAH for contested case proceedings if there are disputed issues of fact or if referral would facilitate public participation in a controversial matter or result in more effective record development.	N
7849.1200 ENVIRONMENTAL REPORT.	Just Change Law recommended modifying the last sentence to include a reference to Minn. § 116D.04.	N
7849.1400 PROCESS FOR ENVIRONMENTAL REPORT PREPARATION.	Just Change Law recommended requiring an Environmental Impact Statement for certificate of need projects instead of an Environmental Report. The Public Intervenors concurred. Otter Tail and ITC Midwest opposed requiring an EIS.	N
Subpart 2. Content of notice.	DOC-EERA recommended retaining the notice content requirements in subpart 2 of the existing rule.	Y
Subpart 3. Meeting notice recipients.	DOC-EERA recommended modifying the draft rule to require one—not two—newspaper notices. GRE/MP raised the same issue. Otter Tail concurred on requiring only one notice.	N
Subpart 4. Conduct of public <u>information and scoping meeting.</u>	DOC-EERA recommended adding language stating that “a transcript of the meeting need not be maintained, although” the Commission “may elect” to keep an audio recording of the meeting. ITC Midwest recommended requiring the Commission to keep either an audio recording or transcript. Otter Tail concurred on removing the requirement to maintain a transcript of the meeting.	N

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7849.1400 PROCESS FOR ENVIRONMENTAL REPORT PREPARATION. (continued)	GRE/MP recommended clarifying whether the applicant is required to give a presentation at the meeting.	N
Subpart 6. Scoping process.	ITC Midwest recommended authorizing people to identify possible adverse or “beneficial” impacts of the proposed facility.	N
Subpart 7. Comment period.	Just Change Law recommended increasing the comment period from 20 to 45 days. DOC-EERA recommended reducing the comment period from 20 to 10 days. Otter Tail stated that 20 days is reasonable.	N N
7849.1410 NOTICE TO COMMISSION.	GRE/MP recommended clarifying whether the notice requirement applies to joint proceedings.	N
7849.1425 SCOPING DECISION. Subpart 1. Scoping decision.	DOC-EERA recommended removing the requirement that the scoping decision be made within 20 days after the close of the public comment period. Otter Tail concurred that 20 days is adequate.	Y (the draft rule has been modified to state that the decision will be issued consistent with the process schedule).
Subpart 2. Notice of decision.	The Public Intervenors and GRE/MP recommended requiring notice of the scoping decision to two additional lists – the landowner list and the local and tribal government contact list. DOC-EERA concurred.	Y
7849.1500 ENVIRONMENTAL REPORT CONTENT. Subpart 1. Content of environmental report.	DOC-EERA, Just Change Law, and Otter Tail recommended clarifying the language governing which alternatives must be studied in the Environmental Report.	Y

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<p>7849.1500 ENVIRONMENTAL REPORT CONTENT. (continued) Subpart 4. Incorporation of information.</p>	<p>DOC-EERA recommended that the draft rule include language directly from Minn. R. 4410.2400.</p>	<p>N</p>
<p>7849.1525 ENVIRONMENTAL REPORT; FILING.</p>	<p>Otter Tail recommended retaining the requirement that the Environmental Report be filed within four months of the application filing.</p>	<p>N</p>
<p>7849.1530 PUBLIC COMMENTS.</p>	<p>Marie McNamara recommended a longer comment period on the Environmental Report.</p> <p>DOC-EERA recommended removing the comment period and instead requiring a comment period after the public hearing. Otter Tail concurred on removing this part.</p> <p>Just Change Law recommended incorporating a comment period following the public hearing to give interested persond 30 days to comment.</p>	<p>N</p> <p>Y (the draft rule removes this rule part and incorporates the comment period into the next rule part, 7849.1550, subpart 6).</p> <p>Y</p>
<p>7849.1550 PUBLIC HEARING. Subpart 2. Public hearing notice.</p> <p>Subpart 4. Newspaper notice.</p> <p>Subpart 6. Comment period.</p>	<p>Just Change Law recommended that subpart 2 be modified to require that the notice be given at least 10 working days in advance of the hearing.</p> <p>Marie McNamara recommended adding a subpart requiring project notice via radio press releases. The Public Intervenors concurred.</p> <p>Just Change Law also recommended incorporating a 30-day comment period following the hearing and that the rule allow the public to ask questions and file comments at the hearing. DOC-EERA also recommended that a public comment period follow the public hearing and that the comments be filed with the Administrative Law Judge.</p>	<p>N</p> <p>Y (the draft rule adds a subpart 5).</p> <p>Y (the draft rule requires comments to be filed with the ALJ but does not otherwise prescribe the hearing process, which the ALJ will conduct).</p>

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7849.1550 PUBLIC HEARING. (continued)	DOC-EERA recommended that the rule state that the Commission is not required to supplement the Environmental Report in response to comments filed.	N
7849.1800 ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.	<p>Just Change Law recommended clarifying that comments made on the Environmental Report must be considered by the Commission when making a final decision on a certificate of need, and recommended clarifying how the process would work when a contested case proceeding is held.</p> <p>ITC Midwest recommended clarifying that only the draft EIS must be filed prior to Commission hearings on a certificate of need application.</p>	<p>N</p> <p>N</p>
7849.1900 JOINT PROCEEDING.	DOC-EERA recommended clarifying that the Commission must determine whether joint proceedings will be held and that the Department may recommend joint hearings.	Y

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7850.1000 DEFINITIONS. Subpart 3. Associated facilities.	ITC Midwest recommended moving language from the definition of “high voltage transmission line” into the definition of “associated facilities.” Just Change Law recommended including “substations” in the definition of “associated facilities.”	N N
7850.1400 EXEMPT PROJECTS.	Just Change Law recommended modifying subpart 2, instead of repealing it, to state than an applicant for an exempt project must comply with applicable “environmental review provisions,” as well as any other applicable law.	Y (this change is incorporated into subpart 1).
7850.1500 EXCEPTIONS TO PERMITTING REQUIREMENTS FOR CERTAIN FACILITIES Subpart 2. Minor alteration.	DOC-EERA recommended retaining use of the term “minor alteration” and its subsequent use in part 7850.4800. The Public Intervenors recommended clarifying why solar projects are separately addressed but wind projects are not.	Y N
7850.1610 NOTICE LISTS. Subpart 1. General list.	GRE/MP recommended making the list publicly available.	Y (this change is incorporated into subpart 6).
Subpart 3. Public agency contact list.	GRE/MP recommended adding the Federal Aeronautics Administration to the project contact list.	Y
Subpart. 5. Local and tribal government contact list.	ITC Midwest recommended stating that the contact list must include chief executives “or clerks.”	N
Subpart 4. Landowner list.	GRE/MP recommended clarifying how often the list must be updated.	Y (this change is incorporated into subpart 6).

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7850.1610 NOTICE LISTS. (continued)	GRE/MP also recommended clarifying “along” any route. DOC-EERA recommended using the term “within” any route, rather than “along” any route. Otter Tail concurred. ITC Midwest recommended using the term “within or immediately adjacent to” a proposed route. The Public Intervenors opposed use of a more restrictive term that would limit broad public notice.	N
7850.1620 PREAPPLICATION MEETING; TRANSMISSION LINES. Subpart 1. Meetings required. 7850.1620	<p>The Public Intervenors recommended requiring pre-application meetings for proposed power plants, as well as transmission line projects.</p> <p>Xcel recommended requiring that meetings be held in areas along routes that are under active consideration and convenient for people who live in the area, rather than in each county where a proposed project would be located.</p> <p>ITC Midwest recommended removing the requirement to hold meetings in “each county” and instead require that at least one pre-application meeting be held in each area where the project would be located. GRE/MP recommended authorizing the applicant to determine the number and location of pre-application meetings. Otter Tail concurred.</p> <p>Just Change Law recommended requiring that the public advisor be appointed and be available to provide</p>	<p>N</p> <p>Y (the draft rule has been modified to: (1) require that at last two public meetings be held; (2) include a requirement that the applicant work with the public to schedule addition meetings upon request; and (3) file with the Commission the applicant’s schedule of pre-application meetings and its efforts to work with members of the public who request additional meetings).</p> <p>N</p> <p>N (but the draft has been updated to require applicants to explain</p>

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PREAPPLICATION MEETING; TRANSMISSION LINES. (continued)	information on how to affect a route and request an advisory task force.	how people can sign up to receive Commission notices).
Subpart 3. Public input.	GRE/MP recommended clarifying whether Department and Commission staff will be appointed at this stage.	N
Subpart 4. Meeting summary.	<p>Just Change Law recommended requiring the meeting summary to include all comments and recommended alternatives.</p> <p>GRE/MP stated requiring “all” comments to be recorded could be difficult.</p>	<p>N</p> <p>Y (the draft rule requires that “the” comments received, rather than “all” comments received, be considered in deciding which routes to include in the application).</p>
7850.1630 NOTICE OF INTENT TO FILE.	ITC Midwest recommended removing this rule part.	Y
<p>7850.1640 DRAFT PERMIT APPLICATION REQUIRED.</p> <p>Subpart 1. Draft permit application.</p>	<p>DOC-EERA recommended requiring that the application clearly be marked as a draft and that it be marked as a draft when filed into the Commission’s electronic filing system.</p> <p>DOC-EERA also recommended that the rule state that the Commission will request comments on the draft and that the Commission may require changes to the draft based on the comments received</p>	<p>Y</p> <p>Y (the Commission will request comments on the draft under part 7850.1680, but the rule does not state that the Commission may require changes).</p>

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<p>7850.1640 DRAFT PERMIT APPLICATION REQUIRED. (continued) Subpart 2. Draft site permit for LEPGP.</p>	<p>Xcel recommended removing language in subpart 2 requiring the applicant to state whether it intends to retain the option to exercise eminent domain. GRE/MP concurred.</p>	<p>Y</p>
	<p>Otter Tail recommended removing language in subpart 2 that would require an applicant to identify the amount of land it has obtained via contract/condemnation. DOC-EERA concurred.</p>	<p>Y</p>
	<p>The Public Intervenors opposed removal of the language but recommended requiring the applicant to identify the “acres of land an applicant would obtain, through contract or condemnation, to build the project, excluding contiguous land that may be acquired as a result of election of Minn. Stat. § 216E.12, subd. 4.”</p>	<p>N</p>
	<p>DOC-EERA recommended adding the word “application” to the subpart title and moving to this subpart all applicable route permit application content requirements listed in part 7850.1900.</p>	<p>Y</p>
	<p>DOC-EERA recommended requiring an applicant to include copies of the size-determination form and the Department’s size-determination decision in the draft application. The Public Intervenors concurred on including this information.</p>	<p>Y</p>

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<p>7850.1640 DRAFT PERMIT APPLICATION REQUIRED. (continued) Subpart 3. Draft route permit for HVTL.</p>	<p>Xcel recommended removing the requirement that the applicant state whether it intends to retain the option to exercise eminent domain. GRE/MP concurred. GRE/MP, ITC Midwest, DOC-EERA, and Otter Tail also recommended removing this requirement.</p> <p>DOC-EERA recommended adding the word “application” to the subpart title and moving into this subpart all application content requirements listed in part 7850.1900 that are applicable to a site permit.</p>	<p>Y</p> <p>Y</p>
<p>Subpart 4. Environmental information.</p>	<p>Just Change Law recommended including information on electric and magnetic fields. The Public Intervenors concurred.</p>	<p>Y</p>
<p>7850.1650 NOTICE OF DRAFT APPLICATION.</p>	<p>GRE/MP recommended clarifying when the notice must be given.</p>	<p>Y</p>
<p>Subpart 1. Notice recipients.</p>	<p>DOC-EERA recommended setting a timetable for sending notice of the application.</p>	<p>N</p>
<p>Subpart 2. Notice content.</p>	<p>DOC-EERA recommended stating that the Commission is the entity making the final decision on the location of a site or route, and clarifying that a notice recipient’s property could be affected the final <i>site</i> or route selected. The Public Intevenors concurred. Otter Tail concurred on clarifying that the Commission makes the final decision.</p> <p>DOC-EERA also recommended removing the requirement that the applicant state the date on which it intends to file its application.</p> <p>ITC Midwest recommended removing any notice of the draft application and subsequent rule part that authorizes the Commission to take comments on the draft application.</p>	<p>Y</p> <p>N (but the draft clarifies that the applicant must include the date, <i>if known</i>).</p> <p>N</p>

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TABLE OF CHANGES MADE TO ATTACHED DRAFT RULE**

Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
<p>7850.1680 COMMENTS AND PROCESS. Subpart 1. Comments.</p>	<p>ITC Midwest recommended requiring comments on the draft application, within 21 days of the filing, only from the Department.</p>	<p>N (but the draft rule has been modified to request comments on completeness only from the Department, the general service list, and the project contact list).</p>
<p>Subpart 2. Notice of comment period.</p>	<p>Xcel recommended removing the comment period on the draft application. Otter Tail also recommended removing the comment period.</p> <p>DOC-EERA recommended retaining a comment period on the draft application to allow the Commission the opportunity to determine if any information is missing. ITC Midwest recommended requiring a comment period on the draft application only from the Department.</p> <p>DOC-EERA also recommended making it clear that the Commission will decide whether to appoint an advisory task force after the close of the comment period.</p>	<p>N (but the draft rule has been modified to require two comment periods – one on whether the application is complete and one on advisory task force; those notices will go to different notice lists).</p> <p>Y (the draft rule requests comments from the Department, the general service list, and the project contact list. To ensure that an applicant has reasonably sufficient time to consider and file reply comments, the draft rule has been modified to extend the reply comment period from 14 to 21 days).</p> <p>N</p>
<p>Subpart 3. Process schedule.</p>	<p>ITC Midwest recommended requiring the process schedule to be an established schedule, not a proposed schedule. Xcel emphasized the need for a predictable process schedule.</p>	<p>N (the draft rule states that the applicant or the Department can request that the Commission review or modify the schedule).</p>

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TABLE OF CHANGES MADE TO ATTACHED DRAFT RULE**

Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7850.1680 COMMENTS AND PROCESS. (continued)	<p>Just Change Law recommended setting the schedule only after completeness has been determined.</p> <p>DOC-EERA recommended moving Commission consideration of joint proceedings to this point in the process, along with the Commission’s decision for referring cases to OAH.</p>	<p>N</p> <p>N</p>
7850.1700 PERMIT APPLICATION AND MANNER OF FILING. Subpart 1. Filing of application for permit.	<p>GRE/MP recommended removing the requirement that applicants file copies of their applications with those persons on the general service list. DOC-EERA also recommended this change, and Otter Tail concurred.</p> <p>Just Change Law recommended including a comment period on completeness. The Public Intervenors recommended against removing any notice requirements.</p> <p>DOC-EERA recommended adding the word “final” application to this subpart.</p>	<p>Y</p> <p>N</p> <p>N</p>
7850.1710 APPLICATION COMPLETENESS; SCHEDULE. Subpart 1. Written notice required.	<p>Just Change Law and the Public Intervenors recommended extending the time period for determining completeness.</p> <p>DOC-EERA recommended clarifying that the completeness determination is made on the final—not the draft—permit application.</p>	<p>N</p> <p>N</p> <p>Staff has added language to the draft rule authorizing the Executive Secretary to designate a public advisor at the time the completeness determination is made.</p>
Subpart 2. Incomplete application.	Just Change Law recommended that the rule provide a comment period on completeness or allow the public to	N

**Chapter 7850 – SITE AND ROUTE PERMITS
TABLE OF CHANGES MADE TO ATTACHED DRAFT RULE**

Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7850.1710 APPLICATION COMPLETENESS; SCHEDULE. (continued)	request Commission review of completeness. The Public Intervenors concurred.	
Subpart 4. Process schedule update.	Just Change Law recommended setting the schedule at the time completeness is determined.	N
Subpart 5. Statutory deadline; extension.	GRE/MP recommended requiring the Commission to make a decision on extending the deadline for a permit decision in cases where the deadline will not be met.	N
7850.1800 PERMIT FEES.		
Subpart 2. Initial payment; and Subpart 3. Additional payment.	GRE/MP recommended updating these subparts to codify existing practice in which applicants typically submit half the estimated fee with the application and then pay subsequent invoices issued by the Department.	N
Subpart 4. Final accounting.	GRE/MP recommended that this step be completed at the end of the construction process.	N
Subpart 5. Payment documentation.	Marie McNamara recommended adding a subpart 5 to require payment information to be filed in e-dockets.	N
7850.1900. APPLICATION CONTENTS. Subpart 1. Site permit for LEPPG.	Xcel recommended that the information required in (B-G) also be required in the draft application. DOC-EERA also made that recommendation. DOC-EERA recommended adding the word “application” to the title of the subpart.	Y Y

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
<p>7850.1900. APPLICATION CONTENTS. (continued) Subpart 2. Route permit for HVTL.</p>	<p>ITC Midwest recommended removing the requirement that an applicant identify and explain “any” change to the application.</p> <p>GRE/MP recommended clarifying whether there is a need to make applications available in both government centers and public libraries.</p> <p>DOC-EERA recommended adding the word “application” to the title of the subpart and to move the list of information into part 7850.1640 governing the draft route permit application.</p>	<p>Y (the draft rule requires the applicant to explain any “material” change).</p> <p>Y (the rule requires the applicant to state the location of the library or government center where the application is available).</p> <p>Y</p>
<p>7850. 2100 NOTICE OF APPLICATION. Subpart 1. Notice to persons on general list, to local officials, and to property owners.</p>	<p>GRE/MP recommended against sending certified mail to certain entities.</p> <p>DOC-EERA recommended using the term “final” application.</p> <p>Just Change Law recommended allowing the public to file comments on completeness and requiring completeness to be determined prior to any further action.</p>	<p>N</p> <p>N</p> <p>N</p>

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
<p>7850. 2100 NOTICE OF APPLICATION. (continued) Subpart 2. Content of notice.</p>	<p>DOC-EERA recommended clarifying that persons subscribe to a “docket” rather than a “case,” in subpart 2 (D), and that the Commission makes the final decision on a site or route.</p> <p>Just Change Law recommended retaining notice content requirements informing the public that the Commission will hold a meeting on the proposed project and to include information on the environmental review process.</p>	<p>Y</p> <p>N</p>
<p>7850. 2110 COMMENTS ON APPLICATION. Subpart 1. Notice.</p>	<p>DOC-EERA recommended removing this rule part.</p> <p>ITC Midwest recommended that the Commission take comments on whether to appoint an advisory task force at this stage based on the final application, rather than on the draft application.</p> <p>Just Change Law similarly recommended that the Commission take comments on whether to appoint an advisory task force</p>	<p>N (but the draft rule has been modified to remove language concerning “contested case hearings,” although the draft also requires the Commission to request comments on issues relevant to record development. This gives the Commission the opportunity to identify issues to be developed when it refers the case to the Office of Administrative Hearings. The draft rule also requires notice of the comment period to be sent to all notice lists).</p> <p>N</p>

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7850.2120 COMMISSION REFERRAL.	DOC-EERA recommended moving this part to 7850.1680.	N
7850.2140 JOINT PROCEEDINGS.	<p>DOC-EERA recommended moving this part to 7850.1680. Otter Tail concurred.</p> <p>ITC Midwest recommended clarifying that record development does not include contested case proceedings (for joint proceedings held on a project subject to the alternative review process).</p> <p>Xcel also recommended clarifying that comments can address whether to assign an ALJ and on the type of report to be filed.</p>	<p>N</p> <p>N</p> <p>N</p>
7850.2200 PUBLIC ADVISOR.	The Public Intervenors recommended adding language stating that the public advisor will volunteer information and provide information about project schedules, opportunities for public comments, and participation.	N
7850.2300 PUBLIC INFORMATION AND SCOPING MEETING. Subpart 2. Notice.	<p>ITC Midwest recommended removing the requirement that the newspaper of general circulation be the one “that is nearest” to the proposed project location.</p> <p>GRE/MP recommended clarifying that the newspaper notice will be an abbreviated version of the Commission notice.</p> <p>DOC-EERA recommended removing language stating that the EERA could exclude alternatives not identified in the scoping process from later analysis.</p> <p>DOC-EERA also recommended clarifying in the rule that the Commission makes the final decision on the site or route location.</p>	<p>Y</p> <p>N</p> <p>Y</p> <p>Y</p>

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
<p>7850.2300 PUBLIC INFORMATION AND SCOPING MEETING. (continued)</p>	<p>DOC-EERA recommended clarifying that notice of the public hearing will be mailed separately, not only to persons receiving notice of the scoping meeting. The Public Intervenors concurred on informing people that separate notices will be sent.</p> <p>Just Change Law recommended that notice of the meeting be given at least 30 days in advance.</p>	<p>Y</p> <p>N</p>
<p>Subpart 3. Notice content.</p>	<p>The EERA recommended removing language stating that the EERA could exclude alternatives not identified in the scoping process from later analysis. The EERA noted that it has authority to modify the scope of environmental review if there are substantial changes to the proposed project or new information regarding potential impacts or alternatives arise. Otter Tail recommended retaining the language to ensure that the Department can effectively manage the process.</p> <p>Just Change Law recommended stating that “alternatives not identified in the scoping meeting or within 10 days after that meeting are likely to be excluded.”</p> <p>ITC Midwest also recommended stating that “alternatives not identified in the scoping process may not be considered by the Commission in determining a route/site for the project.”</p> <p>The EERA also recommended clarifying that the Commission makes the final decision on the site or route location.</p>	<p>Y</p> <p>N</p> <p>Y</p>

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
<p>7850.2300 PUBLIC INFORMATION AND SCOPING MEETING. (continued) Subpart 4. Conduct of meeting.</p>	<p>GRE/MP Power recommended clarifying that Commission staff will conduct the informational portion of the meeting.</p>	<p>N</p>
<p>Subpart 5. Applicant role.</p>	<p>GRE/MP recommended clarifying whether it is sufficient to have one available copy of the application at the meeting.</p>	<p>Y</p>
<p>7850.2400 CITIZEN ADVISORY TASK FORCE. Subpart 1. Authority.</p>	<p>Just Change Law recommended including a broader statement such as “the Commission has the authority to appoint a citizen advisory task force to develop the record on alternatives sites or routes and assist with scoping for environmental review.”</p> <p>Just Change Law recommended language requiring the Commission to include on the task force “a broad spectrum of citizen participants, in accordance with Minn. Stat. § 216E.08.”</p> <p>Just Change Law recommended modifying language on when the Commission will make the decision.</p>	<p>N</p> <p>N</p> <p>N</p>
<p>Subpart 3. Task force responsibilities.</p>	<p>GRE/MP recommended stating that the environmental review document could be either an environmental impact statement “or environmental</p>	<p>Y</p>

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7850.2400 CITIZEN ADVISORY TASK FORCE. (continued)	<p>assessment.” DOC-EERA also recommended clarifying that site, routes, or impacts identified by the task force could be evaluated in the EIS <i>or</i> EA. Otter Tail opposed language requiring an EIS in place of an EA. The draft rule has been modified to use the phrase “environmental review.”</p> <p>Just Change Law recommended requiring the report to be filed upon completion of the task force and that it includes “all routes, sites, and impacts identified and those recommended for evaluation.”</p>	Y
Subpart 4. Termination of task force.	<p>ITC Midwest recommended removing draft rule language that appears to extend the duration of the task force.</p> <p>GRE/MP recommended adding “or environmental assessment.” Otter Tail opposed any changes that would require an EIS in place of an environmental assessment.</p> <p>DOC-EERA recommended stating that the task force terminates once the Commission designates the sites or routes that will be studied in the EIS or the EA. The Public Intervenors recommended that further explanation of this change be provided.</p> <p>DOC-EERA recommended removing language that requires the study of sites or routes “that will be considered at a public hearing.”</p>	<p>N</p> <p>Y (the draft rule uses the phrase “environmental review”).</p> <p>Y</p> <p>Y</p>
7850.2500 EIS PREPARATION. Subpart 2. Scoping process.	DOC-EERA recommended replacing “environmental factors” with “potential human and environmental	Y

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7850.2500 EIS PREPARATION. (continued)	impacts and possible mitigation measures.”	
Subpart 3. Alternatives sites or routes.	Just Change Law recommended requiring earlier notice of the scoping meeting, such as 30 days.	N
Subpart 4. Comment period.	Just Change Law recommended extending the time period for public comment on the scope of the EIS from 10 to 20 days.	N
7850.2520 NOTICE TO COMMISSION.	ITC Midwest recommended clarifying that the scope of the EIS include any alternative identified by either the Commission “or the applicant.” DOC-EERA recommended stating that the Commission meeting will be set forth in the process schedule.	Y N
7850.2530 SCOPING DECISION. Subpart 3. Notice of decision.	DOC-EERA recommended requiring updates to the landowner list prior to the notice of the scoping decision and to include language under 7850.2540, subp. 2, into this rule. The Public Intervenors concurred.	Y (this change is included in subpart 2).
Subpart 4. Changes to scoping decision.	Just Change Law recommended clarifying that the scope of the EIS may not change once the Commission has determined the scope. The Public Intervenors concurred and recommended clarifying that the scope cannot be changed without Commission approval. Just Change Law recommended providing a comment period at this stage of the process.	N N
7850.2540 SUPPLEMENTAL FILING BY APPLICANT. Subpart 1. Supplemental filing.	ITC Midwest recommended clarifying the meaning of “equivalent comparison.”	Y
Subpart 2. Landowner list.	DOC-EERA recommended updating the landowner list prior to issuing notice of the scoping decision and	Y (this change is included in part 7850.2530, subp. 2).

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7850.2540 SUPPLEMENTAL FILING BY APPLICANT. (continued)	recommended moving the requirement into part 7850.2530.	
7850.2550 DRAFT EIS. Subpart 4. Environmental review meeting.	Xcel and ITC Midwest recommended clarifying that the public hearing and environmental review meeting can be combined. GRE/MP recommended clarifying if the notice of the meeting should go to others than just those on the project contact list. DOC-EERA recommended requiring notice to all lists.	N Y
7850.2570 PUBLIC HEARING. Subpart 2. Notice.	DOC-EERA recommended clarifying that the Commission makes the final decision on the site or route location. Just Change Law recommended at least 20 days' notice of the public hearing.	Y N
Subpart 5. Issues excluded.	DOC-EERA recommended adding language to reiterate that during the permitting process questions regarding the certificate of need are not considered. Otter Tail concurred with this recommended change. The Public Invervenors opposed restrictive questions need during the permitting process beyond the limits stated in Minn. Stat. § 216E.02, subd. 3.	N
7850.2650 FINAL EIS. Subpart 2. Filing and public access.	Just Change Law recommended requiring that the final EIS be filed before the public hearing and evidentiary hearings are completed. Xcel opposed adding this requirement.	N
Subpart 3. Public comment.	Xcel and ITC Midwest recommended modifying the comment period to narrow the focus of comments to questions of adequacy. Xcel recommended a comment period of 20	N (but the draft rule has been modified to state that the comment period will be initiated by a Commission notice that will identify the issues on which the Commission seeks comment. The

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
<p>7850.2650 FINAL EIS. (continued)</p>	<p>days. ITC recommended a 10-day comment period.</p> <p>Otter Tail concurred with the draft rule requirement that comments on adequacy be filed within 25 days after the final EIS is filed.</p> <p>DOC-EERA recommended clarifying that final comments must be on the adequacy of the EIS and that the comment period begins with notice of availability of the final EIS in the EQB Monitor. The Public Intervenors concurred that it is reasonable to ask for comments on questions of adequacy.</p> <p>Just Change Law recommended requiring that comments be filed “before the close of the administrative record or within 25 days after the final EIS is filed, whichever comes later.”</p>	<p>draft rule has also been modified to state that the 25-day comment period will be set by Commission staff in consultation with the administrative law judge).</p>
<p>7850.2675 PROCEDURE AFTER ADMINISTRATIVE LAW JUDGE REPORT. Subpart 2. Participating agencies.</p>	<p>ITC Midwest recommended clarifying that agencies may file exceptions to the ALJ’s report.</p> <p>GRE/MP recommended removing “participating” and instead apply the same deadline to all agencies, whether or not they participated throughout the proceeding.</p>	<p>N</p> <p>N</p>
<p>7850.3700 ENVIRONMENTAL ASSESSMENT PREPARATION. Subpart 2. Scoping process.</p>	<p>DOC-EERA recommended replacing “environmental factors” with “potential human and environmental impacts and possible mitigations measures.”</p>	<p>Y</p>
<p>Subpart 3. Alternative sites or routes.</p>	<p>ITC Midwest recommended stating that the applicant will have the opportunity to respond to the “feasibility” of each requested alternative.</p>	<p>N</p>

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
<p>7850.3700 ENVIRONMENTAL ASSESSMENT PREPARATION. (continued) Subpart 4. Public comment.</p>	<p>Just Change Law recommended extending the comment period to 20 days.</p>	<p>N</p>
<p>7850.3720 NOTICE TO COMMISSION.</p>	<p>DOC-EERA recommended requiring that the Commission decision on the scoping process be set forth in the process schedule.</p>	<p>N</p>
<p>7850.3730 SCOPING DECISION. Subpart 2. Notice of decision.</p>	<p>DOC-EERA recommended requiring updates to the landowner list prior to the notice of the scoping decision and to include the language governing an applicant’s supplemental filing (under 7850.2540, subp. 2) into this rule. The Public Intervenors concurred.</p>	<p>Y</p>
<p>7850.3740 SUPPLEMENTAL FILING BY APPLICANT. Subpart 1. Supplemental filing.</p>	<p>ITC Midwest recommended rephrasing the language to require the applicant to file additional “publicly available desktop data to support comparison of all” routes under consideration.</p>	<p>N</p>
<p>Subpart 2. Landowner list.</p>	<p>DOC-EERA recommended requiring that the landowner list be updated prior to issuance of the scoping decision by moving this subpart into part 7850.3730. The Public Intervenors concurred on the importance of updating the landowner list.</p>	<p>Y</p>
<p>7850.3750 ENVIRONMENTAL ASSESSMENT. Subpart 5. No additional environmental review.</p>	<p>ITC Midwest recommended retaining language shown for repeal to ensure that it is clear that no further environmental review is required.</p> <p>Just Change Law recommended stating that no additional environmental review is required “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 Minn. Stat. § 116D.04, subd. 2a.”</p>	<p>N</p> <p>N</p>

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7850.3800 PUBLIC HEARING. Subpart 1. Public hearing.	ITC Midwest recommended stating that the hearing must be held in a county where “a substantial portion of” the proposed project would be located.	N
Subpart 2. Public hearing notice.	DOC-EERA recommended clarifying that the Commission makes the final decision on the location of the site or route. Just Change Law recommended requiring notice of the public hearing to be given at least 20 days in advance.	Y N
Subpart 4. Hearing examiner.	GRE/MP recommended clarifying whether “hearing examiner” means “administrative law judge.” DOC-EERA also recommended removing references to “hearing examiner” and replacing this language with “administrative law judge.” Just Change Law recommended retaining “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.”	Y N
Subpart 5. Hearing procedure.	DOC-EERA recommended clarifying that Commission staff will participate, and recommended clarifying in (B) that Department staff will introduce the EA and associated record information.	Y
Subpart 8. Public comment.	ITC Midwest recommended adding language to state that public comments “on the Environmental Assessment and route decision” must be filed within 10 days after the close of the public hearing. DOC-EERA recommended removing this subpart because the comment period is included in this subpart under item E.	Y (this language is already included in the existing rule under this subpart, item E).

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7850.4000 STANDARDS AND CRITERIA.	DOC-EERA recommended retaining this language and replacing “requirements” with “purposes.” Just Change Law also recommended retaining the existing rule language, and the Public Intervenors concurred.	N
7850.4100 FACTORS CONSIDERED.	Just Change Law recommended adding “electric and magnetic fields.” The Public Intervenors concurred.	Y
7850.4200 FACTORS EXCLUDED.	DOC-EERA recommended retaining the language excluding consideration of need in the permitting process when the Commission has made a certificate of need decision. The Public Intervenors opposed this recommendation.	N
7850.4400 PROHIBITED SITES. Subpart 4. Prime farmland exclusion.	<p>Xcel recommended stating that solar facilities may be sited on prime farmland if they have a Commission-approved agricultural mitigation plan developed in consultation with the Department of Agriculture. Xcel also recommended against language limiting the Commission’s authority to site solar facilities if a local zoning ordinance language prohibits its construction.</p> <p>DOC-EERA recommended removing language on local zoning ordinances because it conflicts with the statutory goal of locating facilities “in an orderly manner compatible with environmental preservation and efficient use of resources.” DOC-EERA also recommended clarifying that local government ordinances do not supersede Commission authority. Otter Tail concurred that local ordinances should not restrict Commission authority.</p> <p>The Public Intervenors supported recognizing the importance of local control.</p>	N (Staff recommends Commission discussion of this issue).

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7850.4650 COMPLAINT FILING. Subpart 1. Plan and profile.	GRE/MP recommended clarifying that the design plan may be completed in segments.	Y
7850.4800 MINOR ALTERATION IN GENERATING PLANT OR TRANSMISSION LINE. Subpart 1. Applicability.	DOC-EERA recommended retaining “minor alteration” language, instead of using the term “change.” The Public Intervenors concurred. Otter Tail also recommended retaining “minor alteration,” and recommended defining the term.	Y (but the rule does not define the term “minor alteration.”).
Subpart 2. Application for minor alteration of a site or route.	DOC-EERA recommended clarifying that the Commission issues the notice of the comment period and that notice should go to landowners reasonably likely to be affected, to the public agency contact list, and to local and tribal units of government with jurisdiction over the area where the minor alteration is proposed.	Y
Subpart 3. Commission decision.	GRE/MP recommended inserting a deadline on Commission action.	N
7850.4900 AMENDMENT OF PERMIT CONDITIONS.	Just Change Law recommended stating in the rule that permit conditions that would result in significant increases in the human or environmental impact of the facility are precluded.	N
Subpart 2. Process.	DOC-EERA recommended clarifying that the Commission issues the notice of the comment period and recommended using “application” in place of “amendment request.” Otter Tail concurred with the change to “application” in place of “amendment request.”	N
7850.4925 COMPLAINT PROCEDURES. Subpart 2. Permittee complaint handling.	GRE/MP recommended clarifying whether the one-business day requirement is only for substantial complaints. DOC-EERA recommended removing this rule part and adding language to draft permits to more clearly specify the applicant’s responsibility.	Y (the draft rule removes this rule part).

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Rule Part	Stakeholder Recommendations	Changes Incorporated into Draft Rule
7850.4950 REPORTS.	GRE/MP recommended changing the monthly reporting requirement to eliminate the requirement that an applicant file monthly reports for one full year after construction has been completed. They instead recommended requiring monthly reports until construction is completed and then for twelve months thereafter, with notice to the Commission of any complaints filed.	Y
7850.5000 PERMIT TRANSFER. Subpart 2. Approval of transfer.	Just Change Law recommended retaining existing language authorizing the Commission to hold a meeting, and recommended adding language to require Commission approval prior to any transfer or ownership change.	N
7850.5300 LOCAL REVIEW OF PROPOSED FACILITIES. Subpart 3. Notice to commission.	GRE/MP recommended adding language to require an applicant to notify the Commission when either the applicant submits an application to a local unit of government, <i>or</i> at the time the local unit of government agrees to permit the project.	N
7850.5400 ANNUAL PUBLIC HEARING. Subpart 1. Annual public hearing.	GRE/MP recommended clarifying that an administrative law judge conducts the public hearing.	N
Subpart 3. Report.	GRE/MP recommended clarifying whether the staff or the administrative law judge prepares the report.	N

WORKING DRAFT – Chapter 7849

PUBLIC UTILITIES COMMISSION

July 2018

CERTIFICATE OF NEED; POWER PLANT OR LINE

CERTIFICATES OF NEED

- 7849.0010 DEFINITIONS.
- 7849.0020 PURPOSE.
- 7849.0030 SCOPE.
- 7849.0100 PURPOSE OF CRITERIA.
- 7849.0110 ALTERNATIVES CONSIDERATION.
- 7849.0115 CERTIFICATE OF NEED REQUIREMENTS.
- 7849.0120 CERTIFICATE OF NEED CRITERIA.

NOTICE REQUIREMENTS

- 7849.0125 NOTICE LISTS.
- 7849.0130 PROJECT NOTICE.

FILING REQUIREMENTS

- 7849.0200 ~~APPLICATION PROCEDURES AND TIMING~~ FORM AND MANNER OF FILING.
- 7849.0208 COMPLETENESS DETERMINATION.
- 7849.0210 FILING FEES AND PAYMENT SCHEDULE.

APPLICATION CONTENT REQUIREMENTS

- 7849.0220 APPLICATION CONTENTS.
- 7849.0230 ~~ENVIRONMENTAL REPORT.~~
- 7849.0240 ~~NEED SUMMARY AND ADDITIONAL CONSIDERATIONS.~~
- 7849.0250 PROPOSED LEGF AND ALTERNATIVES APPLICATION.
- 7849.0255 INDEPENDENT POWER PRODUCER LEGF APPLICATION.
- 7849.0260 PROPOSED LHVTL AND ALTERNATIVES APPLICATION.
- 7849.0270 ~~PEAK DEMAND AND ANNUAL CONSUMPTION FORECAST~~ ENGINEERING DATA.
- 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.
- 7849.0340 NO-FACILITY ALTERNATIVE.

NOTICE OF PROJECT CHANGES

- 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.

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.
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- 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.~~

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

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

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

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

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

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

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

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

Subp. 9a. **Department.** "Department" means the Department of Commerce.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~Subp. 28. **Summer season.** "Summer season" means the period from May 1 through October 31.~~

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

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

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.

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

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

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

Posted: *October 13, 2009*

CERTIFICATES OF NEED

7849.0020 PURPOSE.

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

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

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

Posted: *October 13, 2009*

7849.0030 SCOPE.

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

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

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

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

Posted: *October 13, 2009*

7849.0100 PURPOSE OF CRITERIA.

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

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

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

Posted: *October 13, 2009*

7849.0110 ALTERNATIVES CONSIDERATION.

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

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

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

Posted: *October 13, 2009*

7849.0115 CERTIFICATE OF NEED REQUIREMENTS.

Subpart 1. **Need Demonstration.** An applicant for a certificate of need must demonstrate that the projected demand for electricity cannot be met using existing resources, or more cost effectively through energy conservation and load-management measures, unless the applicant otherwise justifies its need, considering the criteria in part 7849.0120 below.

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

7849.0120 CERTIFICATE OF NEED CRITERIA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Posted: *October 13, 2009*

NOTICE REQUIREMENTS

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

Subpart 1. **General list.** The commission must maintain a general list that includes the names that are on the 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.

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.

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;
- E. the Federal Aeronautics Administration; and
- F. 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 include:

- A. for an HVTL, landowners whose property is along a proposed transmission line;
- B. 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

C. for all projects, landowners who are reasonably likely to be affected by the proposed project.

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 facility's 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. Lists must be maintained in the following manner:

A. A name must not be removed from a list, unless:

(1) an individual requests that the commission or the applicant remove that person's name from a list; or

(2) the commission or applicant sends written notice to an individual on a list asking if that person's name should remain on the list and no response is received within 30 days of the request.

B. Lists must be updated as follows:

(1) the commission or applicant must add the name of a person or entity to a list upon that person's or entity's request;

(2). the applicant must update the landowner list 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;

(3). the applicant must update the local and government contact list to include each governmental entity located in the area of a project alternative that will be considered in the scope of the environmental report under part 7849.1425;

C. List availability. The entity maintaining the list must file the list in the commission's electronic filing system, e-dockets.

[PART 7829.2550 IS UNDER CONSIDERATION IN THIS RULEMAKING PROCEEDING]

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

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

~~A. the department;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~Subp. 7. **Good faith sufficient.** The commission shall not deny a request for certification of a high-voltage transmission line on grounds of defective notice if the applicant acted in good faith,~~

~~in substantial compliance with the notice requirements of this part, and in substantial compliance with any commission orders issued under this part.~~

7849.0130 PROJECT NOTICE.

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

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

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

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

A. for an HVTL:

- (1) a map showing:
 - (i) the end points of the line and existing transmission facilities in the area, including transmission facilities 69 kilovolts or greater; and
 - (ii) shaded-in areas showing possible routes.
- (2) a description of general right-of-way requirements for a line of the size and voltage proposed and a statement that the applicant intends to acquire property rights for the right-of-way that the proposed line will require;

B. for an LEGF:

- (1) a map showing the location **and project footprint** 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) 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;

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

(9) 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. If a county does not have a radio station, an applicant must issue a press release to at least one radio station that broadcasts into that county. 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 proposed facility's project area and that the applicant could use eminent domain proceedings to obtain land for the project;

E. a description of where to obtain the application, including an electronic link to the application; and

F. information on how to contact the Commission for information on public

participation in the Commission's proceeding.

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

A. a copy of the notice sent under subparts 2 through 5 and an affidavit of service that includes the names and addresses of those persons to whom the notice was sent;

B. each affidavit of publication by newspaper;

C. a copy of the press release sent and a list of the stations to which it was sent; and

D. a map or other graphical representation of the area in which the applicant mailed notice of the proposed project under subparts 2 through 5.

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

FILING REQUIREMENTS

7849.0200 APPLICATION PROCEDURES AND TIMING FORM AND MANNER OF FILING.

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

Subp. 2. ~~Copies, title, table of contents~~ **Non-electronic filing.** An applicant who does not file an application electronically must file ~~The the~~ the original and 13 three copies of the application ~~must be filed with the commission. The applicant shall provide copies of the application to other state agencies with regulatory responsibilities in connection with the proposed facility and to other interested persons who request copies. The applicant shall maintain a distribution list of the copies.~~ Documents, forms, and schedules filed with the application must be ~~typed~~ printed on 8-1/2 inch by 11 inch paper except for drawings, maps, and similar materials.

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

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

Subp. 3 **5. Changes to application.** After an application is filed, supplemental filings, changes, or corrections to the application must comply with subpart 2 as to the number of copies and size of documents this rule part. ~~In addition, 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 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. The commission must **subsequently** 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.

Subpart 1. **Written notice required.** 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. **At the time of the determination, the executive secretary must also designate a commission staff person to be the public advisor for the proceeding and include that person's name and contact information in the notice to the applicant. The executive secretary must file notice of the decision in the commission's electronic filing system.**

Subp. 2. **Incomplete application.** If the application is not complete, the executive secretary must set the matter for the earliest possible commission agenda meeting for review by the commission, **considering the applicant's availability and request for additional time.** If, prior to the commission meeting, the applicant files the missing information, the executive secretary will pull the item from the agenda and notify the applicant in writing that the application is complete.

7849.0210 FILING FEES AND PAYMENT SCHEDULE.

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

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

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

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

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

Posted: *October 13, 2009*

APPLICATION CONTENT REQUIREMENTS

7849.0220 APPLICATION CONTENTS.

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

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

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

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

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

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

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

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

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

D. a copy, or electronic link to, of each study relied upon by the applicant for demonstrating that the project is needed.

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 file the application, if known, and whether the applicant intends to request that joint proceedings be held under part 7850.2140.

Subp. 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 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); and
(10) energy conservation in combination with other alternatives.

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

~~C~~ 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 system 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 **ultimate consumers**, 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 **ultimate consumers** 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, including lower voltage options under 100 kV, 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) energy storage;
- (9) a no-build alternative; and
- (8-10) any reasonable combinations of the alternatives listed in subitems (1) to (7 8);

and

(11) energy conservation in combination with other alternatives.

~~B~~ 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.

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

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

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

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

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

- ~~(1) farm, excluding irrigation and drainage pumping (for reporting purposes, any tract of land used primarily for agricultural purposes shall be considered farm land);~~
- ~~(2) irrigation and drainage pumping;~~
- ~~(3) nonfarm residential (when electricity is supplied through a single meter for both residential and commercial uses, it shall be reported according to its principal use, and apartment buildings shall be reported as residential even if not separately metered);~~
- ~~(4) commercial (this category shall include wholesale and retail trade; communication industries; public and private office buildings, banks, and dormitories; insurance, real estate and rental agencies; hotels and motels; personal business and auto repair services; medical and educational facilities; recreational, social, religious, and amusement facilities; governmental units, excluding military bases; warehouses other than manufacturer owned; electric, gas, water and water pumping, excluding water pumping for irrigation, and other utilities);~~
- ~~(5) mining;~~
- ~~(6) industrial (this category shall include all manufacturing industries, construction operations and petroleum refineries);~~
- ~~(7) street and highway lighting;~~
- ~~(8) electrified transportation (this category shall include energy supplied for the propulsion of vehicles, but shall not include energy supplied for office buildings, depots, signal lights or other associated facilities that shall be reported as commercial or industrial);~~
- ~~(9) other (this category shall include municipal water pumping facilities, oil and gas pipeline pumping facilities, military camps and bases, and all other consumers not reported in subitems (1) to (8)); and~~
- ~~(10) the sum of subitems (1) to (9);~~

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) the software input data, such as load bus data and generator bus data; and
- (2) the software output data, such as voltage magnitude and angle.

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

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

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

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

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

Posted: *October 13, 2009*

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

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

~~A. the overall methodological framework that is used;~~

~~B. the specific analytical techniques which are used, their purpose, and the components of the forecast to which they have been applied;~~

~~C. the manner in which these specific techniques are related in producing the forecast;~~

~~D. where statistical techniques have been used:~~

- ~~(1) the purpose of the technique;~~
- ~~(2) typical computations (e.g., computer printouts, formulas used), specifying variables and data; and~~
- ~~(3) the results of appropriate statistical tests;~~

~~E. forecast confidence levels or ranges of accuracy for annual peak demand and annual electrical consumption, as well as a description of their derivation;~~

~~F. a brief analysis of the methodology used, including:~~

- ~~(1) its strengths and weaknesses;~~
- ~~(2) its suitability to the system;~~
- ~~(3) cost considerations;~~
- ~~(4) data requirements;~~
- ~~(5) past accuracy; and~~
- ~~(6) other factors considered significant by the applicant; and~~

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

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

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

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

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

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

data.

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

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

E. for statistical techniques that were used:

(1) the software used in forecasting;

(2) the statistical model used; and

(3) the results of statistical tests.

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

The applicant ~~shall~~ must discuss the assumptions made regarding:

A. the availability of alternate sources of energy;

~~B. the expected conversion from other fuels to electricity or vice versa~~ the sources, sinks, and dispatch assumptions (e.g., economic dispatch assumptions);

~~C. future prices of electricity for customers in the applicant's system and the effect that such price changes will likely have on the applicant's system demand;~~

~~D. C.~~ 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. D.~~ 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.~~

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;~~

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

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

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

~~F. B. a quantification of the manner by which these programs affect or help determine~~

the forecast provided in response to part 7849.0270, subpart 2, a list of their total costs by program, and a discussion of their expected effects in reducing the need for new generation and transmission facilities;

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

- i. the applicant's integrated resource plan filing under Minn. R. Chapter 7843, and
- ii. the applicant's conservation improvement plan filing under Minn. Stat. § 216B.241, subd. 1b(g).

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

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

Posted: *October 13, 2009*

7849.0300 CONSEQUENCES OF DELAY.

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

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

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

Posted: *October 13, 2009*

7849.0310 ENVIRONMENTAL INFORMATION REQUIRED.

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

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

History: *L 1983 c 289 s 115*

Posted: *October 13, 2009*

7849.0320 GENERATING FACILITIES

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

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

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

C. for fossil-fueled and other combustion facilities:

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

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

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

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

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

(6) the estimated greenhouse gas air emissions;

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

~~D. for fossil fueled facilities:~~

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

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

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

(1) the type of water, and water source, that will be used for cooling;

(2) the withdrawal intensity (the gallons of water withdrawn per kilowatt hour);

(3) the consumption intensity (the gallons of water consumed per kilowatt hour);

(4) the method used to determine withdrawal and consumption intensity levels;

(5) maximum and average monthly temperatures of water discharged;

(6) planned modifications to reduce the temperatures of water discharged;
(4) the estimated maximum use, including the groundwater pumping rate in gallons per minute and surface water appropriation in cubic feet per second;
(2) the estimated groundwater appropriation in million gallons per year; and
(3) the annual consumption in acre-feet;

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

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

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

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

L. 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

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

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

History: *L 1983 c 289 s 115*

Posted: *October 13, 2009*

7849.0330 TRANSMISSION FACILITIES.

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

A. for overhead transmission facilities:

(1) schematic diagrams that show the dimensions of the support structures and conductor configurations for each type of support structure that may be used;

(2) a discussion of the strength and distribution of the electric and magnetic fields attributable to the transmission facility, ~~including the contribution of air ions if appropriate;~~

(3) a discussion of ozone and nitrogen oxide emissions attributable to the transmission facility;

(4) a discussion of radio and television interference attributable to the transmission; and

(5) a discussion of the characteristics and estimated maximum and typical levels of audible noise attributable to the transmission facilities;

B. for underground transmission facilities:

(1) the types and dimensions of the cable systems and associated facilities that would be used;

(2) the types and quantities of materials required for the cable system, including materials required for insulation and cooling of the cable; and

(3) the amount of heat released by the cable system in kilowatts per foot of cable length;

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

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

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

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

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

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

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

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

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

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

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

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

Posted: *October 13, 2009*

7849.0340 NO-FACILITY ALTERNATIVE.

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

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

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

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

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

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

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

Posted: *October 13, 2009*

NOTICE OF PROJECT CHANGES

7849.0400 CERTIFICATE OF NEED CONDITIONS AND CHANGES.

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

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

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

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

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

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

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

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

~~G~~ Subp. 3. **Change Requiring Application.** If a utility applies to the Minnesota Environmental Quality Board commission for a transmission line route that is not expected to meet the definition of LHVTL in part 7849.0010, but at some time in the routing process it becomes apparent that the ~~board~~ commission may approve a route that meets the definition, the utility may apply for a certificate of need as soon as possible after that time. The length of a route is determined by measuring the length of its center line.

~~H~~ Subp. 4. **Commission decision.** If an applicant determines that a change in size, type, timing, or ownership other than specified in ~~this~~ subpart 2 is necessary for a large generation or transmission facility previously certified by the commission, the applicant must inform the commission of the desired change and detail the reasons for the change. A copy of the applicant's submission to the commission must be sent to each ~~intervenor~~ person on the official service list in

the certificate of need hearing proceeding on the facility. ~~Intervenors~~ Persons may comment on the proposed change within 15 days of being notified of the change. The commission ~~shall~~ must evaluate the reasons for and against the proposed change and, ~~within 45 days of receipt of the request,~~ promptly notify the applicant whether the change is acceptable without recertification. The commission ~~shall~~ must order further hearings if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part 7849.0120.

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

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

Posted: *October 13, 2009*

COMMENTS AND RECORD DEVELOPMENT

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

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

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

Statutory Authority: *MS s 116D.04*

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

Posted: *October 13, 2009*

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

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

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

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

Subp. 4. **Process Schedule.** Upon receipt of a certificate of need application, commission staff must consult with the department and the applicant to set a proposed schedule for completing the certificate of need process within applicable statutory deadlines and must make the schedule available in the commission's electronic filing system. If an application includes a request by the applicant that joint proceedings 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. If the applicant or the department objects to the proposed process schedule, either has the option to file a request seeking commission review of the schedule.

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

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

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

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

Statutory Authority: *MS s 116D.04*

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

Posted: *October 13, 2009*

ENVIRONMENTAL REPORT PROCESS

7849.1200 ENVIRONMENTAL REPORT.

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

Statutory Authority: *MS s 116D.04*

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

Posted: *October 13, 2009*

~~7849.1300 INFORMATION REQUIRED FOR ENVIRONMENTAL REVIEW.~~

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

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

Statutory Authority: *MS s 116D.04*

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

Posted: October 13, 2009

7849.1400 PROCESS FOR ENVIRONMENTAL REPORT PREPARATION.

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

- A. ~~those persons on the commissioner's list maintained pursuant to part 7850.2100;~~
- B. ~~those persons on the general service list maintained by the applicant pursuant to part 7829.0600;~~
- C. ~~those persons on any service list maintained by the Public Utilities Commission for the proceeding;~~
- D. ~~those persons who are required to be given notice of the certificate of need application or the transmission projects report under rules of the Public Utilities Commission;~~
- E. ~~local governmental officials in the area of the proposed project; and~~
- F. ~~those persons who own property adjacent to any site or within any route identified by the applicant as a preferred location for the project or as a site or route under serious consideration by the applicant if such sites or routes are known to the applicant.~~

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. Content of notice. The notice required by subpart 1 must contain the following information:

- A. a description of the proposed project, including possible sites or routes if known;
- B. a statement that authorization from the Public Utilities Commission to construct the facility has been applied for and a description of the PUC process, including a statement that the PUC proceeding is the only proceeding in which the no-build alternative and the size, type, timing, system configuration, and voltage will be considered;
- C. a statement that the commissioner of the Department of Commerce will prepare an environmental report on the project and a description of the process for preparation of the report;

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

E. a statement informing the public of where copies of the pertinent information may be reviewed and copies obtained;

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

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

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

Subp. 3. **Meeting notice recipients.** 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.

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. **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. **Applicant role.** The applicant ~~shall~~ must provide representatives at the public meeting who can respond to questions about the proposed project.

Subp. 6. ~~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. 7. Comment period. The department must provide at least 20 days from the day of the public meeting for the public to submit written comments regarding the proposed project. ~~The commissioner shall include in the environmental report any alternative or impact identified by the PUC for inclusion.~~

Subp. 8. 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 environmental report any alternative identified by the commission.

7849.1425 SCOPING DECISION

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

A. the alternatives to be addressed in the environmental report, including the alternatives required by part 7849.1500, subpart 1, item B;

- B. the specific potential impacts to be addressed;
- C. the schedule for completion of the environmental report; and
- D. other ~~matters~~ issues to be ~~included~~ addressed in the environmental report.

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

Subp. 8 2. **Notice of decision.** ~~At the time of the commissioner's decision, the commissioner shall mail the order to those persons who have requested to be notified. Any person may request to bring the matter of what alternatives or impacts to include in the environmental report to the commissioner in accordance with part 4405.0600, subpart 5. Such request shall be filed in writing with the commissioner within ten days of the commissioner's decision. A request to bring the matter to the commissioner shall not preclude the commissioner from beginning preparation of the environmental report in accordance with the commissioner's decision.~~

The department must file a copy of its scoping decision with the commission, and mail a copy to the project contact list, the public agency contact list, the local and tribal government contact list, and the landowner 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 each of the following and may include any combination of the following: the no-build alternative, demand side management, purchased power, facilities of a different size, type, or configuration, or using a different energy source than the source proposed by the applicant, upgrading of existing facilities, generation rather than transmission if a high voltage transmission line is proposed, transmission rather than generation if a large electric power generating plant is proposed, use of renewable energy sources, distributed generation, and those alternatives identified in the scoping decision ~~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.

*Changes made to the draft are highlighted in yellow.

*Issues for further Commission discussion are highlighted in green

D. An analysis of the potential impacts that are project specific.

E. An analysis of mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified for the proposed project and each alternative analyzed.

F. An analysis of the feasibility and availability of each alternative considered.

G. A list of permits required for the project.

H. A discussion of other matters identified by the ~~commissioner~~ department.

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

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

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

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

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

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

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

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

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

I. the types and amounts of solid and hazardous wastes generated by such a project,

including an analysis of what contaminants may be found in the ash and where the ash might be sent for disposal or reuse; and

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

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

(1) effects on human health and safety;

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

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

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

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

A. the typical right-of-way required for construction of a transmission line;

B. the anticipated size and type of structures required for a line;

C. the electric and magnetic fields usually associated with a line;

D. the anticipated noise impacts of the transmission line; ~~and~~

E. the anticipated visual impacts of the transmission line; and

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

(1) on human health and safety;

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

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

(4) on land use, including human settlement, historical, and cultural resources,

recreation, conventional and organic agricultural production, and forestry.

Subp. 4. **Incorporation of information.** In preparing an environmental report, the ~~commissioner~~ department 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 shall 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. ~~4~~ 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.

7849.1550 PUBLIC HEARING.

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

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

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

Subp. ~~3~~ 4. Newspaper notice. An 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.

Subp. 5. Press release. An applicant must mail notice of the public hearing in the form of a press release to at least one radio station in each county where the proposed project will be located. If a county does not have a radio station, an applicant must issue a press release to at least one radio station that broadcasts into that county.

Subp. 6. Comment period. Interested persons have 30 days following the public hearing to file comments with the administrative law judge on the environmental report and the certificate of need application.

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*

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7849.1700 APPLICANT ASSISTANCE.

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

Statutory Authority: *MS s 116D.04*

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

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7849.1800 ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.

Subpart 1. **PUC Commission decision.** The environmental report, or environmental assessment or EIS prepared pursuant to part 7849.1900, must be completed and copies provided to

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

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

Statutory Authority: *MS s 116D.04*

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

Posted: *October 13, 2009*

7849.1900 JOINT PROCEEDING.

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

Subp. 2. **Environmental impact statement.** In the event an applicant for a certificate of need for a ~~LEPGP~~ LEGF or a HVTL applies to the ~~commissioner~~ commission for a site permit or route permit prior to the time the ~~commissioner department~~ completes the environmental report, and the project does not qualify for alternative review by the ~~commissioner~~ under part 7850.2800, the ~~commissioner department~~ may elect to prepare an environmental impact statement in lieu of the

environmental report required under part 7849.1200 if the applicant and the ~~Public Utilities Commission~~ agree to the additional time that will be required to prepare the environmental impact statement. In this event, the ~~commissioner~~ department shall must include in the EIS the analysis of ~~alternatives~~ required by part 7849.1500, but is not required to prepare an environmental report under part 7849.1200.

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

Subp. 4. **Joint hearing.** If the ~~commissioner~~ department 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~~ department may ~~decide to~~ recommend that the commission 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

July 2018

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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*

Published Electronically: *September 18, 2009*

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, including applicable environmental review provisions.~~

~~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.~~

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;

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 large electric power generating plant that is powered by solar energy, as long as the plant is not expanded beyond the developed portion of the plant site and does not require a certificate of need from the commission;

(4) 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) 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** 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*

Published Electronically: October 15, 2013

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*

Published Electronically: *September 18, 2009*

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.

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.

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;
- F. the Federal Aeronautics Administration; and
- F. 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 be in a format that makes the list capable of being sorted both alphabetically by last name and by zip code. The list must include:

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

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. Lists must be maintained in the following manner.

A. A name must not be removed from a list, unless:

(1) an individual requests that the commission remove that person's name from a list maintained by the commission;

(2) an individual requests that the applicant remove that person's name from a list maintained by the applicant;

(3) the commission sends written notice to an individual on a list asking if that person's name should remain on the list and no response is received within 30 days of the request or

(4) an applicant sends written notice to an individual on a list asking if that person's name should remain on the list and no response is received within 30 days of the request.

B. Lists must be updated as follows:

(1). the commission or applicant must add the name of a person or entity to a list upon that person's or entity's request;

(2). the applicant must update the landowner list 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 either the environmental impact statement under part 7850.2500 or environmental assessment under part 7850.3700;

(3). the applicant must update the local and government contact list to include each governmental entity located in the area of a project alternative that will be considered in the scope of either the environmental impact statement under part 7850.2500 or environmental assessment under part 7850.3700;

C. List availability. The entity maintaining the list must file the list, including an updated list, in the commission's electronic filing system, e-dockets.

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 two public outreach meetings. Each meeting must be held in a county where a portion of a high voltage transmission line route is under active consideration by the applicant. The meeting must be held as close as practicable to where the line would be located. If members of the public request additional meetings, the applicant must demonstrate its efforts to accommodate those requests.

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 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, how to contact the commission's public advisor, and how to sign up to receive commission notices; 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 the comments received in deciding which routes to include in its draft application filed under part 7850.1640.

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. The applicant must use the word "draft" on each page of the application and must label the application as a "draft" when filing it in the commission's electronic filing system.

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

- A. for all projects, including those eligible for alternative review under part 7850.2800, each site the applicant has considered and rejected and the reasons for rejecting it;
- B. a statement of proposed ownership of the proposed LEPGP;
- C. 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;
- D. each proposed site for the proposed LEPGP;
- E. a description of the proposed LEPGP, including the size and type of the facility, and all associated facilities;
- F. the environmental information required under subpart 4;
- G. the name of each person who owns property within each proposed site;
- H. the engineering and operational design of the LEPGP at each of the proposed sites;
- I. a cost analysis of the LEPGP at each proposed site, including the costs of constructing and operating the facility, considering the facility's design;
- J. an engineering analysis of each of the proposed sites, including how each site could accommodate expansion of generating capacity in the future;
- K. identification of transportation, pipeline, and electrical transmission systems that will be required to construct, maintain, and operate the facility;
- L. a listing and brief description of federal, state, and local permits that may be required for the project at each proposed site;
- M. United States Geological Survey topographical maps or other maps showing the entire proposed project area;
- N. a proposed application notice that includes the notice content requirements under part 7850.2100, subp. 2;
- O. for a solar-powered LEPGP, a copy of the applicant's project size determination form and a copy of the department's size determination required under Minnesota Statutes, section 216E.021.
- P. 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;

- Q. 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;
- R. the name of each zoning authority with responsibility over each property within each proposed site and the present zoning classification of the property; and
- S. a statement that the applicant 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 site selected.”

Subp. 3. Draft route permit application for HVTL. A draft route permit application must contain 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 propose more than one route. A draft route permit application must also contain the following information:

- A. each proposed route;
- B. a list of all proposed routes labeled alphabetically in text and in maps;
- C. each route the applicant has considered and rejected and the reasons for rejecting it;
- D. whether or not the project is eligible for alternative review under part 7850.2800;
- E. a statement of proposed ownership of the facility as of the day of filing and after commercial operation;
- F. 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;
- G. each proposed route for the proposed HVTL;
- H. a description of the proposed HVTL and all associated facilities including the size and type of the high voltage transmission line;
- I. the environmental information required under subpart 4;
- J. identification of land uses and environmental conditions along each proposed route;
- K. the name of each person who owns property within any of the proposed routes;

- L. United States Geological Survey topographical maps or other maps showing the entire length of the HVTL on all proposed routes;
- M. 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;
- N. the engineering and operational design concepts for the proposed HVTL, including information on the electric and magnetic fields of the transmission line;
- O. cost analysis of each route, including the costs of constructing, operating, and maintaining the high voltage transmission line, considering the line's design;
- P. a description of possible design options to accommodate expansion of the HVTL in the future;
- Q. the procedures and practices proposed for the acquisition and restoration of the right-of-way, construction, and maintenance of the HVTL;
- R. a listing and brief description of federal, state, and local permits that may be required for the proposed HVTL;
- S. 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;
- T. 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;
- U. a proposed application notice that includes the notice content requirements under part 7850.2100, subp. 2;
- V. 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;
- W. 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;
- X. 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; and
- T. a statement that the applicant 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.”

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 public health and safety, displacement, noise, aesthetics, socioeconomic impacts, cultural values, recreation, and public services, as well as information on electric and magnetic fields;

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

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.** At the time the applicant files its draft application with the commission, 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 within the final site or route selected";

G. a statement that the commission will make the final decision on the location of a site or route; and

H. the date on which the applicant intends to file its completed application with the commission, if known.

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 request comments on completeness of the draft application from persons on the general list and the project contact list. The commission must request comments on whether to appoint an advisory task force from persons on 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 21 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. 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 complying with 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.

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. **The applicant must also send notice of its filing** 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.

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*

7850.1710 APPLICATION COMPLETENESS; SCHEDULE

Subpart. 1. **Written notice required.** Within ten days of receipt of an application for a site or a route permit, the commission's executive secretary must determine whether the application is complete and notify the applicant in writing of the decision. **At the time of the determination, the executive secretary must also designate a commission staff person to be the public advisor for the proceeding and include that person's name and contact information in the notice to the applicant. The executive secretary must file notice of the decision in the commission's electronic filing system.**

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.

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.

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*

Published Electronically: *September 18, 2009*

7850.1900 APPLICATION CONTENTS.

Subpart 1. **Site permit application 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. 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;

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

C. a description of any **material** change made to the draft application and the reason for the change; **and**

D. the location of each public library or government center where the application is available to the public.

Subp. 2. **Route permit **application** 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 propose 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 **material** change made to the draft application and the reason for the change;

F. the location of each public library or 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:

~~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 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 ~~1~~ 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. ~~D.~~ the manner in which persons may register their names with the PUC commission on the project contact list and how to subscribe to the docket using the commission's electronic filing system;

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

~~I. E.~~ 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;

~~J. F.~~ 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

G. a statement that the commission will make the final determination on the location of the site or route, 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*

Published Electronically: *September 18, 2009*

PROCEDURAL STEPS

7850.2110 COMMENTS ON APPLICATION.

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 be sent to all notice lists under part 7850.1610. 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*

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

Published Electronically: *September 18, 2009*

7850.2300 PUBLIC INFORMATION AND SCOPING MEETING.

Subpart 1. **Scheduling public information and scoping meeting.** ~~Upon acceptance of an 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 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:

- 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;

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;

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 separately mailed, 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 within the final site or route selected" ~~along with a statement that the commission will make the final decision on the location of the site or route.~~

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 a copy of its application available at the meeting or provide in writing the electronic link to 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*

Published Electronically: *September 18, 2009*

7850.2400 CITIZEN ADVISORY TASK FORCE.

Subpart 1. **Authority.** The commission has the authority to appoint a citizen advisory task force. 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.08. ~~The commission shall advise of the appointment of the task force at the next monthly commission meeting.~~

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 evaluated evaluation in the scope of environmental ~~impact statement~~ review. 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. The report must include all routes, sites, and impacts identified and those sites or routes recommended for inclusion in the scope of environmental review.

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 scope of environmental ~~impact statement~~ review, 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 potential human environmental impacts and possible mitigation measures, 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 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.

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 either the commission or the applicant.

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. The applicant must coordinate with the department to update the landowner list prior to the issuance of the scoping decision 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.

Subp. 3. **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 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.

7850.2540 SUPPLEMENTAL FILING BY APPLICANT.

If the commission determines that a site or route not proposed by the applicant will be examined in addition to the applicant's proposed sites or routes, the applicant must supplement its application filing with information on each such alternative to support equivalent comparison of applicable permitting criteria for all sites or routes that will be studied in the EIS. The filing must be made consistent with the process schedule.

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 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, the general list, the government agency contact list, the landowner list, and the local and tribal government 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. **Notice.** Notice of the hearing must be coordinated with the administrative law judge. 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,” along with a statement that the commission makes the final decision on the location of a site or route.

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. 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, 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. 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.** The public will have 25 days to comment on the final EIS. The comment period will be set by commission staff in consultation with the administrative law judge.

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. 5 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.

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 ~~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 ~~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 ~~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*

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*

Published Electronically: *September 18, 2009*

~~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*

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~~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 assessment by soliciting public comments. Members of the public must be provided the opportunity to comment on the scope of the EA, including **potential human and environmental impacts and possible mitigation measures**, 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.

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~~ department has determined the scope of the environmental assessment, the scope shall must not be changed except upon a decision by the ~~commissioner~~ 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. The ~~commissioner~~ department 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. The applicant must coordinate with the department to update the landowner list prior to the issuance of the scoping decision 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.

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.

If the commission determines that a site or route not proposed by the applicant will be examined in addition to the applicant's proposed routes, the applicant must supplement its application filing with information on each such alternative to support equivalent comparison of applicable permitting criteria for all sites or routes to be studied in the EIS. The filing must be made consistent with the process schedule.

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. ~~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*

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 be held in a county where the proposed large electric power generating plant or high voltage transmission line would be located.~~

Subp. 2. **Public hearing notice.** 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," along with a statement that the commission will make the final decision on the location of a site or route.

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. The hearing examiner shall must be conducted by an administrative law judge. The administrative law judge 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, although the hearing examiner administrative law judge may vary the order in which the hearing proceeds:~~

~~A. the commission 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;~~

~~C. the department must introduce the project's environmental assessment and associated record;~~

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

~~E. 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~~

~~F. 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.

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.~~

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-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 services, as well as information on electric and magnetic fields;
- 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*

Published Electronically: *September 18, 2009*

~~7850.4200 FACTORS EXCLUDED.~~

~~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*

Published Electronically: *September 18, 2009*

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*

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 LEPGP 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 LEPGP 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*

Published Electronically: *September 18, 2009*

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, whether filed in segments or in its entirety, 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 commission's 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. 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*

Published Electronically: *September 18, 2009*

7850.4800 MINOR ALTERATION IN GENERATING PLANT OR TRANSMISSION LINE.

Subpart 1. **Applicability.** ~~No person may make a~~ A minor alteration ~~in a large electric power-generating plant or high voltage transmission line without approval from the commission, to~~ existing or permitted LEPGP or HVTL facility must be approved by the commission, unless the action is exempt from review under part 7850.1500. A minor alteration is a change in the design or location of a large electric power generating plant or high voltage transmission line that would place the facility outside the site or route approved by the commission that does 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. A minor alteration of 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 alteration 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 reasonably likely to be affected by the proposed alteration, 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~~ 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*

Published Electronically: *September 18, 2009*

7850.4900 AMENDMENT OF PERMIT CONDITIONS.

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 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, 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*

Published Electronically: *September 18, 2009*

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 the 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.~~

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*

7850.5100 PERMIT REVOCATION OR SUSPENSION.

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*

Published Electronically: *September 18, 2009*

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~~ **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~~ **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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