BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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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

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STATEMENT OF NEED AND REASONABLENESS

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I.
INTRODUCTION

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 (EQB) to the Commission. Since that time, experience in overseeing both the certificate of need and the siting and routing processes has led to the need for rule changes to clarify these procedures and enhance the organizational structure of the rules.

The Commission therefore opened a rulemaking to consider amending companion rule chapters 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, clarifying, and reorganizing Commission procedures for evaluating applications for certificates of need and site and route permits, as well as incorporating new statutory criteria governing certificates of need. This rulemaking also transfers rule part 7829.2550 (governing notice plans for certificate of need applications for high-voltage transmission lines) into Chapter 7849.

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. The procedural framework of the proposed rules largely codifies practices that reflect the Commission's experience in individual dockets, as well as the experiences of parties, stakeholders, and staff.

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

In response to comments received, the Commission appointed an advisory committee, which met with Commission staff approximately once a month between May 2013 and September 2014. Staff took subsequent input from the advisory committee, updating the drafts in response to that input. The Commission met on March 9, 2017, and then again on August 2, 2018, to consider publication of the proposed rules.

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 were some issues on which the committee did not reach full consensus. Discussion of the committee's input is included in the analysis of individual rule parts.

A. Overview of Proposed Changes to Certificate of Need Rules, Chapter 7849

The proposed rule changes to Chapter 7849 are intended to incorporate statutory amendments; update notice requirements; shorten the timeframe for the Commission's administrative determination on application completeness; establish updated application content requirements, including for independent power producers; and update the process governing the Environmental

Report,[1] which is required in certificate of need cases. The proposed rules also require use of a process schedule that is designed to establish procedural review timelines on a case-by-case basis in a manner that is both project-responsive and consistent with applicable statutory deadlines.[2]

Additionally, the proposed rules make numerous changes to increase clarity, in some instances by reorganizing rule parts and relocating existing language. While relocated language is not new, that language is underlined in the proposed rules' draft to recognize the reorganization. Relocated rule language is addressed in the analysis of individual rule parts.

The proposed rules also align the procedures of both rule chapters, to the extent feasible.

B. Overview of Proposed Changes to Site and Route Permit Rules, Chapter 7850

The proposed rule changes to Chapter 7850 are intended to update existing notice requirements; establish pre-application procedures for transmission line projects; clarify and update environmental review requirements; and establish and update post-permitting requirements. The proposed rules also require use of a process schedule, as described above, that is designed to establish procedural review timelines on a case-by-case basis in a manner that is both project-responsive and consistent with applicable statutory deadlines.

The proposed rules also make numerous changes to increase clarity, in some instances by reorganizing rule parts and relocating existing language. While relocated language is not new, that language is underlined in the proposed rules' draft to recognize the reorganization. Relocated rule language is addressed in the analysis of individual rule parts.

To remove unnecessary redundancy in the rules, the proposed rules repeal parts 7850.2900 to 7850.3600, which restate procedures that are applicable to both the full permitting process and the alternative review process. The proposed rule instead distinguishes, as necessary, between the two types of review and the corresponding rule requirements.

C. Housekeeping Changes

Both rule chapters also incorporate technical corrections to increase clarity and consistency. These include, for example, 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." A description of such changes is included in the analysis of individual rule parts.

[1] The Environmental Report process is an EQB-approved alternative form of environmental review (27 *State Register* 1688); Minn. R. 7849.2000.

[2] To facilitate timely decision-making consistent with applicable statutory deadlines, the SONAR includes flowcharts on pp. 71-73. which approximate the amount of time needed to reach a final Commission decision.

II.
THIS MATERIAL IS AVAILABLE IN ALTERNATIVE FORMAT

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III.
STATUTORY AUTHORITY

The Commission's statutory authority to adopt these rules is set forth at Minn. Stat. §§ 216A.05; 216B.08; 216B.243; 216E.03, subd. 10; 216E.04, subd. 9; 216E.08; and 216E.16.

IV.
STATEMENT OF NEED

The Administrative Procedure Act, Minn. Stat. Ch. 14, requires the Commission to establish the need for the proposed rules by an affirmative presentation of facts. Minn. Stat. §§ 14.14 subd. 2 and 14.23.

In this case, the proposed rules are necessary to clarify the Commission's procedures applicable to evaluating certificates of need and site and route permits for large electric generating facilities and high-voltage transmission lines, following the transfer of authority over siting and routing from the EQB to the Commission. Further, the proposed rules are necessary to incorporate and clarify recent statutory changes to Minn. Stat. §§ 216B and 216E.

V.
STATEMENT OF REASONABLENESS

The Minnesota Administrative Procedure Act also requires the Commission to establish that the proposed rules are a reasonable solution to the problems they are intended to address, that the Commission relied on evidence in choosing the approach adopted in the rules, and that the evidence relied upon is rationally related to the approach the Commission chose to adopt. Minn. Stat. §§ 14.14, subd. 2 and 14.23. Minn. R. 1400.2070, subp. 1.

A. The Process Used to Develop the Rules Facilitated Informed Decision-making and was the Most Efficient Method for Establishing Reasonable Rules

The proposed rules are a reasonable means of incorporating recent statutory changes affecting the Commission's role in making decisions on certificates of need and site and route permits for large electric generating facilities and high-voltage transmission lines. The Commission notified all persons who could be identified as potentially interested in or affected by the rules. After issuing a Request for Comments that resulted in recommendations made by stakeholders, the Commission established an advisory committee. The committee recommended, and the Commission incorporated, changes that were reasonable and responsive to the needs of diverse stakeholders.

B. The Rules' Approach to Implementing Policy Goals is Reasonable

The Commission has determined that the proposed rules are needed and are the most reasonable way to implement recent statutory changes and to codify practices that resolve inherent inconsistencies in the rules as a result of the transfer of authority from the EQB to the Commission. Without rule changes, the Commission's rules are out of date and less clear, which adversely impacts the Commission's ability to effectively implement the rules, and which adversely impacts regulated parties' knowledge and understanding of the process governing certificates of need and site and route permits for large electric generating facilities and high-voltage transmission lines.

VI.
ANALYSIS OF INDIVIDUAL RULES

A. Proposed Changes to Certificate of Need Rules, Chapter 7849

7849.0010 DEFINITIONS.
Proposed rule changes to this part include the relocation of some terms, as well as clarifications and modifications as needed and as explained below.

Subpart 1. Scope.
The "scope" is modified to reflect the effect of 2005 legislative changes that transferred authority over environmental review of projects for which a certificate of need is required. Under the transfer, parts 7849.1000 to 7849.2100 were added to Chapter 7849. As a result, there are two different rule parts governing defined terms, which can cause confusion.

For example, the term "associated facilities" is defined in part 7849.1100 but is used in a preceding rule, part 7849.0330, item B (1). Another example is the definition of "*large* high voltage transmission line," which is defined in part 7849.0010, subp. 14, but is defined as a "high voltage transmission line" in part 7849.1100, subp. 5. Including all defined terms in one rule part and removing duplicative definitions is a reasonable way to enhance the organizational structure of the rule chapter and increase clarity.

Subp. 6a. Associated facilities.
The proposed rule relocates the existing definition of "associated facilities" from part 7849.1100, subp. 2, without modifying the definition. This term is used throughout the rule chapter, and its definition continues to be needed to ensure that the term and its use are clear. Further, it is the same definition used in part 7850.1000, subp. 3, a reasonable approach to maintaining consistency between rule chapters.

Subp. 8. Commission.
The proposed rule contains a housekeeping change; it is not necessary to state that the Commission is a Minnesota state agency and the rule therefore strikes the word "Minnesota."

Subp. 9. Construction.
The proposed rule clarifies this definition by using the phrase "an area" in place of "a site" to avoid confusion over the meaning of "site" or "route" in this context. It is simply clearer to use the word "area." It is necessary and reasonable to make this change to increase clarity without altering the meaning of the rule.

Subp. 9a. Department.
It is necessary and reasonable to include a definition of the Department of Commerce to ensure consistent and clear identification of the agency throughout these rules, and because there are numerous rule parts that use the term.

Subp. 9b. Environmental assessment or EA.[3]
Subp. 9c. Environmental impact statement or EIS.
Subp. 9d. Environmental report.

It is necessary and reasonable to define the three forms of environmental review applicable to projects governed by the two rule chapters. The definitions of EA and EIS incorporate the definitions used in Chapter 7850. It is necessary and reasonable to define these terms because they could become applicable to a certificate of need application that is filed jointly with a permit application. These definitions are consistent with the description of an EIS contained in Minn. Stat. § 116D.04 and of an EA in Minn. Stat. § 216E.04, subd. 5.

The definition of "environmental report" relocates the existing definition from part 7849.1100, subp. 4 without modifying the definition. The existing definition is necessary, reasonable, and accurate. Further, relocating this term is a reasonable way to increase clarity by including all definitions in one rule part.

Subp. 12a. ~~Large h~~High voltage transmission line.[4]
Under the existing rules, this term is defined in this rule part, as well as in part 7849.1100, subp. 5. The proposed rule repeals the second definition and modifies the existing definition to be applicable throughout the rule chapter, a necessary and reasonable way to increase clarity.

The proposed modifications include updated citations to Minn. Stat. 216B.2421, subd. (2) and (3). This ensures that the definition is consistent with the applicable statute, a necessary and reasonable clarification.

The proposed rule also repeals the word "large" because the definition of a "large energy facility" under the governing statutes, Minn. Stat. § 216B.2421, subd. 2, does not use the word "large" in the definition of "high voltage transmission line." This is a necessary and reasonable clarification that does not alter the meaning of the rule. It is also consistent with the definition of "high voltage transmission line" in part 7850.1000, subp. 9, an approach that increases consistency between the two rule chapters.

[3] The proposed rules substitute the acronym "EA" for "environmental assessment" where applicable. This is a necessary and reasonable housekeeping change that does not alter the meaning of the rule.
[4] Subsequent rule parts incorporate use of the new acronym, "HVTL" for the reason stated above without restating the reasoning in the analysis of each rule part where this change is incorporated.

Subp. 12b. Independent power producer.
The proposed rule defines 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. The definition clearly excludes utility companies, which are separately defined and governed by the rules.

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

Defining this term is a necessary and reasonable way to incorporate this statutory change. Further, it is necessary to define this term because it is used in subsequent rule parts, which set forth requirements applicable to independent power producers. The definition is reasonably narrow to include only those entities engaged in electric generation that do not serve end-user customers and do not provide retail electric service. It is reasonable to distinguish these entities from public utilities, for example, because they do not have access to customer usage data that is used to develop a demand forecast.

Subp. 16a. Mail.
This subpart incorporates the definition of "mail" in part 7850.1000, subp. 12. It has been added to ensure that "mail" includes electronic mail. This is a necessary and reasonable housekeeping change that updates the rule and increases clarity.

Subp. 24a. Region.
It is necessary and reasonable to define "region" because it is used in a subsequent rule part (7849.0120) that incorporates statutory changes requiring the Commission to consider regional need (the potential benefits of a proposed facility to the reliability of energy supply in Minnesota and the region) when evaluating a certificate of need application. And because regional transmission planning is conducted by the regional transmission planning organization, such as MISO, it is reasonable for the definition to include states and Canadian provinces whose utilities are within the same regional transmission planning organization as Minnesota's utilities.

Subp. 25. Regional Transmission Organization; RTO.
It is necessary and reasonable to define this term because it is used in a subsequent rule part requiring that proposed projects include information on regional transmission planning data from the RTO. Under the proposed definition, the RTO is the organization with operational or functional control over transmission facilities owned by utilities operating in Minnesota and the region who are also members of the RTO.

Repealed definitions.
The proposed rule repeals definitions in subparts 2, 3, 4, 5, 6, 10, 11, 16, 17, 18, 19, 21, 22, 24, 26, 27, 28, 30, and 33. These terms will no longer be used in subsequent rule parts, which the proposed rules modify. It is therefore necessary and reasonable to repeal these terms because they will no longer be used throughout the chapter.

7849.0030 SCOPE.
Subpart 1. Facilities covered.
The proposed rule repeals the sentence stating that an applicant must provide the information contained in parts 7849.0010 to 7849.0400 because it is not only these rule parts that apply to a certificate of need application; the entire chapter applies. This is a necessary and reasonable way to remove potential confusion over the applicability of the chapter and to increase clarity without altering the meaning of the rule or inadvertently limiting the scope of the chapter.

Subp. 2. Exemption.
The proposed rule updates the existing language to include accurate statutory citations. This is a necessary and reasonable housekeeping change that clarifies the rule.

7849.0100 PURPOSE OF CRITERIA.
This proposed rule contains three clarifying modifications.

First, the proposed rule eliminates the reference to the list of factors in part 7849.0120 because that rule part has been updated to reorganize and modify the list of criteria the Commission must consider. Therefore, it is necessary to eliminate references to rule language that will be removed.

Second, the proposed rule clarifies that the entire chapter applies to a certificate of need application, rather than only a range of rule parts. The existing rule effectively excludes the applicability of parts 7849.0100 to 7849.2100, which were added to chapter 7849 as a result of the 2005 Legislative changes. The proposed rule therefore clarifies that the entire chapter applies, which is a necessary and reasonable way to increase clarity.

Third, the proposed rule removes language requiring the Commission to make a written finding on the criteria listed in a separate rule part because the Commission's written orders explain the reasons for Commission decisions and are written in each case to sufficiently address questions of law, policy, and fact, while considering all applicable criteria. As a result, it is necessary and reasonable to remove this language to eliminate redundant language and increase clarity.

7849.0110 ALTERNATIVES CONSIDERATION.
The proposed rule requires the Commission to consider alternatives proposed before the close of the public hearing and includes housekeeping changes to increase clarity in language usage without altering the requirement that the Commission consider alternatives for which there is record support. It is intended to make the phrasing more concise and therefore clearer. The proposed rule also removes the words "each of" and "listed" to increase clarity in language usage.

The proposed rule also uses the term "must" in place of "shall," consistent with the recommendations of the Office of the Revisor of Statutes.[5]

These are necessary and reasonable clarifications that are intended to increase clarity.

7849.0115 CERTIFICATE OF NEED REQUIREMENTS.

The proposed rule incorporates statutory language governing standards applicable to certificate of need applications. An applicant must demonstrate in certificate of need cases that use of energy conservation would not meet the stated need more cost-effectively than the proposed project; for proposed non-renewable energy projects, the applicant must show that use of renewable energy sources was considered in meeting the stated need for electricity.

It is necessary and reasonable to incorporate the statutory language governing standards applicable to certificate of need applications to ensure that applicants are aware of this threshold legal standard, and several members of the advisory committee recommended including this language in the proposed rule to emphasize the importance of this requirement. Ordinarily, the Commission would not propose language restating the statute, but due to the fundamentally important nature of the language, the Commission concurred with some committee members who supported including it.

Subpart 1. Need Demonstration.

It is necessary and reasonable to require an applicant to demonstrate the need for a proposed project, as required by Minn. Stat. § 216B.243, subd. 3, which states that "no proposed large energy facility shall be certified for construction unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need."

Subp. 2. Renewable Resource Preferred.

It is reasonable to incorporate Minn. Stat. § 216B.243, subd. 3a, which states that "the Commission may not issue a certificate of need for a large energy facility that generates electric power by means of a nonrenewable energy source, unless the applicant has demonstrated to the Commission's satisfaction that it has explored the possibility of generating power by means of renewable energy sources and has demonstrated that the alternative selected is less expensive (including environmental costs) than power generated by a renewable energy source." Including this legislative policy in the proposed rule is a reasonable way of highlighting this requirement.

7849.0120 CERTIFICATE OF NEED CRITERIA.

The proposed rule restructures the existing rule language by re-organizing the list of criteria and factors the Commission must consider. It also updates the rule, consistent with recent statutory changes, to increase clarity. Primarily, the rule repeals criteria that are now listed in the certificate of need statute, while retaining the list of additional criteria the Commission will consider. Because the statute was amended after the existing rules were codified,[6] this update is a reasonable way to ensure that regulated entities are aware of all applicable criteria, including

[5] Subsequent rule parts use "must" in place of "shall" and because the same reasoning applies to those instances, the reasoning is not restated in each subsequent rule part where the change is made.
[6] Minn. Stat. § 216B.243.

statutory criteria. Rather than listing the criteria in the statute, the rule cites to the statute and lists the additional criteria the Commission will consider. It is reasonable to cite the statute in this instance because it reduces the likelihood that the rule will become outdated if the statute is again amended to add additional criteria.

The following rule items are repealed because they are listed in the statute: A (1), (2), and (3); these items are set forth in Minn. Stat. § 216B.243, subd. 3 (1), (2), and (4).

Item B (5) is repealed because it is addressed by Minn. Stat. § 216B.243, subd. 3 (6).

Items C (1) to (4) are repealed because they are addressed by Minn. Stat. § 216B.243, subd. 3 (3), (8), (9), and (10), and (12).

Item (D) is repealed because it is addressed by Minn. Stat. § 216B.243, subd. 3 (7).

Furthermore, it is reasonable to repeal the list of criteria concerning environmental quality not only because the statute requires the Commission to consider environmental quality but also because the Commission is now charged with considering such impacts as part of the Environmental Report process, which is governed by subsequent rule parts that the Legislature transferred to the Commission in 2005.

Based on input from the advisory committee, the Commission considered other possible rule changes. For example, under item A, the Commission considered a recommendation to clarify that regional need for electricity may be considered but is not determinative. The proposed rule is, however, intended to incorporate the statutory requirement that the Commission 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 and will determine the probative value of evidence in the record when making its decisions.

The Commission also considered a recommended clarification to 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. 7849.1429 and for which there exists substantive evidence on the record with respect to each of the criteria listed in this part, 7849.0120." The proposed rule does not include this change, however, because the Commission's consideration of alternatives will depend on the entire record developed in each case, and such a limitation is therefore not necessary.

7849.0125 NOTICE LISTS.

The proposed rule incorporates notice lists, which are necessary and reasonable for notifying potentially interested or affected persons of the application, public information and scoping meetings, the Environmental Report, public hearings, and related filings.

Promulgating these lists is necessary to ensure that the public and interested persons or entities are informed about certificate of need applications and other procedural steps and have opportunities to engage and make comments. Prescribed lists reasonably tailor communication efforts to ensure that people are given reasonable opportunities to participate in the

Commission's proceeding, consistent with the legislative policy goal to maximize public participation in the Commission's processes.[7]

Subpart 1. Notice lists required.
It is necessary and reasonable to state that notice lists must be established and maintained as described in this rule part to clarify the applicability of the proposed rule.

Subp. 2. General list.
The general list includes persons who want to be notified of *permit* applications under existing rule part 7850.2100, subp. 1 (A);[8] that list will also be used to notify people of certificate of need applications. This is a reasonable way to ensure that people who are likely to be interested in or affected by a proposed project have relevant information on the process. Because it is feasible for the Commission to collect contact information from interested persons and to ensure notice to such persons, it is reasonable for the Commission to maintain this list.

Subp. 3. Project contact list.
The project contact list includes anyone who has requested to receive notice of a specific project and is modeled after a nearly identical requirement originally set forth in existing rule part 7850.2100, subp. 1 (B).[9] It is necessary and reasonable to distinguish between persons who want to be notified of an application for *any* proposed project and those who have requested to receive notice of a *specific* project. Because it is feasible for the Commission to collect contact information from interested persons and to ensure that such persons are notified, it is reasonable for the Commission to maintain this list.

Based on input from the advisory committee, the Commission considered other possible rule changes. For example, the Commission considered a recommendation to remove 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 notice of a particular project. 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 siting and routing statutes, and the flexibility to add names to a project contact list furthers this legislative priority. It is therefore necessary and reasonable to retain this requirement.

Subp. 4. Public agency contact list.
The public agency contact list is necessary to identify and inform state and federal agencies with likely interest in, or regulatory responsibilities related to, certificate of need filings. This proposed rule is a necessary and reasonable way to ensure that such entities are notified of filings related to the Commission's proceeding. Because it is feasible for the Commission to identify

[7] Minn. Stat. § 216E.16.
[8] Minn. R. 7850.2100, subp. 1 (A) is recodified at proposed rule part 7850.1610, subp. 2.
[9] Minn. R. 7850.2100, subp. 1 (B) includes similar proposed rule language but is recodified at proposed rule part 7850.1610, subp. 3.

such entities and to ensure that notice is sent to them, it is reasonable for the Commission to maintain this list.

Subp. 5. Landowner list.

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 or "who are reasonably likely to be affected by the proposed project". It is necessary and reasonable to inform these landowners about applications, public meetings, the Environmental Report, and public hearings, consistent with the statutory directive under Minn. Stat. § 216E.16 to maximize public participation in these proceedings. Because the applicant is in the best position to identify the persons on this list using its proposed project maps, the proposed rule requires the applicant to maintain this list.

Based on input from the advisory committee, the Commission considered other possible rule changes. For example, the Commission considered a recommendation to remove from the list landowners "who are reasonably likely to be affected by the proposed project." There was some concern 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; there was a recommendation to instead require 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. An applicant is therefore in the best position to identify landowners who are reasonably likely to be affected by a proposed project. And, broad public notice encourages broad public participation. Use of this phrase has worked well in certificate of need dockets, and applicants have consistently complied with notice requirements or modified their notices after comments. Because the language facilitates broad public notice and because there are no ongoing compliance issues resulting from the language, the proposed rule retains this language.

The Commission also considered a recommendation to replace the phrase "along a transmission line" to "within a proposed transmission line route" because "along a transmission line" is unclear. The proposed rule uses the term "along" because it is a term used in the permitting statute (Minn. Stat. § 216E.03, subd. 4). The statute is clearly aimed at ensuring broad public notice to people who are likely to be affected by a proposed project, and while "along" a proposed route is similar to the phrase "landowners reasonably likely to be affected," the emphasis is on distributing notice broadly rather than narrowly. As explained above, the applicant is in the best position to know who is likely to be affected by a proposed project, and the language therefore gives the applicant needed flexibility to make that assessment.

The Commission also considered a recommendation to replace "proposed footprint" with "proposed site." To ensure that notice goes to persons in the entire project area, the proposed rule necessarily and reasonably uses the term "footprint," which the applicant's certificate of need filing describes. Use of the term "footprint" is likely to include a larger area, meaning that notice

will be sent to more people who are likely to benefit from such notice, including those who for example, are near the project site and may become affected by construction-related noise.

Subp. 6. Local and tribal government contact list.
It is necessary and reasonable to maintain a list of local and tribal government entities located in the project footprint to ensure that all concerned or interested local units of government have information on how to engage in the Commission's process and can share information with their members and constituents. Because the applicant is in the best position to identify the entities on this list using its proposed project maps, the rule requires the applicant to maintain this list.

The Commission considered a recommendation to state that the contact list include 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 others who would want to be informed. The proposed rule therefore does not include this recommended change.

Subp. 7. List maintenance.
The proposed rule includes requirements to ensure that names are not inadvertently removed from lists and to ensure that the lists are subsequently updated to include people who may be affected by a proposed project alternative identified or developed later in the proceeding. It is necessary and reasonable to maintain the lists in this way to ensure that interested persons at all stages of the proceeding have the opportunity to engage in the process, consistent with the legislative policy objective to maximize public participation.

7849.0130 PROJECT NOTICE.
The project notice requirements replace and relocate the notice plan filing requirements contained in part 7829.2550, which is repealed as part of this rulemaking proceeding. This reorganization is necessary for retaining certain notice requirements and updating others.

The advisory committee concurred that there is no longer a need to require applicants to file for approval of a notice plan *prior to giving notice* of a proposed project. Under Minn. R. 7829.2550, an applicant must file a 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 typically as a way to better coordinate the timing between giving notice and filing an application. As a result, the proposed rule requires applicants to give notice of their project at least 45 days, but no more than 60 days, prior to filing an application. This approach is a reasonable method of codifying practices that have become increasingly common.

Though the advisory committee concurred on removing the *notice plan* filing requirements under rule part 7829.2550, the group emphasized the importance of retaining notice requirements governing: timing, recipients, content, and format. The committee also concurred on new requirements, such as requiring applicants to issue press releases and to demonstrate compliance with the rule. The proposed rule includes these requirements, as discussed below.

Subpart 1. Notice required.
The proposed rule requires an applicant to give notice of a project approximately two months before filing a certificate of need application, a necessary and reasonable way to engage the public early in the process. Notice that the application will be filed gives those who are potentially interested in, or affected by, the proposed project the time and opportunity to prepare their input and comments in response to the application once it is filed.

Subp. 2. Notice recipients; all projects.
The proposed rule requires early notice of a proposed project to various entities and agencies at the local, state, and federal levels. This requirement is necessary and reasonable because it furthers the policy goal of obtaining relevant input from these organizations as early as possible in the process.

Subp. 3. Notice content.
Based on the advisory committee's input, the proposed rule, subpart 3 C (9), requires 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." It is reasonable to notify people of an applicant's right to use eminent domain to obtain property for the proposed project as a way to ensure that people have the opportunity to seek legal advice early on in the process.

During development of the proposed rule, the Commission considered whether to also require the applicant to state whether it *intends* to retain its right to use eminent domain proceedings. Several committee members opposed this approach, stating that applicants are likely to retain this option, although they try to avoid its use. Further, they stated that it could be difficult to precisely determine, at this point in the process, an applicant's intent regarding eminent domain. Based on the comments received, it does not appear to be reasonable or useful to require the applicant to state its intent.

Subp. 4. Newspaper notice.
This subpart modifies the existing rule to require that newspaper notice be given in each county where a project is proposed and include a description of the location of the proposed project and where to obtain additional project information. This requirement provides a necessary and reasonable means of giving broad public notice to increase public awareness and provide opportunity for public engagement.

Subp. 5. Press release.
The proposed rule requires a radio station press release, which includes relevant project information, where to obtain additional project information, and a statement that the applicant could use eminent domain proceedings to obtain property for the project. It is reasonable to use various forms of mass communication for disseminating information about the proposed project in areas where people are likely to be affected. Further, some advisory committee members stated that people in rural areas may be more likely to hear about a proposed project on the radio.

The proposed rule also clarifies that if there is no radio station within a county where the proposed project would be located, the applicant must issue a press release to a radio station that broadcasts into the county. This is necessary to ensure that the rule is sufficiently flexible.

The Commission considered a recommendation to require that the press release include information on the Commission's appointment of a public advisor, as well as a statement with information about opportunities for public comment, but a separate rule part addresses these items. Specifically, information on public participation, including the scoping process, is included in the mailed notice that will be sent to members of the public under part 7849.1400, which governs notice of the public information and scoping meeting; subpart 2 of that rule requires two newspaper notices of the meeting. For these reasons, the proposed rule does not incorporate this recommendation.

Subp. 6. Compliance filing.
The proposed rule requires that the applicant demonstrate compliance with the notice requirements. This a necessary and reasonable way to ensure that notice was given to the intended recipients.

Subp. 7. Good faith sufficient.
The proposed rule transfers language from existing rule part 7829.2550, subp. 7, but also adds language addressing defective notice to clarify that if the Commission determines that notice was defective, the process schedule could be modified to ensure that persons not previously notified will be given a reasonable opportunity to participate early in the process. This is a reasonable way to ensure that a lack of notice does not materially hinder a person's opportunity to meaningfully participate in the process.

The Commission also considered a recommendation authorizing the Executive Secretary to modify the process schedule if notice is found to be defective. In the event that there are disputes over compliance, however, the Commission is in the best position to resolve such disputes and to consider any necessary extension to the proceedings or modifications to the process schedule. The proposed rule therefore does not delegate authority to the Executive Secretary to make this decision.

There was also a recommendation to state that the schedule could be modified "where project notice was *deficient*," but Minn. Stat 216E.04, subd. 4, uses the term "defective," which the proposed rule incorporates (although this statutory provision does not directly apply to certificates of need, the proposed rule is intended to align the requirements of both rule chapters where feasible).

7849.0200 APPLICATION FORM AND MANNER OF FILING.
Subpart 1. Electronic filing.
The proposed rule modifies this subpart to include a reference to electronic filing requirements under Minn. Stat. § 216.17, subd. 3. This language is a necessary and reasonable way to incorporate electronic filing requirements.

Subp. 2. Non-electronic filing.
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 for the Commission to receive 13 paper copies. This change reasonably reduces redundancy and conserves resources. Furthermore, it is reasonable to eliminate unnecessary paper copies because Commission staff can immediately e-file the original paper copy to make it electronically available to the public via the Commission's e-docketing system.

The Commission considered a recommendation to retain 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 proposed rule therefore does not incorporate this recommended change.

Subp. 2a. Form.
This is a necessary and reasonable housekeeping change that relocates a portion of existing language in subpart 2 into this subpart. The proposed rule clarifies the organizational structure of this rule part but does not modify existing language or alter the meaning of the rule.

Subp. 3. Changes to application.
The proposed changes to this subpart clarify that if changes are made to an application and there is no pending proceeding in front of an administrative law judge (ALJ), the applicant must file the changes with the Commission. This is a necessary and reasonable housekeeping change that clarifies the existing rule language.

Subp. 4. Cover letter and summary.
The proposed rule incorporates a requirement that currently exists under part 7829.2500, subp. 2, for all certificate of need applications. It is necessary and reasonable to move this requirement into Chapter 7849, which governs certificate of need applications. The requirement continues to be a needed and reasonable way of ensuring that the summary is available and easily accessible to the public and other parties for a general description of the proposed project. The proposed rule is also consistent with language in part 7849.0240, subp. 1, which sets forth more specific requirements governing the summary.

~~**Subp. 5. Complete applications.**~~
The proposed rule repeals this subpart because it is no longer necessary; application completeness will instead be governed by a separate rule part, 7849.0208, and it is therefore reasonable to strike this language.

Subp. 6. Exemptions.
The proposed rule repeals the sentence requiring the Commission to act on an exemption request within 30 days of receipt. Because Minn. Stat. Ch. 13D (the Open Meeting Law) requires Commission meetings to be open, with 10 days' advance public notice, it can take longer than 30 days to develop and issue the notice, process comments, consider the merits of an application, make a decision, and issue an order. The Commission acts promptly on filings, and as a result, it is not necessary to include a time limit on Commission action in this rule.

Subp. 7. Service.
The proposed rule reasonably requires that the certificate of need application be served on the Department and OAG, which are automatically parties to Commission proceedings.[10] The rule also requires that notice of the application be sent to the general list; the public agency contact list; the landowner list; and the local and tribal government contact list. This is a necessary and reasonable way to ensure that potentially interested persons are given early notice.

At the time of the certificate of need application, it is unlikely that the Commission will have developed a project contact list. This list will likely be developed based on requests from people who are on the general list; as a result, the proposed rule does not require notice to the project contact list.

Subp. 8. Docket number.
It is necessary and reasonable to require that the docket number for the case be clearly visible on the application and attached to documents that are part of the application filing. This requirement saves time and resources and ensures that application filings are clearly marked.

Subp. 9. Joint applications.
This subpart clarifies that an applicant intending to file both a certificate of need application and a permit application may do so after first filing a *draft* permit application under Chapter 7850. Once the applicant has completed the steps governing draft permit applications, the applicant may then file both the certificate of need and the complete permit application.
The Commission will subsequently decide, under part 7850.2140, whether to hold joint proceedings on both applications, including whether to hold joint scoping meetings, joint public hearings, and joint proceedings for developing the record. Existing rule part 7849.1900 addresses the circumstances for conducting joint environmental review on multiple applications.

These changes are a necessary and reasonable way to establish a procedural framework for applicants intending to simultaneously file certificate of need and permit applications.

The Commission considered a recommendation to clarify that joint applications refer only to certificate of need and route permit applications. But there are instances where a certificate of need application could also be filed with a site permit application, and for this reason, the proposed rule does not incorporate this recommended change.

7849.0208 COMPLETENESS DETERMINATION.
Subpart. 1. Written notice required.
Minn. Stat. § 216E.03, subd. 3, requires—*in permitting cases*—that the Commission make a completeness determination within 10 days of receiving the application. The proposed rule applies this requirement in certificate of need cases to increase consistency between the two rule chapters. The proposed rule therefore delegates to the Executive Secretary the authority to determine, within 10 days, whether an application is complete; the rule strikes the existing requirement that the Commission notify an applicant within 30 days if a certificate of need application is not substantially complete. This is a necessary and reasonable method of aligning the procedures of both rule chapters.

[10] Minn. R. 7829.0800, subp. 3.

The completeness decision is *as to form only* and does not imply any Commission judgment on 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 under subpart 2, the application will be brought to the full Commission for further review at the earliest possible Commission meeting, considering the applicant's availability.

The corresponding proposed rule part, 7850.1710, governs *permit* applications, and also incorporates this 10-day requirement and mechanism for the Executive Secretary to make the determination. It is reasonable to establish the same completeness deadline in both rule chapters to ensure that multiple applications (such as a certificate of need and route or site permit application filed simultaneously), are subject to similar procedural treatment where practicable. This approach reduces confusion and complexity and increases clarity and consistency between the two rule chapters.

Subp. 2. Incomplete application.

If the Executive Secretary determines that an application is incomplete, the issue will be brought before the Commission for consideration as soon as possible, considering the applicant's availability. This ensures that any substantive disputed issues are formally considered and decided. This is a necessary and reasonable way to ensure that the applicant has the opportunity to come before the Commission on substantive questions of completeness.

7849.0220 APPLICATION CONTENTS.

The proposed rule restructures this part to increase clarity. The existing part is titled "application contents," but it is, in effect, a citation to subsequent rule parts that address application content requirements for various types of projects governed by the rule chapter. It is reasonable to increase clarity by instead listing in this rule part the content requirements applicable to all applications, which, in turn, justifies the repeal of part 7849.0240, a subsequent rule part with separate content requirements applicable to all applications; those requirements are effectively updated in the changes incorporated into this proposed rule. Removing this redundancy is a necessary and reasonable way to increase clarity.

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

This subpart applies four requirements to all applications.

Item A: It is necessary and reasonable for all applicants to affirm in their application that they have complied with applicable notice requirements. This requirement ensures that notice was given to the intended recipients, which furthers the policy goal of engaging people early in the process and which facilitates informed decision-making.

Item B; It is also necessary and reasonable to require applicants to give a summary of the major factors that support the claimed need for the proposed project. This rule change effectively relocates existing language from rule part 7849.0240, which the proposed rule repeals. The summary continues to be valuable to the public and to other interested persons and parties because it gives general information about the contents of the application, and it is therefore reasonable to maintain this requirement.

Item C: It is necessary and reasonable to require the applicant to show how the proposed project addresses the requirements under part 7849.0115. Part 7849.0115 requires the applicant to demonstrate the need for the proposed project considering other methods; to address the need criteria under part 7849.0120; and to address the statutory preference for renewable resources. This information is foundational in examining certificate of need applications and ensures that the application addresses applicable criteria.

Item D: It is necessary and reasonable to explicitly require each application to address how the proposed project satisfies the criteria under part 7849.0120, which the Commission evaluates when considering whether to grant a certificate of need. This information facilitates substantive analysis of the application, and it is therefore reasonable to require each applicant to address the applicable criteria.

Subp. 2. ~~Large high voltage~~ Regional transmission ~~lines (LHVTL)~~ planning.
The proposed rule requires data on regional transmission planning because both transmission and generation projects implicate the transmission system. This part is therefore applicable to all applications. The Commission considered input on whether or not to apply this requirement to generation projects, but because it is common for an applicant proposing a generation project to have access to the data, the requirement applies to all applications. If, however, an applicant does not have access to such data or the data is not relied upon for the proposed project, the applicant can make that clear in the application or request an exemption from this requirement under 7849.0200, subp. 6.

It is necessary and reasonable to require regional planning information, which is relevant to the Commission's evaluation of the applicable statutory criteria, including consideration of regional energy needs under Minn. Stat. § 216B.243, subd. 3 (3). This requirement is also necessary to facilitate development of a complete record on the claimed need for the proposed project.

Item A: It is necessary and reasonable to require the applicant to identify the regional planning processes relied upon to support the claimed need for the project. This ensures that all relevant information is available for consideration by parties, stakeholders, and the Commission.

Item B: It is reasonable to require data from the RTO because increasingly frequently, applicants rely on plans or studies from the RTO to demonstrate that a project is needed. Making that data easily accessible does not unreasonably burden the applicant. To ensure flexibility, the rule gives the applicant the option of either filing a copy of the plan as part of the application or including an electronic link to it.

Item C: Requiring data from the RTO on planned additions or retirements of existing facilities is necessary and reasonable to give the reader and the Commission context as to the relationship, if any, between the proposed project and any planned facility additions or retirements.

Item D: It is reasonable to require applicants to identify any study relied upon in support of its claimed need. To ensure flexibility, the rule gives the applicant the option of either filing a copy of the study as part of the application or by including an electronic link to it.

Subp. 2a. Joint proceedings.
It is reasonable to request information on joint proceedings early in the process because such information informs the next steps and facilitates an orderly and timely process. Requiring the applicant to state when it intends to file another application, if known, also furthers these goals.

~~7849.0230 ENVIRONMENTAL REPORT.~~
This is essentially a housekeeping change, which repeals this part because the process for developing the Environmental Report is governed by subsequent rule parts that the Legislature transferred to the Commission in 2005. The process for developing the Environmental Report is addressed beginning at part 7849.1200. As a result, this rule part is no longer necessary and is therefore repealed.

~~7849.0240 NEED SUMMARY AND ADDITIONAL CONSIDERATIONS.~~
The proposed rule repeals this part because a need summary is separately required by proposed changes to parts 7849.0200 and 7849.0220, and because the list of criteria is not the full list of criteria the Commission must consider when evaluating an application. Recent changes to Minn. Stat. § 216B.243 set forth additional criteria the Commission must consider, and rule part 7849.0120 incorporates those changes. As a result, this rule part is no longer necessary.

7849.0250 PROPOSED LEGF AND ALTERNATIVES APPLICATION.
This rule governs the filing requirements for an application for a large power plant. These proposed rule changes are necessary and reasonable for updating existing rule language governing renewable energy resources, potential costs, and environmental impacts.

Item A, sub-item (4) of the proposed rule adds language specifying that an applicant must include, *for fossil fuel facilities,* the anticipated heat rate of the facility. Anticipated heat rate, which is a common measure of system efficiency in a steam power plant, is a necessary and reasonable method of calculating the anticipated efficiency of a proposed project.

The legislature mandates that cost-effective energy savings should be procured systematically and aggressively to reduce utility costs for businesses and residents, improve the competitiveness and profitability of business, create more energy-related jobs, reduce the economic burden of fuel imports, and reduce pollution and emissions that cause climate change.[11] Obtaining information on the facility's anticipated heat rate furthers the analysis of this legislative priority.

Item A, sub-item (6) requires an applicant to provide scaled maps showing the area where the applicant's system is located. The Commission considered a recommendation to require a map rather than a scaled map. However, the Commission did not incorporate this recommendation because a scaled map shows the relationship between the distance on a map and the corresponding ground distance, which gives the viewer an impression of the size and distance between the items displayed on the map. This requirement is therefore necessary and reasonable for assisting the public, and property owners, with identifying the applicant's system and other properties in relation to the location of a proposed project.

[11] Minn. Stat. § 216B.2401

Item A, sub-item (7) requires an application for a proposed LEGF to include a list of any state or federal energy mandates the facility is designed to satisfy and an explanation of how the proposed project satisfies the mandate. It is necessary and reasonable to further the legislative goal of promoting renewable resources by requiring an applicant to explain how a proposed project satisfies an energy mandate.

Item B, sub-item (4) – (10) of the proposed rule requires a discussion of the availability of alternatives to the facility, and mandates consideration of: renewable resources; demand-response programs; distributed generation; energy storage; a no-build alternative; and energy conservation in combination with other alternatives. Requiring the applicant to include analysis of these additional alternatives is a reasonable way to ensure that renewable resources and combinations of resources, including energy conservation, were examined and considered by the applicant.

Item C states that an applicant for a renewable LEGF designed to meet state or federal renewable energy standards is only required to discuss alternatives, under item B, that are eligible to meet state or federal renewable energy standards, a reasonable approach to ensuring that the record on renewable energy resources is thoroughly developed. It would be unreasonable to require an applicant for a renewable LEGF designed to meet state or federal renewable energy standards to consider alternatives which are themselves not eligible to meet state or federal renewable energy standards.

Item D, sub-item (3) requires an applicant to include the proposed facility's "capacity factor," which can be compared to the expected output of the facility. This analysis is important to the Commission's consideration of the proposed facility's feasibility compared to project alternatives, and it is therefore reasonable to include this requirement.

Item D, sub-item (7) requires discussion of the estimate of the present value of the revenue requirement of the proposed facility. This requirement will facilitate development of the record on the present value of the facility, considering items such as depreciation and return on investment, as well as taxes. It is reasonable to require this information, as recommended by advisory committee members, because the data can be used to evaluate the cost of the proposed facility compared to alternatives.

Item D, sub-item (8) clarifies that the existing requirement to file data on a proposed facility's efficiency applies to either a fossil-fuel facility or a transmission facility. To examine efficiency, the existing rule requires the applicant of a transmission line to include estimated energy losses. The proposed rule includes a housekeeping change to clarify that "losses" means "system" losses. It is reasonable to make these clarifications because questions of whether a facility will perform efficiently are relevant to the examination of non-renewable energy facilities.

Item D, sub-item (10) requires discussion of the expected effects on the natural and socioeconomic environments, including human health. It is reasonable to add this requirement because it furthers the legislative goals of protecting or enhancing environmental quality and increasing reliability of energy supply in Minnesota and the region. Identifying the expected effects on the natural and socioeconomic environments facilitates the Commission's

understanding of a proposed facility's impact on environmental quality and reliability of energy supply. It is therefore necessary and reasonable to require discussion of such expected effects.

7849.0255 INDEPENDENT POWER PRODUCER LEGF APPLICATION.

The proposed rule governs applications by independent power producers, which are entities that own, operate, maintain, or control facilities for furnishing electric generation but do not serve end user customers.

Recent legislative changes to Minn. Stat. § 216B.243, subd. 8a (7), exempt independent power producers if the "electric output of the system or facility is not sold to an entity that provides retail service in Minnesota or wholesale electric service to another entity in Minnesota other than an entity that is a federally recognized regional transmission organization or independent system operator." Independent power producers who intend to sell electric output to an entity that provides retail service in Minnesota are therefore not exempt from the statute, and the proposed rule therefore establishes application content requirements for independent power producers, who frequently file certificate of need applications subject to the statute's certificate of need requirements. The proposed rule codifies requirements that reflect the Commission's recent experiences with applications filed by independent power producers.

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 rule therefore requires utility data only if the independent power producer has entered into a power purchase agreement with a utility. At a minimum, however, independent power producers must provide ownership information, data on regional capacity, availability of renewable resources, reliability, and cost.

The Commission considered a recommendation to apply this rule only to independent power producers who are not exempt from the certificate of need process. Available statutory exemptions are clearly set forth in rule part 7849.0030 (governing the scope of Chapter 7849), and the proposed rule therefore does not incorporate this recommended change because it is clearer to address questions of applicability and scope at the beginning of the rule chapter.

Subpart 1. Required data.

It is necessary and reasonable to state what is required in the following subparts.

Subp. 2. Utility data.

If the applicant has entered into a power purchase agreement with a utility, the proposed rule requires the applicant to file the data that a utility would be required to file. It is necessary and reasonable to require applicants to file all available and relevant data to facilitate record development on issues that the Commission considers when evaluating a certificate of need application.

The Commission considered a recommendation to clarify whether the rule applies to an independent power producer that is outside Minnesota but has a power purchase agreement with a utility that serves end user customers "in Minnesota." The Commission's jurisdiction extends

to applicants building facilities in Minnesota and the proposed rule therefore does not incorporate any further clarification. 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.

Subp. 3. Ownership information.
This subpart requires an independent power producer to provide information about its business and ownership structure and to keep the Commission informed of changes to the information provided. It is necessary and reasonable to require an independent power produce to file this information because it is important for the Commission and those participating in Commission proceedings to know who the responsible entity is. This facilitates efficient record development, as well as transparency and accountability.

It is also necessary and reasonable under item D of this subpart to require the applicant to notify the Commission within 30 days of any changes to the information originally filed, even after a certificate of need is granted, to ensure that the Commission will continue to have current and accurate information while the facility is in operation.

Subp. 4. Relevant available data.
This subpart sets forth the type of information that an applicant must provide in lieu of utility data, including data on regional capacity, availability of renewable resources, reliability, and the expected cost to ratepayers. It is necessary and reasonable to require this information in lieu of utility data to facilitate record development and to ensure that the Commission can make an informed determination of the need for the proposed project and to examine the feasibility of possible alternatives.

Subp. 5. Subsequent power purchase agreement.
If an applicant enters into a power purchase agreement with a utility after filing its certificate of need application, it is reasonable to require the applicant to notify the Commission within three business days of entering into the agreement. This requirement is necessary and reasonable because it ensures that the Commission receives prompt notification of a change that could be relevant to its decision. Ensuring that the Commission is notified as promptly as possible enables the Commission and parties to obtain additional relevant data as needed for further record development.

7849.0260 PROPOSED ~~L~~HVTL AND ALTERNATIVES APPLICATION.
This rule governs application content requirements for high voltage transmission lines. The proposed rule updates the existing language to require an applicant to file a description of the portion of the system affected, file regional transmission planning and reliability information, evaluate lower voltage and no-build alternatives, as well as energy storage alternatives, and file cost estimates. These additional requirements are necessary and reasonable for a full consideration and understanding of all possible alternatives.

Item A, sub-item (3) includes a housekeeping change to clarify that the expected losses are to the system, and it requires the applicant to identify the portion of the system affected. It is

reasonable to set forth data requirements that are as specific as possible to ensure that the data filed can be effectively analyzed by the public, stakeholders, parties, and the Commission.

Item B, subitems (1) and (2) require the applicant to address reliability risks that the proposed project is intended to resolve and discuss the most recent reliability study related to the associated risks. It is reasonable to require the applicant to file such data to facilitate record development on reliability issues.

The Commission considered a recommendation to address a circumstance where there is no such report; however, 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 such a situation arises, an applicant has the option to request an exemption from this data requirement under part 7849.0200, subp. 6, or to state in its application that there is no such report available. The proposed rule therefore does not incorporate this recommended change.

Item C, subitem (3) requires that the capacity of alternative transmission lines be listed and expressed in megavolt amps, a standard way to express such capacity. This is a necessary and reasonable clarification to ensure that the capacity of an alternative can be compared to, and considered in relation to, the proposed facility.

Item C, subitems (8), (9), and (11) require the applicant to address alternatives, including energy storage, a no-build alternative, and energy conservation in combination with other alternatives. These requirements are a necessary and reasonable way to strengthen the analysis of possible project alternatives.

Item D, subitem (5) requires an applicant to estimate the present value of the proposed project's revenue requirement. This clarification is necessary and reasonable for the purpose of examining potential cost implications of a proposed project.

Item D, sub-item (6) removes data on efficiency because expected system losses are addressed under Item A, sub-item (3). Instead, the proposed rule language requires the applicant to address the expected environmental effects. It is necessary and reasonable to require the applicant to file data on environmental factors within the context of the discussion on alternatives to ensure that the anticipated environmental effects can be more fully evaluated.

Item E includes a housekeeping change removing the requirement that an applicant must file any other relevant information. An applicant bears the burden to demonstrate that the proposed project is needed, and it is therefore unnecessary to include this statement. It is reasonable to expect that an applicant will identify any other relevant information that it believes should be included in the record for consideration.

7849.0270 ~~PEAK DEMAND AND ANNUAL CONSUMPTION FORECAST~~ ENGINEERING DATA.

The proposed rule separates part 7849.0270 into two rule parts as a way to reorganize this rule part, while also substantively amending it. The existing rule requires data on peak demand,

forecast content, forecast methodology, and the assumptions made in preparing the forecast. To establish more current and relevant data requirements, the proposed rule (proposed changes to part .0270) requires engineering data, and the second part (renumbered as rule part 7849.0275) governs forecast methodology. These changes were made as part of the advisory committee process and with consensus among committee members.

The current rule includes application content requirements that 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 electric 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, for example, 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 proposed rule therefore repeals the existing data requirements in subpart 2 and replaces them with changes incorporated into subparts 2a and 2b.

The updates to this rule are necessary to ensure that a utility files the most comprehensive and complete set of data relevant to questions of need and relied upon by the utility in making its decision to file a certificate of need application. It is reasonable to require a utility to file engineering data followed by a separate rule part governing the utility's forecast because separate documents will add clarity to the data.

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 proposed rule. Ultimately, the advisory committee reached consensus on requiring a utility to file engineering data followed by a separate rule part governing the utility's forecast. The existing rule is no longer reasonable in light of recent changes in proposed generation projects, and it is necessary to establish updated application content requirements that reflect the current state of the energy industry.

Subpart 1. Scope.
For reasons explained above, the proposed rule clarifies the scope of this part by striking outdated language requiring comprehensive system-wide data and instead requires engineering data. It is necessary and reasonable to strike this rule language because changes to subsequent parts replace the content requirements of this rule part. Updating the rule in this manner increases clarity and is consistent with the following rule changes.

Subp. 2a. Engineering analysis required.
The advisory committee concurred that an applicant should be required to file an engineering analysis supporting its claimed need, as explained above. This type of an analysis enables the public, parties, and the Commission to understand and evaluate the ability of the utility's current system (existing facilities) to meet the utility's projected demand for electricity. Combined with the forecast, the engineering analysis enables full record development on whether there is a need for a proposed facility.

Item A requires the applicant to file either a power-flow study for an HVTL or a capacity expansion model for an LEGF. Commission staff with technical expertise in this area stated that it is highly unlikely that either model would be unavailable, considering MISO's involvement in regional transmission planning. However, if such a situation arises, an applicant has the option to request an exemption from this data requirement under part 7849.0200. To review an undisputed exemption request as efficiently and promptly as possible, the Commission may make a decision using its consent calendar subcommittee process, a process authorized under Minn. Stat. § 216A.03, subd. 8 (b).

These types of studies are fundamental to conducting an analysis of a utility's existing electric power system. A power flow study calculates the current transmission system's ability to reliably meet the existing load. A capacity expansion model simulates generation capacity investment and answers questions related to what types of facilities should be built to meet the load. It is therefore reasonable to require a utility to file either study, as applicable, to facilitate an in-depth evaluation of the study, its results, and the utility's claimed need for building a new transmission or generation facility.

Item B requires the applicant to identify the model used, which is a necessary and reasonable way to establish a beginning baseline for evaluating the model.

Item C requires the applicant to identify any modifications made to the model to ensure that they are clearly identified and accounted for. It is reasonable to study modifications made to the model to ensure that the modeling results can be analyzed, verified, and understood.

Item D requires the applicant to list the performance criteria and planning standards used in the model, which is a reasonable way to facilitate an analysis of the system's current performance.

Item E requires the applicant to identify the contingencies modeled, which is a reasonable way to evaluate the system's response to outages, potential power losses, or other system failures.

Item F requires the applicant to include the method of power transfer simulated, if applicable. This requirement is necessary and reasonable to facilitate record development on system optimization.

Item G requires the applicant to identify the conditions modeled, including summer, winter, and shoulder (non-winter or summer months) peak. This requirement is necessary and reasonable because peak load is directly related to understanding whether the existing system is capable of meeting the current load.

Item H, **sub-item 1** requires the applicant of an HVTL to identify the software input data, including load bus and generator bus data. The bus (or node) is the general term used to describe the part of the network, or line, at which several points in a power system connect. To analyze the engineering data, the model must show the data the utility used (the input data), including data for load bus (where demand is specified or scheduled) and generator bus (where power generation and voltage magnitude are specified). It is reasonable to require the utility to include this data in its engineering analysis because the data is directly relevant to understanding the model and its results.

Item H, sub-item 2 requires the HVTL applicant to identify the software *output* data, including voltage magnitude and angle. This is necessary and reasonable to assess system voltage levels and to measure the difference between the current and the voltage. Such data can be used to understand and evaluate the efficiency of the current system in meeting load, and it is therefore reasonable to require the utility to file this data.

Item I requires an applicant of an LEGF to include software input and output data, also in the form of an electronic spreadsheet. This ensures that the data used by the applicant is readily available in a user-friendly format that can be used to evaluate the foundations of the study and its reliability in evaluating the need for a proposed project. It is therefore reasonable to require the utility to file this data.

Item J requires an applicant to file the results, key findings, and conclusions of the study. This is necessary and reasonable to ensure that the applicant ties together the data analysis to the claimed need for a proposed project. It also facilitates a clearer understanding of the study for persons without the technical expertise to evaluate the modeling itself.

Subp. 2b. Extended forecast filing.

The proposed 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 this rule part (the rules that require data on annual electrical consumption by customer class). In other words, utilities are required to file the same data under Chapter 7610 that is currently required under the existing rule part. The Department's rules in Chapter 7610 govern the annual forecasting, statistical, and informational reporting requirements as required by statute.[12] Because utilities must file this data with the Department, which is a party to Commission proceedings, there is no need to require that utilities also file this data with a certificate of need application. Removing this redundancy is a reasonable way to increase clarity without eliminating information relevant to substantive record development in certificate of need cases.

Subp. 3-6 are removed because they are relocated to proposed rule part 7849.0275, which governs the forecast. Part 7849.0275 retains data requirements that continue to be relevant in evaluating a utility's claimed need for a proposed project. Some data requirements have, however, become outdated as utilities develop analyses related to projects designed to meet a specific load, for example. As a result, the proposed rule repeals data requirements that are outdated. In particular, data on confidence levels required by existing part 7849.0270, subp. 3,

[12] See Minn. Stat. §§ 216C.17 and 216C.18.

item E, requires data that is most relevant when examining annual electric consumption data across the utility's entire electric power system. Because many utility projects involve more complex data used to analyze demand/load within portions of the utility's system, the confidence levels, which typically involve only a few ranges, do not provide as much rigor for analyzing the utility's forecasted need. As a result, the proposed rule strikes item E, as well as F, and replaces these data requirements with more detailed requirements in proposed rule part 7849.0275, subp. 2 and 3.

Subp. 4 is relocated to proposed rule part 7849.0275, subp. 2.

Subp. 5 is largely relocated to proposed rule part 7849.0275, subp. 2, with the exception of items B, C, and E, which require data on other fuel sources, energy pricing, and energy conservation, all of which are addressed in separate rule parts. It is reasonable to update the rule requirements by eliminating unnecessary redundancy.

Subp. 6 is repelaed because coordinating load forecasts is a function primarily of MISO, which combines the forecasts of its member utilities to analyze regional planning needs.

It is necessary and reasonable to repeal data requirements that are no longer most relevant in examining the claimed need for a proposed project. Furthermore, subsequent rule changes requiring the utility to file studies and analyses that show the modeling used, as well as the results of the modeling, are reasonable updates to the existing rules.

7849.0275 FORECAST METHEDOLOGY, DATA BASE, AND ASSUMPTIONS.
As explained above (in discussion of changes to part 7849.0270), these proposed changes necessarily restructure the rule to better reflect current industry patterns. Since the rule was first codified, the type of data relevant to specific projects has changed, leading to an outdated rule. As a result, applicants often request an exemption to this rule. Therefore, it is necessary and reasonable to restructure the rule to better reflect current practices.

For example, the Commission recently granted Xcel Energy and ITC Midwest (joint applicants) an exemption (under part 7849.0200, subpart 6) from the requirements of part 7849.0270 and authorized the applicants to provide other data, including substation demand and forecasts for substations in the project area, as well as data on congestion.[13] 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, and it is not necessary or reasonable to maintain outdated data requirements.

Subpart 1. Forecast; methodology.
This subpart largely incorporates language from existing rule part 7849.0270, subp. 3, which the proposed rules modify. It is necessary and reasonable to require an applicant to file a forecast and detail the forecast methodology, which is used to examine the applicant's forecast of demand and the corresponding claimed need for the proposed project.

[13] *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-022, ET-6675/CN-17-184, Order (September 1, 2017).

Subp. ~~4~~ 2. Data base for forecasts.
The proposed rule requires the applicant to file, as part of the forecast, the data sets used in making the forecast, including raw and adjusted input data, and raw and adjusted output data. It is reasonable to require the applicant to file both raw and adjusted data to ensure that the data sets, and adjustments made to raw data, can be understood and analyzed in relation to the claimed need for the proposed project.

The advisory committee concurred on requiring an applicant to file the data in the form of an electronic spreadsheet that can be used to replicate the results, an approach that is likely to facilitate public participation. Difficulty with accessing, understanding, and evaluating complex data can otherwise discourage people from engaging in the process.

Further, the proposed rule requires detailed information from an applicant on how the applicant developed the forecast. The items below work in conjunction to ensure that an applicant files sufficient levels of detailed data to enable a full analysis of the forecast. These requirements are necessary and reasonable to facilitate record development and informed decision-making by the Commission on a case-by-case basis.

Items A and B incorporate existing language originally located at part 7849.0270, subp. 4, item A and B. These data requirements continue to be needed and reasonable because information on data sets and adjustments to raw data facilitate record development on key questions of whether a proposed project is needed.

Item C incorporates existing language originally found at 7849.0270, subp. 3, item B. It continues to be necessary and reasonable to require an applicant to give details on the analytical techniques used in the forecast.

Item D incorporates and updates existing language in part 7849.0270, subp. 3, item D. It continues to be necessary and reasonable to require an applicant to address the relationship between the various analytical techniques used in developing the forecast. It is necessary and reasonable to require this level of detail to facilitate robust examination of the forecast.

Item E, sub-items (1)-(3) incorporate and update existing language in part 7849.0270, subp. 3, item D. It continues to be necessary and reasonable to require an applicant to identify, in relation to the statistical techniques used in developing the forecast, the software and statistical model used, as well as to require the results of the statistical tests. It is reasonable to require this level of detail to facilitate robust examination of the forecast, which is a fundamental tool used to determine whether there is a demonstrated need for a proposed project.

Subp. ~~5~~ 3. Assumptions and special information.
The proposed rule incorporates and updates existing language from part 7849.0270, subp. 5.

Item A incorporates existing language from part 7849.0270, subp. 5, item B. It continues to be necessary and reasonable to require an applicant to give details on the availability of alternative sources of energy for purposes of analyzing the claimed need for a proposed project.

Item B requires discussion of "the sources, sinks, and dispatch assumptions." Sources are points of power injection, while sinks are points of power extraction. Dispatch assumptions are the economic assumptions that the utility makes in deciding which generating units to operate to meet demand. It is necessary to understand the assumptions made in forecasting the need for a proposed project, and it is therefore necessary and reasonable to require an applicant to provide data on the sources, sinks, and dispatch assumptions for a proposed project. This is data typically used in these types of models, and it is therefore reasonable to require it in this rule part.

Items C and D incorporate and update existing language in part 7849.0270, subp. 5, items D and F. These data requirements continue to be needed and reasonable because information on these essential assumptions made in preparing the forecast facilitate record development on key questions of whether a proposed project is needed.

7849.0280 SYSTEM CAPACITY.

The proposed rule requires an applicant to file information about the capacity of its existing system 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 reasonably 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. This change is necessary because it requires that all relevant and applicable information is made available, while eliminating outdated requirements.

Previous applicants have successfully sought exemptions from this rule part by asserting that system-wide data is not relevant to a proposed transmission line project that is, for example, intended to address need within a specific geographic area. In those cases, applicants have instead provided data on the area affected by the proposed project, also described as the affected load center. It is therefore necessary and reasonable to update the rule to accurately reflect current practices, while also ensuring that applications include relevant data.

7849.0290 CONSERVATION PROGRAMS, APPLICATION.

The proposed rule reasonably updates this rule part by striking outdated language and requiring applicants to list the conservation programs they have considered as alternatives to the proposed project, as required by statute.

The proposed rule also contains general housekeeping changes to increase clarity in language usage.

Further, the proposed rule requires applicants to explain the correlation between the proposed project and the applicant's integrated resource plans and extended forecast filings, which are relevant to the Commission's consideration of the claimed need for a proposed project.

7849.0300 CONSEQUENCES OF DELAY.

The proposed rule requires information on system impacts if the proposed project is delayed up to three years but removes the reference to the three levels of demand, which are no longer used in part 7849.0270. These changes are necessary for updating the rule to comply with current procedures.

The Commission considered a recommendation to retain language on the three levels of demand, but 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 proposed rule does not include this recommended change.

The proposed rule replaces the term "power pool" with "regional transmission organization," or "RTO" based on advisory committee input, which identified the proposed rule language and a clarification to the existing rule language, which is outdated.. It is necessary and reasonable to increase clarity within the rules to the extent possible.

7849.0310 ENVIRONMENTAL INFORMATION REQUIRED.
The proposed rule clarifies the language of this part by adding a citation to part 7849.0255, subp. 4, item D, which requires independent power producers to file information on alternative approaches for supplying energy.

The proposed rule also clarifies language usage on alternatives and use of the word "applicable." These changes are necessary and reasonable non-substantive housekeeping edits.

7849.0320 GENERATING FACILITIES.
7849.0330 TRANSMISSION FACILITIES.
These two rule parts incorporate updates to the environmental data required for applications for power plants and power lines, as recommended by advisory committee members. These changes increase clarity and modernize existing rule language on the anticipated environmental impacts, while maintaining a standard for obtaining necessary information that is relevant to robust environmental review.

Since these two rule parts were first codified, advances in scientific knowledge have resulted in a clearer understanding of the potential impacts of infrastructure development on air quality, ecology, and human health. To facilitate analysis of these issues, the proposed rule requires data on the potential emissions impacts of a proposed facility, as well as the potential impacts on water resources. It is reasonable to require applicants to identify such potential impacts because understanding those impacts will strengthen record development on possible mitigation measures.

7849.0320 GENERATING FACILITIES.

Item C clarifies the existing rule language to state that the applicant must provide data on fossil-fueled "and other combustion" facilities. Advisory committee members recommended this addition to ensure that applications for facilities that burn substances to produce electric energy include information that can be used to conduct a rigorous analysis of the potential environmental impacts. This is a necessary and reasonable change that reflects innovative changes in technology that have led to a wider variety of facility types that may otherwise not be subject to such analysis.

The proposed rule also contains a housekeeping clarification to replace a parenthetical with the word “expressed.”

The proposed rule also requires applicants to file information on the proposed project’s “estimated greenhouse gas air emissions” as well as other air emissions to facilitate a full analysis on the potential impacts on air quality. These changes replace the language in item D, which is therefore removed from the rule. Updating the rule in this manner is a necessary and reasonable way to update the application content requirements and ensure that the application contains the most relevant and currently available information on potential impacts.

Items D and E establish new requirements for data on the potential impacts to water resources by requiring applicants to file information on water usage and the source of water used. This is a necessary and reasonable way to update the rule and ensure that a full analysis on water usage can be conducted.

Item K incorporates new language requiring applications to include information on potential impacts to human health and ecological resources. This is a necessary and reasonable way to ensure that data on water usage is tied to the potential impacts of that usage on resources that directly affect human health, including ecological resources.

Item I requires the applicant to identify any other agency permits required for the proposed project. This ensures that the record will identify any other permits that may need to be obtained.

7849.0330. TRANSMISSION FACILITIES.

Item A (2) updates the existing rule language to include a discussion of electric “and magnetic” fields. It also removes outdated language on “air ions,” which is not necessary to the analysis of potential impacts of transmission lines. These are necessary and reasonable changes that increase clarity and modernize the existing language while also requiring necessary data that is relevant to robust environmental review.

Item G incorporates new language requiring applications to include information on potential impacts to human health and ecological resources. This is a necessary and reasonable way to ensure that data on water usage is tied to the potential impacts of that usage on resources that directly affect human health, including on ecological resources.

Item H requires the applicant to identify any other agency permits required for the proposed project. This ensures that the record will reflect what other permits may need to be obtained.

7849.0340 NO-FACILITY ALTERNATIVE.
Consistent with proposed changes to part 7849.0300, which repeals the reference to the three levels of demand because they are no longer used in part 7849.0270, this proposed rule also repeals language requiring three levels of demand. This change is necessary and reasonable to ensure consistency throughout the rules.

7849.0400 CERTIFICATE OF NEED CONDITIONS AND CHANGES.

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

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

Requiring further Commission 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 proposed rule therefore does not incorporate such a requirement.

Subp. 3. Change requiring application. ~~C.~~

The proposed rule changes are housekeeping changes clarifying that the Commission, not the EQB, is the agency responsible for decision-making. The other proposed rule change is consistent with the proposed change to the definition of "high-voltage transmission line," which removes" large" from the definition.

Subp. 4. Commission decision. ~~H.~~

The proposed rule requires the applicant to give notice of its request for changes to the facility to the official service list for the docket. This requirement is necessary and reasonable to ensure that all interested parties are provided notice of changes potentially affecting operation of the facility.

COMMENTS AND RECORD DEVELOPMENT

Rule parts 7849.1000 to 7849.2100 primarily govern the process for developing and considering the Environmental Report and include parts that were transferred to the Commission from the EQB in 2005, at the same time rules governing the siting and routing process in Chapter 7850 were transferred to the Commission. The proposed rule changes update and modify existing requirements and set forth new requirements, as explained below.

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

The proposed rule repeals "applicability" and "scope" because they are separately governed by parts 7849.0020 and 7849.0030 at the beginning of the chapter. This rule part will instead govern notice of and comments on the application, petitions to intervene, and record development. This change is necessary to increase clarity and consistency.

Subpart 1. Publication in State Register.

The proposed rule requires the Commission to give public notice of the certificate of need filing in the *State Register*, a codification of existing practice. Publication in the *State Register*, which is the official publication of the State of Minnesota's executive branch of government, is a reasonable means of furthering the policy goal of giving broad public notice.

Subp. 2. Comment Period.

The proposed rule sets forth the notice and comment process, allowing 21 days for comments on the procedural treatment of the application, and 14 days for reply comments. Under this rule, the

Commission must send notice of the comment period to the project contact list, the public agency contact list, and the local and tribal government contact list. At this stage of the proceeding, the Commission will invite comments to identify possible contested issues of material fact warranting referral to the Office of Administrative Hearings for contested case proceedings or to determine whether the case should be developed using the Commission's informal process under Minn. R. 7829.1200.

Establishing a comment period is necessary and reasonable to determine whether a contested case proceeding is needed, and to ensure that interested parties are given an opportunity to comment on the process and issues to be developed.

Subp. 3. Petition to intervene.
The proposed rule states that petitions to intervene are governed by part 7829.2500, subpart 8. Identifying controlling authority helps eliminate confusion and ambiguity. This change is therefore necessary and reasonable to increase clarity.

Subpart 4. Process schedule.
The proposed rule includes a proposed schedule to ensure necessary flexibility to enable the applicant, the Department, and Commission staff to set project-responsive timeframes for completing procedural requirements. Without this change, timeframes that need to be adjusted could require rule variances that would add unnecessary delay to the proceedings. Therefore, the proposed process schedule is necessary and reasonable to minimize delays, establish clear procedural timeframes, and reduce the need for rule variances.

The Commission considered a recommendation to require the process to be an established schedule, not a proposed schedule, and to include timeframes for contested case proceedings. In response to this recommendation, the proposed rule includes a statement that the applicant or the Department can request that the Commission review and modify the schedule. And while there is sufficient time in the proposed schedule for contested case proceedings, 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. This is a reasonable way to retain flexibility while providing a useful framework for facilitating adherence to a process schedule.

~~7849.1100. DEFINITIONS.~~
The proposed rule repeals this part because the definitions that continue to be needed are relocated to part 7849.0010.

Subpart 1 defines the scope of this portion of the chapter, but it is not necessary to have a scope that applies to only portions of the chapter, and the proposed rule therefore repeals this definition; the scope of the rule chapter is instead set forth in part 7849.0010, subp. 1.

Subp. 3 defines the Commissioner of the Department of Commerce, a definition that is no longer needed because the term "Department of Commerce" is defined by proposed rule part 7849.0010, subp. 9a. It is sufficient for the purpose of these rules to define the agency, which bears the responsibilities described in the rule chapter.

Subp. 4 defines "environmental report," which is relocated to proposed rule 7849.0010, subp. 9d.

Subp. 5 and 6 define terms that are currently defined by existing rule 7849.0010, subp. 13 and 14.

Subp. 7 defines "mail," which is relocated to part 7849.0010, subp. 16a.

Subp. 8 defines the Public Utilities Commission, which is defined by existing part 7849.0010, subp. 8.

7849.1150 RECORD DEVELOPMENT.
The proposed rule describes the process for record development, consistent with the manner in which the Commission ordinarily processes certificate of need applications. Cases will either be referred to the Office of Administrative Hearings for contested case proceedings under Minn. R. 7829.1000 or will be developed using the Commission's informal comment and reply process under part 7829.1200.

The Commission considered a recommendation to modify the proposed rule 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 general referral authority under Minn. R. 7829.1000, and the proposed rule therefore does not incorporate this recommended change.

7849.1200. ENVIRONMENTAL REPORT.
The proposed rule incorporates minor housekeeping changes, which are necessary and reasonable to increase clarity.

~~7849.1300 INFORMATION REQUIRED FOR ENVIRONMENTAL REVIEW.~~
The proposed rule necessarily and reasonably repeals this part because it contains outdated language on filing requirements, which are governed by part 7849.0200 and because, with the Commission's electronic filing system, there is no longer a need to require separate filings with the Department.

7849.1400 PROCESS FOR ENVIRONMENTAL REPORT PREPARATION.
The existing rule requires the Department to give notice of the certificate of need application and to include the time, date, and location of public information and scoping meetings. It also governs the scoping decision and the timeframe for completing the Environmental Report. The proposed rule separates these requirements to increase clarity.

Under the proposed changes, this rule part only governs notice of the public information and scoping meeting. Notice of the certificate of need application will be given by the applicant before filing the application (under part 7849.0130) and after the application has been filed (under part 7849.0200, subpart 7). Therefore, the proposed changes to this section are necessary and reasonable to clarify the process and increase consistency. To do so, the proposed rule

repeals subparts 1, 3, 7, 8, 9, and 10, but largely relocates these requirements and some of the language of these subparts to other parts, as described below.

The Commission considered a recommendation to require an Environmental Impact Statement for certificate of need projects instead of an Environmental Report, but an Environmental Report process is an approved alternative form of environmental review under Minn. Stat. § 116D.04. The proposed rule therefore does not further modify this requirement.

Subpart 1a. Public meeting.

This proposed rule governs the timing of the public information and scoping meeting held jointly by the Commission and the Department. The proposed rule requires that the meeting be held in accordance with the process schedule developed under part 7849.1000, subp. 4. The current rule requires the meeting to be held within 40 days after receipt of the application, but rather than apply a specific deadline in the rules for this step, the proposed rule removes this requirement to enable coordination at the outset of the process between Commission and Department staff, along with the applicant, to establish a process schedule that considers project-specific issues.

Subp. 2. Content of Notice.

The proposed rule includes minor clarifications to the existing rule language governing notice content, and also requires the notice to include the name and contact information for the Commission's public advisor, along with a description of the public advisor's role. It is reasonable to add this requirement to ensure that members of the public are aware of the public advisor's role and have the most direct method for obtaining additional information about the proceeding from Commission staff.

Subp. 3a. Meeting notice; recipients.

Requiring notice of the meeting to be sent to the project contact list, the public agency contact list, the landowner list, and the local and tribal government contact list is necessary and reasonable to ensure that potentially interested or affected persons will receive advance notice of the meeting. Notice of at least 15 days prior to the meeting provides a reasonable amount of time for persons to prepare for the meeting; giving broad public also encourages public engagement in the Commission's process, which in turn facilitates informed decision-making.

Under the proposed rule, notice will not be sent to those on the general list because at this stage, those persons will have likely signed up for the project contact list if they want to continue receiving notices about the proposed project. This helps avoid duplicate notices being sent to the same persons and avoids notice to persons no longer interested in receiving them.

The proposed rule also requires applicants to give newspaper notice of the meeting and requires the Department and the Commission to post notice of the meeting on their websites.
These changes are necessary and reasonable to ensure that there is broad public notice of the meeting, consistent with the policy goal of maximizing public participation.

Subpart 4. Conduct of public information and scoping meeting.

The proposed rule retains most of the existing language explaining the opportunities for public input at the meeting, but it does repeal one sentence governing the written comment period that

begins after the close of the meeting; this comment period is separately addressed in a subsequent subpart. This proposed rule change is necessary and reasonable to increase clarity and to better organize the structure of the rule.

The Commission considered a recommendation to add a statement that "a transcript of the meeting need not be maintained, although" the Commission "may elect" to keep an audio recording of the meeting. There are no proposed changes to the existing requirement that the Commission keep an audio recording. There are no apparent ongoing problems with the existing rule, and the proposed rule therefore does not incorporate such changes.

Subp. 5. Applicant role.
The proposed rule changes "shall" to "must," a reasonable housekeeping change that updates language usage.

Subp. 6. ~~Alternatives and impacts.~~ Scoping process.
The proposed rule retains most of the existing language explaining the scoping process and the opportunity for public input on alternatives to, and potential impacts of, the proposed project.

The proposed rule also includes language requiring that the Department provide the public with an opportunity to participate in the development of the scope of the environmental report. This proposed addition is necessary and reasonable to ensure that the public has an opportunity to participate in the development of the scope of the environmental report.

The Commission considered a recommendation authorizing people to identify probable 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 potential benefits that could mitigate impacts will be identified in the scoping process; the rule therefore does not incorporate additional language.

The proposed rule repeals language explaining the Department's role because that language has been relocated to subpart 12 (authorizing the Department to exclude alternatives) and to part 7849.1410 (language requiring the Department to include any alternative identified by the Commission in the scope of the Environmental Report).

Subp. 11. Comment period.
The proposed rule requires the Department to provide 20 days following the close of the meeting for interested persons to file written comments. This is existing language, which is necessarily and reasonably set out in a separate subpart to increase clarity. A public comment period continues to be needed and reasonable to ensure interested persons have time to comment on potential impacts after the close of the meeting.

Subp. 12. Department analysis.
The proposed rule governs the Department's analysis, which comes from existing rule language originally located at part 7849.1400, subp. 6. The proposed rule also establishes a new requirement, which directs the Department to explain its reasons for excluding an alternative. This is necessary and reasonable for continued record development and to ensure that the

Commission can understand the basis for the Department's decision before making its own determination on possible alternatives.

7849.1410 NOTICE TO COMMISSION.

The proposed rule adds this part to give the Commission the opportunity to consider the alternatives the Department intends to include in the scoping decision. It is reasonable for the Commission to have the opportunity to give input on the list of alternatives that will be studied in the scope of the Environmental Report and to add any alternatives the Commission identifies for further study. To do so, the proposed rule requires the Department to give notice to the Commission, prior to filing its scoping decision, of the alternatives it intends to study. This change is necessary and reasonable to give the Commission the time and opportunity needed to consider other alternatives and to hear from interested or affected persons.

The Commission considered a recommendation to clarify whether the notice requirement applies to joint proceedings (when certificate of need and permit applications are combined). The rule governing joint proceedings (7849.1900) states that the Department has the option to prepare an environmental assessment or EIS, in lieu of an Environmental Report. In such cases, this notice requirement would not apply (the applicant would follow the procedures in Chapter 7850), and for this reason, the proposed rule does not include any further clarification.

7849.1425 SCOPING DECISION.

The proposed rule moves existing language on the scoping decision (called the "Commissioner decision" in existing part 7849.1400) and relocates it to this rule part to increase clarity and to improve the rule's organizational structure.

Subpart 1. Scoping decision.

The existing rule (7849.1400, subp. 7) requires the Department to identify, within ten days after the close of the public comment period, the alternatives to be addressed in the environmental report. Although the Commission considered increasing this timeframe to 20 days based on input from the advisory committee, including the Department, the proposed rule instead requires that the decision be made consistent with the process schedule. The process schedule is set by Commission staff in consultation with the Department and the applicant and can be brought before the Commission if there are disputes. It is necessary and reasonable to set a deadline for the scoping decision using the process schedule because it increases the likelihood that the deadline is reasonable and will be met. Setting a case-specific process schedule provides needed flexibility for identifying a reasonable timeframe that considers the complexity of the project and potentially disputed issues.

The proposed rule also necessarily and reasonably modifies the existing rule language to clarify that the Department will be making a scoping decision (rather than issuing an order). This is consistent with current practice, which works well.

Subp. ~~8~~ 2. Notice of decision.

The proposed rule modifies the existing notice requirement (part 7849.1400, subp. 8) by eliminating the requirement that the Department mail the decision to those who have requested to be notified and instead requires that the Department file the decision with the Commission and

send notice of the decision to those on the project contact list, the public agency contact list, the local and tribal government list, and the landowner list. The Department's filing will be made electronically, and the decision will therefore be publicly accessible.[14] It is reasonable to require notice to those on the lists because they include people and entities who are likely to be directly affected by the decision.

The relocation of the proposed rule also results in striking an outdated citation to Minn. R. 4405.0600, subp. 5, because that rule applies to the procedures of the Environmental Quality Board. It is reasonable to repeal this language to avoid confusion over which agency will identify the alternatives to be studied in the Environmental Report.

7849.1500 ENVIRONMENTAL REPORT CONTENT.

The proposed rule incorporates input from the advisory committee on additional relevant environmental information that the Department must address in the Environmental Report. This information will facilitate record development on issues the Commission must evaluate when deciding whether to grant a certificate of need.

Under separate proposed rule changes (parts 7849.0320 and .0330), applicants are required to include the same information in their applications, and it is therefore reasonable to require that the Department's analysis in the Environmental Report include evaluation of these issues.

Subpart 1. Content of environmental report.

The proposed rule requires that the Environmental Report discuss alternatives or *combinations* of alternatives, including distributed generation, consistent with a separate rule (7849.0250, item B) requiring applications for power plants to discuss such alternatives, or combinations thereof, to the proposed project.

This requirement is necessary and reasonable to ensure that the application can be thoroughly analyzed and to ensure that the record is fully developed on issues that the Commission considers when deciding whether to grant a certificate of need.

The proposed rule also incorporates housekeeping changes that use acronyms in place of terms. These are necessary and reasonable clarifications that do not alter the meaning of the rule.

Subp. 2. Impacts of power plants.

The proposed rule updates the language on the types of pollutants that must be studied and their potential environmental impacts, consistent with changes made to part 7849.0320. It is reasonable to update the list as proposed to ensure that potential impacts will be identified, analyzed, and mitigated.

Subp. 3. Impacts of high voltage transmission lines.

The proposed rule updates the language requiring analysis of environmental impacts, including the list of hydrological resources that could be impacted, consistent with changes made to part

[14] Minn. Stat. § 216.17 requires entities, including state agencies to file documents with the Commission via e-dockets, the Commission's electronic filing system.

7849.0320. It is reasonable to update the list as proposed to ensure that potential impacts will be identified, analyzed, and mitigated.

7849.1525 ENVIRONMENTAL REPORT; FILING.
The proposed rule necessarily and reasonably relocates language from part 7849.1400, subp. 9 and 10, into this rule to increase clarity and improve the organizational structure of the rule.

Subpart ~~9~~ 1. Time frame for completion of environmental report.
The primary change to this rule is to remove the requirement that the Environmental Report be completed within four months of the certificate of need application. Instead, the proposed rule requires that the Environmental Report be completed in accordance with the process schedule. This is a reasonable way to balance the need for predictable timeframes with the need for flexibility depending on the complexity of the proposed project.

Subp. ~~10~~ 2. Notification of availability of environmental report.
The proposed rule modifies existing rule language to increase clarity by identifying the "notice lists" (as established by proposed rule part 7849.0125) to whom the Department must send notice of the availability of the Environmental Report. This is a necessary and reasonable way to ensure that interested and affected persons are notified.

7849.1550 PUBLIC HEARING.
Subpart 1. Public hearing.
This proposed rule modifies the existing language governing the public hearing by clarifying that the Commission must hold a public hearing subject to Minn. Stat. § 216B.243, subd. 4, which requires that the Commission hold a public hearing on a certificate of need application under Minn. Stat. Ch. 14. The proposed rule also states that Commission staff will coordinate with the administrative law judge on details of the hearing. These changes ensure that the administrative law judge retains flexibility to exercise discretion in conducting the hearing consistent with the rules of the Office of Administrative Hearings. To incorporate these clarifications, the proposed rule includes the relevant statutory citation.

Subp. 2. Public hearing notice.
Because an Administrative Law Judge will conduct the hearing, the proposed rule necessarily and reasonably modifies the existing rule to require that the Commission coordinate notice of the hearing with the administrative law judge.

The Commission considered recommendations 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. Because an administrative law judge will preside over the hearing, under subpart 1, using the rules of the Office of Administrative Hearings, this subpart does not incorporate those changes.

Subp. 3. Notice recipients.
The proposed rule necessarily and reasonably requires the Commission to send notice of the public hearing to the project contact list, the public agency contact list, the landowner list, and

the local and tribal government contact list. This a reasonable method for furthering the legislative policy goal to maximize public participation in Commission proceedings.

Subp. ~~3~~ 4. Newspaper notice.
The proposed rule requires an applicant to give newspaper notice of the public hearing in the county where the hearing will be held. The applicant must subsequently file its affidavit of publication. This requirement is necessary and reasonable to ensure that notice is widely disseminated throughout the county in which the public hearing is to be held, thereby increasing the likelihood of public participation.

Subp. 5. Press Release.
The proposed rule also requires that notice of the meeting be given by press release. This requirement is also necessary and reasonable to ensure that notice is widely disseminated throughout the county in which the public hearing is to be held, thereby increasing the likelihood of public participation.

Subp. 6. Comment period.
The proposed rule requires that a public comment period follow the public hearing, and that the comments be filed with the administrative law judge presiding over the hearing. It is necessary to provide an opportunity for public comment after the public hearing to facilitate record development on issues that the Commission considers when deciding whether to grant a certificate of need. Furthermore, it will facilitate the administrative law judge's analysis of the comments, and for this reason, requiring that the comments be filed with the administrative law judge ensures that public comments are considered and evaluated.

The Commission considered a recommendation stating that the Commission is not required to supplement the Environmental Report in response to comments filed. Authorizing a comment period does not mean that the Commission will require that the Environmental Report be supplemented, but if the Commission determines that further record development is warranted, the Commission can do so. That decision will be made on a case-by-case basis, considering the record developed. The proposed rule therefore does not include this recommendation.

7849.1600 AGENCY ASSISTANCE AND FILING OF AGENCY COMMENTS.
The proposed rule adds a requirement that another agency's comments are clearly identified in e-dockets as comments of that agency. This avoids situations where another state agency, for example, sends comments directly to the Department but does not independently file them, leaving it to the Department to file them as promptly as possible with an attribution to the commenting agency. This rule change is necessary and reasonable to ensure that comments from other agencies will be clearly identifiable in e-dockets, and it prevents comments of other agencies from being filed either in a batch along with other public comments or as comments of the Department.

Both the Department and the Commission have worked to clarify to other agencies that they should directly file comments in e-dockets if they intend those comments to be made part of the record. The proposed rule does not, however, require that all correspondence between agencies

be filed into the record because it could result in an overly broad rule that limits the flexibility of agencies to informally discuss issues as they work through a case.

7849.1700 APPLICANT ASSISTANCE.
7849.1800 ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.
7849.1900 JOINT PROCEEDING.
7849.2000 ALTERNATIVE FORM OF REVIEW.
7849.2100 COSTS TO PREPARE ENVIRONMENTAL REPORT.
These five rule parts incorporate non-substantive housekeeping edits to increase clarity without altering the meaning of the rules.

B. Proposed Changes to Siting and Routing Rules, Chapter 7850

7850.1000 DEFINITIONS.
Subp. 5a. Department.
It is necessary and reasonable to include a definition of the Department of Commerce, an agency identified in numerous rule parts throughout the chapter.

Subp. 7. Environmental assessment or EA.
This proposed definition includes the acronym "EA," which is used in multiple subsequent rule parts as the abbreviation for Environmental Assessment. It is therefore necessary and reasonable for the definition to include this acronym.

Subp. 9. High voltage transmission line or HVTL.
The proposed definition incorporates a statutory amendment that modifies the term to include a line "greater than 1,500 feet in length." See Minn. Stat. § 216E.01, subd. 4. It is reasonable to update the rule by incorporating this statutory amendment.

Subp. 14 defines "PUC," which is already defined by subp. 4. As a result, it is necessary and reasonable to repeal this rule to reduce redundancy.

7850.1200 APPLICABILITY.
This proposed rule includes a housekeeping change to clarify that "this chapter," (the entire chapter), establishes the applicable requirements for the permitting process. This is clearer than the existing language, which states that parts "7850.1000 to 7850.5600" establish the applicable requirements. This modification is a reasonable way to clarify that the entire chapter governs.

The proposed rule also includes a statement that the chapter establishes the requirements for the environmental review of such projects, a necessary and reasonable way to clarify that applications are subject to the environmental review provisions contained within the rule chapter. For this same reason, it is also reasonable to strike the last sentence of the rule concerning environmental review, which does not reference the environmental review procedures of Chapter 7850.

7850.1300 PERMIT REQUIREMENT.
Supbarts 1 to 3, and 5 incorporate housekeeping changes to clarify the existing language withoutaltering the meaning or sense of the rule.

Subp. 4. Local authority.
The proposed rule replaces "governmental authorities" with "units of government," consistent with the use of this language in Minn. Stat. § 216.05, subd. 1. This change is necessary and reasonable to increase clarity.

7850.1400 ~~SMALL~~ EXEMPT PROJECTS.
Subpart 1. No ~~PUC~~ commission permit required.
The proposed rule replaces "small" with "exempt" because the rules no longer describe transmission lines or power plants as large or small. This change is necessary and reasonable to increase clarity.

The proposed rule also clarifies that transmission lines that are 1,500 feet in length or less are exempt from the Commission's permitting process, consistent with the proposed change to the definition of "high voltage transmission line" in part 7850.1000, subp. 9. This is a necessary and reasonable clarification, consistent with Minn. Stat. § 216B.2421, subd. 2 (2) and (3).

The proposed rule also clarifies that proposers of "exempt" projects must obtain other approvals required by local, state, or federal units of government with jurisdiction over the project." The proposed rule amends this requirement to include "applicable environmental review provisions." This change is necessary and reasonable to clarify that exempt projects are subject to applicable environmental review provisions.

The proposed rule repeals subpart 2 because it addresses the certificate of need rules, which separately clarify how, and to which projects, those rules apply. It is reasonable to make this change to increase clarity and avoid potential confusion over the applicability of Chapter 7849.

7850.1500 EXCEPTIONS TO PERMITTING REQUIREMENT FOR CERTAIN EXISTING FACILITIES.
Subpart 1. No permit required.
This proposed subpart includes several housekeeping changes that use acronyms, consistent with similar changes to other rule parts.

The proposed rule also clarifies that under specific circumstances, a project expansion is not subject to Commission approval, consistent with applicable statutory criteria. This is set forth in a new sub-item (C (4)), which states that "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," is not considered construction of a large electric power generating plant and may be constructed without a permit from the Commission.

It is necessary and reasonable to clarify in the rule which types of projects are not subject to Commission approval; avoiding unnecessary filings saves time and resources for regulated and governmental entities.

~~7850.1600 JOINT PROCEEDING.~~
The proposed rule repeals this part because joint proceedings will be governed by separate rule parts 7850.1640; 1680; 1750; and 2140.

7850.1610 NOTICE LISTS.
The proposed rule sets forth notice lists, which are necessary and reasonable for notifying people of the application; public information and scoping meetings; the environmental review document (either an EIS or an EA); public hearings; and possible changes to either permit conditions or to projects for which permits have already been issued. This proposed rule incorporates the same changes made to part 7849.0130.

Establishing these lists aligns with the policy goal to engage members of the public in the Commission's proceedings. The lists will be used to ensure that the public is informed about proposed site or route permit applications and the applicable review process. Prescribed lists are a reasonable way to focus communication efforts and ensure that people are given relevant information and reasonable opportunities to participate in the process.

Subp. 1. Notice lists required.
To establish clarity about the applicability of the proposed rule, it is necessary and reasonable to state that notice lists must be established and maintained as described by this rule part.

Subpart 2. General list.
The general list includes persons who want to be notified of permit applications under existing rule part 7850.2100, subp. 1, item A (the proposed rule repeals 7850.2100, subp. 1 and recodifies it in this proposed rule). Relocating and retaining this list is a reasonable way to ensure that people who are likely to be interested in, or affected by, a proposed project, have relevant information on the applicable process. In the Commission's experience, this list is a useful way to ensure that interested persons receive early notice of permit applications. Because it is feasible for the Commission to collect contact information from interested persons and to ensure notice to such persons, it is reasonable for the Commission to maintain this list.

Subp. 3. Project contact list.
The project contact list is an existing list (under existing rule part 7850.2100, subp. 1, item B, which is recodified in this proposed rule) and includes anyone who has requested to receive notice of a specific project. It is necessary and reasonable to retain this list in the rules because it distinguishes between those individuals who want to be notified when *any* application for a proposed site or route permit has been filed (see existing rule part 7850.2100, subp. 1, item A, which is recodified in this proposed rule) and those who have requested to receive notice of a specific project. Because it is feasible for the Commission to collect contact information from interested persons and to ensure that interested persons are notified, it is reasonable for the Commission to maintain this list.

Based on input from the advisory committee, the Commission considered other possible rule changes. For example, the Commission considered a recommendation to remove 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 notice of a particular project, stating that the standard for determining when someone would like to receive notice is unclear.

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 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 the 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 furthers this legislative policy.

Subp. 4. Public agency contact list.

The public agency contact list includes state and federal agencies that are likely to be interested in, and have regulatory responsibilities related to, permit applications and related filings. This proposed rule is a necessary and reasonable way to ensure that such entities are notified of filings related to the Commission's proceeding. Because it is feasible for the Commission to identify such entities and to ensure that notice is sent to them, it is reasonable for the Commission to maintain this list.

Subp. 5. Landowner list.

The landowner list includes those whose property is on or adjacent to any site the applicant proposed or along any route the applicant proposed, consistent with the requirement in Minn. Stat. § 216E.03, subd. 4, which requires an applicant to give notice of its proposed project to landowners "whose property is on or adjacent to any of the proposed sites for the power plant or along any of the proposed routes for the transmission line." It is necessary to notify these landowners of permit applications and Commission proceedings, such as public meetings and hearings, as well as of filings such as an EIS or EA. Because the applicant is in the best position to identify the persons on the list using its proposed project maps, the rule requires the applicant to maintain this list.

Based on input from the advisory committee, the Commission considered other possible rule changes. For example, the Commission considered input recommending that the rule clarify what is meant by "along" any route by instead using "within" any route, or landowners "within or immediately adjacent to." There was also some opposition to using a more restrictive term that could inadvertently and unreasonably narrow the list of recipients.

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" may not require notice to other landowners whose property is reasonably likely to be affected even though the land is not within a proposed route. The proposed rule therefore does not incorporate the term "within." The proposed rule language is aimed at furthering the legislative policy objective to give broad public notice of proposed projects. Further, the Commission's experience with the phrase "reasonably

likely to be affected" in the certificate of need rules has not shown the language to be problematic for regulated entities who must comply with it.

Subp. 6. Local and tribal government contact list.
It is necessary and reasonable to maintain a list of local and tribal government entities located in the project area to ensure that all concerned or interested local units of government have information on how to engage in the Commission's process and can share information with their members and constituents. Because the applicant is in the best position to identify the entities on this list using its proposed project maps, the rule requires the applicant to maintain this list.

The Commission considered a recommendation to 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 proposed rule therefore does not include this recommended change.

Subp. 7. List Maintenance.
The proposed rule includes requirements to ensure that names are not inadvertently removed from notice lists and to ensure that the lists are subsequently updated to include notice to people who may be affected by a proposed alternative identified or developed later in the proceeding. It is necessary and reasonable to maintain the lists in this way to ensure that interested persons have the opportunity to engage in Commission proceedings, consistent with the legislative policy objective to maximize public participation.

PRE-APPLICATION PROCEDURES
The advisory committee concurred that it would be helpful to establish pre-application procedures, including public outreach meetings; a draft permit application; comment periods on draft applications; and a process schedule. Adding these steps largely codifies existing practice in a manner that engages members of the public earlier in the process and necessarily and reasonably furthers the statutory objective to have an orderly and timely process for considering proposed projects.

7850.1620 PRE-APPLICATION MEETINGS; TRANSMISSION LINES.
Subpart 1. Meetings required.
The proposed 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 codifying this practice increases consistency and uniformity, while promoting public participation early in the process.

The proposed rule also 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 comments received.

The committee agreed that public outreach meetings should be required in transmission line cases because these projects are more likely to directly affect a larger number of people,

frequently requiring more time to develop issues and consider possible alternatives. As a result, the proposed rule does not apply to site permit applications for power plants.

The Commission considered whether to require a public outreach meeting in each county where a proposed transmission line would be located. Committee members disagreed, however, with such an approach, stating that it is not always feasible or efficient to hold meetings in each county, particularly in sparsely populated areas where an area affected is limited and is near another county. They recommended instead that the proposed rule maintain flexibility for applicants to decide, in individual cases, where the hearing would be held, which would enable them to consider the scope of the proposed project, while working with local communities to determine what is feasible and reasonable under the circumstances.

Recognizing the need for flexibility, the proposed rule does not require that public meetings be held in each county where the proposed line would be located. This balances the need to hold multiple public meetings with the need to schedule those meetings at times and places that can accommodate local interests. Further, the proposed rule requires the applicant to work with members of the public to schedule additional meetings upon request. It is also reasonable to require the applicant to file its pre-application meeting schedule with the Commission.

The Commission considered a recommendation to require that the Commission's public advisor be appointed and be available to provide information on routing issues and how to 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 application, which is not yet filed, including appointment of a public advisor, and the proposed rule therefore does not incorporate this recommendation.

Subp. 2. Notice.

The proposed rule requires the applicant to give ten days' notice of its preapplication meetings. While the projects have not yet been formally proposed at this stage of the process, it is reasonable to facilitate early engagement to ensure that the application, once filed, can proceed to next steps in a timely fashion and consistent with applicable statutory deadlines. The committee generally concurred that a ten-day meeting notice is sufficient time for people to plan to attend the meeting. It is unlikely that a longer notice period is necessary, considering that these meetings will likely be among the first opportunity to learn details about the proposed project, therefore requiring less preparation time for those interested in attending.

Subp. 3. Public input.

This subpart sets forth requirements for public outreach meetings, including, materials that identify and describe each route, contact information for the Commission, and an opportunity for the public to offer comments on the proposed project. These requirements necessarily and reasonably ensure that outreach meetings provide members of the public with relevant information necessary for informed and meaningful participation.

The Commission considered a recommendation to clarify whether Department and Commission staff would 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 proposed rule

does not contemplate that the Commission will formally act on the application at this stage. The proposed rule does, however, require the applicant to provide information on how to sign up to receive Commission notices, which is a reasonable way to ensure that people who want to receive Commission notices or contact the Commission can do so.

Subp. 4. Meeting summary.
This subpart requires an applicant to prepare a summary of each public outreach meeting and comments received, and to consider the comments received in deciding which routes to include in its draft application. This requirement reasonably ensures that comments are considered by the applicant and that the input is used to inform the record as it begins to develop.

7850.1640 DRAFT PERMIT APPLICATION REQUIRED.
It is current practice that applicants provide a draft application to the Department to informally begin discussions on a proposed project. The proposed rule therefore 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 in a final application under part 7850.1900, including environmental information. This is consistent with the information applicants currently provide to the Department on an *ad hoc* basis. It is reasonable to codify this practice because it gives the public access to important information early in the process, which will facilitate timely public engagement once the application is filed.

Subpart 1. Draft permit application.
This subpart establishes a minimum 45-day period for filing a draft site or route permit application, requires the applicant to request a Commission docket number, and requires the application to be clearly marked as a draft. It is necessary and reasonable to set forth clear filing requirements that make the document easier for members of the public to understand and access.

Further, the 45-day timeframe ensures that there is enough time for people to begin learning about the proposed project before the application is filed and the formal application review process begins. Because the Commission's final decision on a permit is subject to a statutory deadline, it is necessary to give people relevant project information early in the process to further both timely and thorough record development.

Subp. 2. Draft site permit application; LEPGP.
The requirements under this subpart have been relocated from a separate rule, part 7850.1900, subp. 1, governing site permit application contents. It is necessary and reasonable to include these content requirements in this rule part to ensure that draft permit applications continue to include data that is necessary and relevant for analyzing proposed sites and routes. It is also necessary and reasonable to relocate these requirements to increase clarity and reduce redundancy throughout the proposed rules.

Although the advisory committee largely concurred on these requirements, there was discussion during the advisory committee process on the extent to which eminent domain should be addressed by the applicant in the draft application. Those opposing additional information stated

that applicants are unlikely to know at this point in the process the extent to which eminent domain will be used and stated that it is premature to identify 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. Further, they also recommended against emphasizing the likelihood of its use because applicants often try to avoid eminent domain, although they would not likely waive their right to do so.

Those supporting additional information stated that it would be reasonable to require an applicant to identify the acres of land the applicant would obtain, through contract or condemnation, to build the project, including contiguous land that may be acquired through eminent domain.

Based on the comments received, the proposed rule does not require detailed information on eminent domain. The proposed rule instead requires the draft application 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." This a reasonable method of ensuring that the public is aware that eminent domain could apply without suggesting that it is likely to apply. Because applicants are not likely to yet know the scale of eminent domain to be used within the proceeding, it is reasonable to avoid requiring applicants to file data that is not likely to be accurate.

The proposed rule also incorporates a new item, listed as subpart 2, item O, that requires an applicant to include copies of the size-determination form and the Department's size-determination decision in the draft permit application for a solar-powered facility, consistent with the language of Minn. Stat. § 216E.021. It is reasonable to require the applicant to include this information in its application because the Department's size determination confirms whether the proposed facility is subject to the Commission's jurisdiction.

Subp. 3. Draft route permit application; HVTL.

The requirements under this subpart have been relocated from a separate rule, part 7850.1900, subp. 2, governing route permit application contents. These requirements are necessary and reasonable for the reasons state above for subpart 2. It is reasonable to list the application contents in one rule part to ensure that the applicant can clearly understand what information and data is required.

Subp. 4. Environmental information.

Consistent with the changes described in subparts 2 and 3 above, the proposed rule relocates existing requirements from a separate rule, part 7850.1900, subp. 3, governing the environmental information required in a site or route permit application.

It is necessary and reasonable to include these content requirements in this rule part to ensure that draft permit applications continue to include data that is necessary and relevant for analyzing proposed sites and routes, potential environmental impacts, and potential mitigation measures. It is also necessary and reasonable to relocate these requirements to increase clarity and reduce redundancy throughout the proposed rules.

7850.1650 NOTICE OF DRAFT APPLICATION.

This rule part requires an applicant to give notice of its draft permit application to the general list; the public agency contact list; the landowner list; and the local and tribal government contact list. This requirement necessarily and reasonably supports the legislative goal of promoting public engagement in the permitting process.

Subpart 1. Notice recipients.

This subpart includes the specific lists, identified above, of persons to whom notice must be sent. It is reasonable to send the notice to the persons on these lists because these are lists that will have been established by this point in the process. Subsequent notices that must be given at later stages will be sent to additional lists as those lists are developed. Further, requiring that the notice be given at the time the applicant files the draft application ensures that notice is given in a timely manner, which gives people the opportunity to learn about the proposed project before additional meetings or comment periods.

Subp. 2. Notice content.

This subpart outlines content requirements for the notice. It is necessary and reasonable to delineate clear notice requirements to ensure that applicants understand what needs to be included in the draft application and to ensure that those receiving the notice have relevant information for beginning to evaluate the proposed project.

Subp. 3. Filing with commission.

This subpart requires the applicant to file a copy of the notice with the Commission at the time the applicant mails the notice. This a necessary and reasonable way to ensure both that the Commission receives the notice and that the applicant has complied with notice content requirements.

7850.1680 COMMENTS AND PROCESS.

Subpart 1. Notice to Commission.

The proposed rule requires the Department to notify the Commission of any deficiencies in a draft application within ten days of the date a draft application is filed. This is a necessary and reasonable way to identify deficiencies related to completeness such as missing information. Issues related to the merits of an application or the quality of the data filed will be subject to rigorous review when the record is developed through either an informal Commission proceeding or a contested case proceeding. If the Department finds a deficiency in a draft filing, the applicant will have the opportunity to respond to the Department's notice of deficiency at the time the applicant subsequently files its application under part 7850.1900. This is a reasonable way to ensure that record development can proceed in a timely manner.

The Commission considered taking public comments on the draft application, but at this stage of the process, it is more useful to identify problems with the form of an application, rather than substance because the merits of an application will be subject to subsequent review and record development. Further, comments from the Department will assist the Executive Secretary in making an administrative determination under rule part 7850.1710 on whether an application is complete.

Subp. 2. Notice of comment period.
The proposed rule establishes a comment period on whether the Commission should appoint an advisory task force. The notice will go to all persons and entities listed on each notice list. This is necessary and reasonable 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 with the related scoping process.

Subp. 3. Process schedule.
The proposed rule includes a proposed process schedule to ensure needed flexibility to enable the applicant, the Department, and Commission staff to set project-responsive timeframes. Without this flexibility, timelines set by rule may need to be adjusted, which would require rule variances that would add unnecessary delay to the proceedings.

The Commission considered recommendations to require that the process schedule be an established schedule, not a proposed schedule that could be adjusted only by an Administrative Law Judge for good cause. The Commission also considered a recommendation to set the schedule only after application completeness has been determined. Because there could be months between a draft and final application filing.

To address the issues raised and to establish a predictable process, the proposed rule authorizes the applicant or the Department to request Commission review and modification as reasonably necessary. The proposed rule also does not require that the Commission set timeframes for contested case proceedings, which are governed by the rules of the Office of Administrative Hearings.

Subp. 4. Application process.
The proposed rule identifies the rule parts to which the application is subject after the draft application is filed. This is a necessary and reasonable way to make it clear particularly to regulated entities how to proceed with the application process.

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

Subpart 1. Filing of application for permit.
This subpart requires an applicant to 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 to the general list. This requirement is necessary and reasonable to ensure that government agencies and other interested parties have prompt access to the application.

The distinction between serving the application and sending notice of the application is aimed at avoiding cumbersome filing requirements. Considering that the Commission's electronic filing system, e-dockets, is publicly accessible, there is no need to require applicants to serve copies of the application on entities other than the Department and the OAG. It is reasonable to ensure that these two agencies, which are parties to Commission proceedings and have regulatory responsibilities related to the applications, are served with copies of the application.

Subp. 2. Electronic copy.
The proposed rule repeals this subpart because electronic filing requirements are set forth in proposed changes to subpart 1. This is a necessary and reasonable housekeeping clarification.

Subp. 3. Cover letter and summary.
The proposed rule combines the requirements of Minn. R. 7849.0200, subp. 4 and 7829.2500, subp. 2, which separately require a cover letter and summary. Requiring an applicant to file these items is a reasonable way to give interested or affected persons general information about the proposed project and clarify the nature of the filing.

7850.1710 APPLICATION COMPLETENESS; SCHEDULE.
Subpart 1. Completeness determination.
The proposed rule requires the Commission's Executive Secretary to determine, within ten days of receipt of an application for a site or route permit, whether the application is complete and to notify the applicant in writing of its decision; the proposed rule also delegates to the Executive Secretary to appoint a Commission staff person to be the public advisor for the proceeding and to include that person's name and contact information in the notice sent to the applicant. The proposed rule further states that notice of the decision must be filed in the Commission's electronic filing system. These requirements are necessary and reasonable measures to ensure that the applicant receives timely notice of the Commission's determination on completeness.

The Commission considered recommendations to require that the Commission take comments on whether the application is complete. Under Minn. Stat. § 216E.03, subd. 3, however, the Commission must make a completeness determination within 10 days of the filing. The proposed rule is aimed at ensuring that the Commission's decision complies with this statutory time limit. Further, other proposed rule changes that require an applicant to file a draft application ensure that the public has the opportunity to begin analyzing an application prior to this filing.

Subp. 2. Incomplete application.
This subpart establishes requirements for the Executive Secretary's completeness determination and specifies the procedure for further review in the event that the application is found to be incomplete. It is necessary and reasonable to identify parameters for analysis of application completeness and to prescribe procedural requirements for further analysis of an incomplete application.

Subp. 3. Joint application.
This subpart specifies that for joint proceedings on multiple permit applications, or for applications filed under both chapters 7849 and 7850, those proceedings will not begin until after the Executive Secretary determines that all applications are complete. This requirement necessarily and reasonably ensures that all applications subject to simultaneous review are complete before next steps in the process are taken.

Subp. 4. Process schedule update.
This subpart requires Commission staff to update the process schedule after the completeness determination to reflect any necessary changes. The updated schedule must be sent to the Department and the applicant and be made available to the public upon request.

The Commission considered recommendations to set the process schedule at the time completeness is determined instead of shortly after the draft application is filed. Anticipating that the process schedule is likely to be updated at this stage of the process does not negate the need for establishing a process schedule as early as possible to facilitate effective coordination of the process. Further, updating the process schedule is a reasonable way to provide necessary flexibility to incorporate project-specific considerations. For example, if a proposed project is likely to generate multiple public hearings, Commission staff may have a clearer understanding of such public interest at this stage of the process. As a result, it is reasonable to contemplate that the schedule will be updated at this point to reflect new or additional information.

Subp. 5. Statutory deadline; extension.
This subpart codifies the Commission's authority, under Minn. Stat. § 216E.03, subd. 9, or § 216E.04, subd. 7, to extend the deadline for making a final decision if the Commission determines that the deadline cannot be met. This is a reasonable way to ensure needed flexibility for modifying the process schedule.

The Commission considered a recommendation to *require* 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 proposed rule therefore does not incorporate this recommendation.

7850.1800 PERMIT FEES.
Subpart 1. Requirement.
The proposed rule requires that the estimated fee for processing the permit application be determined at the time an application is filed. This is a necessary and reasonable way to ensure that the applicant is informed of the estimated fee in a timely manner.

Subp. 2. Initial payment.
The proposed rule requires the Department to notify the Commission at the time of receipt of the application if the initial payment has not been made. This is a necessary and reasonable change, which ensures that the Department and the Commission are aware if the initial payment is not made and can follow up with the applicant on the issue as needed.

Subp. 3. Additional payment.
The proposed rule requires the Department to notify the Commission at the time of the final decision on a permit if any assessed fees have not been paid. It is necessary and reasonable for the Commission to be informed of any outstanding fees. It is reasonable to ensure that the Department and the Commission are aware if payments are not made and can follow up with the applicant on the issue as needed.

Subp. 4. Final accounting.
The only proposed changes to this subpart are housekeeping changes to increase clarity, consistent with changes made to other rule parts.

7850.1900 APPLICATION CONTENTS.

Subpart 1. Site permit application ~~for~~; LEPGP.

This proposed rule part incorporates several clarifications to the existing rule, which contains a list of all application content requirements.

As an initial matter, the proposed rule incorporates the statutory requirement under Minn. Stat. § 216E.03, subd. 3, which requires an applicant to propose at least two sites for an LEPGP. It is reasonable to incorporate this requirement and to additionally require (under item A) the reasons the applicant rejected sites that it considered but did not propose. It also reasonable to clarify that an applicant proposing a project that is eligible for review under the alternative review procedures (beginning at rule part 7850.2800) is not required to propose more than one project site.

Because proposed rule part 7850.1640 requires an applicant to first file a draft permit application, this proposed rule identifies the additional items that the applicant must file, while simultaneously requiring the applicant to also include the information required in a draft application. This a reasonable way to ensure that an application filed under this rule part is as complete as possible when filed and that it contains information relevant for analyzing the application, as well as any updates to the information initially filed with the draft application.

Under item B, the applicant must notify the Commission of any change from the draft application that would affect whether the proposed project is still eligible for the alternative review process. It is reasonable to require this information to ensure that the proposed project continues to be eligible for review under the alternative review process.

Under item C, the applicant must identify any material change to the draft application. It is reasonable to require the applicant to identify changes affecting the merits of the application. The committee concurred that it would be unreasonable to require an applicant to identify typos or corrections that would not materially affect the application, and the committee therefore concurred on this language.

Item D requires that the applicant identify the location where a copy of the application is publicly available. This is a reasonable way to ensure that people know where they may view a physical copy of the application in its entirety.

These changes are necessary and reasonable to ensure that the application includes information relevant to record development and that the public has access to that information.

Subp. 2. Route permit application ~~for~~; HVTL.

Similar to the changes described above, this proposed subpart requires that an application for a route permit identify at least two proposed routes, unless the applicant intends to propose a project that is eligible for alternative review.

Item A requires the application to identify proposed routes alphabetically in texts and maps. This is necessary to ensure that parties and the public can readily identify proposed routes and accurately cross-reference those locations on associated maps.

The proposed changes to items B-E track the changes made above, for the same reasons.

Subp. 3. Environmental information.
This proposed subpart requires that the application include the information required in a draft site permit application under part 7850.1650, along with any changes made to the information filed in the draft application. This proposed rule is necessary and reasonable to increase clarity and to ensure that the information filed in the application includes complete and accurate data and other information relevant to analyzing the application and studied in either the EIS or the EA.

7850.2000 ~~APPLICATION REVIEW.~~
The proposed rule repeals this part because application completeness will be governed by proposed rule part 7850.1710.

7850.2100 ~~PROJECT~~ NOTICE <u>OF APPLICATION.</u>
~~Subpart 1. Notification lists.~~
The proposed rule repeals this subpart because notice lists are governed by proposed rule part 7850.1610.

Subp. 2. Notification to persons on general list, to local officials, and to property owners.
Under this subpart, an applicant must, within 15 days of filing an application, mail written notice of the application to the following: the general list; the project contact list; the public agency contact list; the landowner list; the tribal and local government contact list by certified mail;[15] and for a utility, the general service list maintained under part 7829.0600.

Requiring notice of the filing to each of these lists ensures broad public notice, which, in turn, facilitates early participation in the process. It is necessary and reasonable to encourage broad participation by those potentially interested in, or affected by, a proposed project to ensure that the record is fully developed on issues that inform the Commission's decisions on the application.

Subp. 3. Content of notice.
This subpart governs notice content requirements and largely tracks the existing notice requirements with some additional clarifications. Original items E, F, H, and K are being relocated to a subsequent rule part governing notice of the public information and scoping meeting (see part 7850.2300, subp. 2a). Original item D states that the notice must inform recipients that the Commission will hold a public information and scoping meeting. To avoid confusion by stating that a meeting will be held but without providing the time or date of the meeting, the proposed rule repeals this statement. These changes are a reasonable way to increase clarity by eliminating unnecessary information or redundancy, thereby better ensuring that notice recipients receive relevant information from the applicant about the proposed project. A separate meeting notice is governed by part 7850.2300.

The Commission considered a recommendation to retain all notice content requirements currently listed in part 7850.2300, but the proposed rule omits items that are, as stated above,

[15] Minn. Stat. § 216E.03, subd. 4, requires notice to be made by certified mail to these entities.

largely included in a subsequent notice. Although there are reasonable and differing approaches to notice requirements, the Commission is persuaded that clear and concise notices are likely to increase the effectiveness of the notice and encourage public engagement without giving more information that is immediately useful.

Subp. 4. ~~Publication of~~ Newspaper notice.
The proposed rule includes housekeeping changes to update existing rule language and to increase clarity without altering the meaning of the rule.

Subp. 5. ~~Confirmation of notice~~ Compliance filing.
This proposed rule requires an applicant to make a filing demonstrating compliance with these notice requirements, including affidavits of publication, or mailing, and copies of the notice. This requirement necessarily and reasonably provides a method of ensuring that an applicant has complied with applicable notice requirements.

7850.2110 COMENTS ON APPLICATION.
Subpart 1. Notice.
This subpart governs the comment period on the application. It is necessary to set comment periods that provide reasonable opportunity for parties and the public to comment on the filing, while also contemplating applicable statutory timeframes for the Commission's final decision in the matter. These specific timeframes were developed in consultation with the advisory committee to ensure that they are reasonable and appropriately reflect the amount of time needed for obtaining information that will facilitate record development.

Subp. 2. Agency participation.
This proposed rule clarifies that comments filed on behalf of another agency by either the Department or by the Commission appear as "on behalf of" the agency that authored the comments. This clarification is necessary and reasonable for ensuring that agency comments are not mistaken for comments made by the public or other parties.

The Commission considered a recommendation to remove this part due to the language of Minn. Stat. § 216E.03, which requires a contested case proceeding for specific projects. In those instances, the Commission is required to refer the case to the Office of Administrative Hearings for contested case proceedings. The proposed rule is, however, intended to ensure that interested persons can raise issues for Commission consideration after the Commission has determined that the application is complete. The proposed 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, and it ensures that the Commission can satisfy its obligation to make its decision to refer the case in accordance with the Open Meeting Law.

The Commission also considered a recommendation to require that the Commission take comments on whether to appoint an advisory task force at this stage—rather than at the draft application stage (under 7850.1640). 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 proposed 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.

7850.2120 COMMISSION REFERRAL.
After the close of the reply comment period, 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. This proposed rule codifies the Commission's ordinary practice of referring such matters, a necessary and reasonable clarification to the existing rule.

7850.2140 JOINT PROCEEDINGS.
This proposed rule governs the Commission's decision on joint proceedings, a necessary and reasonable way to clarify the structure of the rules. Establishing a rule part that addresses procedures applicable to joint applications enhances the organizational structure of the rules.

It is reasonable to require the consideration of joint meetings and joint hearings, and to decide which procedures should be used to develop the record. These are the primary matters that require coordination on joint applications, and it is therefore reasonable for the proposed rule to include them.

7850.2200 PUBLIC ADVISOR.
The proposed rule includes housekeeping changes to update existing rule language and to increase clarity without altering the meaning of the rule. It is reasonable to make these changes, consistent with similar changes made to other rule parts.

7850.2300 PUBLIC INFORMATION AND SCOPING MEETING.
Subpart 1. Scheduling public information and scoping meeting.
The proposed subpart governs the meeting that is held jointly by the Commission and the Department and clarifies that the meeting will be held in accordance with the process schedule. The roles of the two agencies remain consistent with current practice. Because both agencies are closely involved in the process but with distinct roles, it continues to be needed and reasonable for each agency to have a described role.

Subp. 2. Notice ~~of public meeting~~.
To ensure broad notice, the proposed rule requires notice by the applicant, as well as notice by the Commission, consistent with current practice.

Notice by the applicant must be published in at least one newspaper 14 days prior to the meeting date. These is a necessary and reasonable way to ensure broad public notice and to increase awareness of the meetings. In addition, the applicant must file a copy of each affidavit of publication with the Commission within ten days of receipt. This requirement is a necessary and reasonable way to demonstrate the applicant's compliance with the notice requirements.

The proposed rule requires the Commission to send notice of the meeting to: the project contact list; the public agency contact list; the landowner list; and the local and tribal government contact list. This requirement is a necessary and reasonable way to reinforce broad notice to potentially interested and affected persons. The existing rule requires ten days' notice of the meeting, and the proposed rule retains this timeframe. This is a reasonable amount of time for interested persons to prepare, considering that most recipients will be notified via e-mail, which will be delivered the day it is sent.

Subp. 2a. Notice content.
The requirements listed under this subpart have been relocated from 7850.2100 to increase clarity. In addition to the relocated requirements, the proposed rule incorporates the following additional requirements:

- The date, time, and location of each scheduled meeting, which is a necessary and reasonable way to give interested persons the basic information they need to attend the meeting.

- A statement that the Department will direct the portion of the meeting that includes scoping, which is a reasonable way to clarify the Department's specific role at the meeting.

- A statement that the public hearing will be conducted after completion of either the draft EIS or the EA and that notice of the hearing will be separately mailed, which is a necessary and reasonable way to establish a clear order of events and to ensure that environmental review is conducted before the public hearing takes place.

- 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, which is necessary and reasonable for ensuring that interested persons have relevant information on the issues the Commission has identified for record development.

Subp. 3. Conduct of ~~public~~ meeting.
This proposed rule clarifies that the Department will conduct the scoping portion of the meeting, as described in parts 7850.2500 and 7850.3700, which give further detail of the Department's role. This is a necessary and reasonable clarification, which increases organizational clarity within the rule chapter.

Subp. 4. Applicant role.
The proposed rule requires the applicant to provide, at the meeting, either a copy of the application or a written copy of the electronic link to the application, which is a necessary and reasonable way to ensure that meeting attendees can access the entire application.

~~Subp. 5. EIS scoping.~~
The proposed rule repeals this subpart to increase clarity. It is not necessary to state in this rule partwhich other rule part governs the EIS scoping process. This is a housekeeping change that doesnot alter the meaning of the rule or the subsequent rule part governing EIS scoping.

7850.2400 CITIZEN ADVISORY TASK FORCE.

Subpart 1. Authority.

The last sentence of this subpart requiring the Commission to "advise of the appointment of the task force at the next monthly commission meeting" has been removed from this rule part because the Commission does not hold monthly meetings (typically, the Commission meets on a weekly basis) and acts through its written orders. It is therefore necessary and reasonable to remove this language to ensure that the rules do not set arbitrary requirements that do not accurately reflect how the Commission operates. The Commission is subject to the Open Meeting Law and must give 10 days' notice of its meetings, which are scheduled in a timely matter considering applicable statutory timelines.

Subp. 2. Commission decision.

This proposed rule part also removes the reference to monthly Commission meetings which, as discussed above, does not reflect how the Commission functions. It is necessary and reasonable to repeal this reference to ensure that the proposed rules are consistent with how the Commission operates.

Subp. 3. Task force responsibilities.

This subpart requires the Department to file a report with the Commission summarizing the work of the task force and to include all routes, sites, and impacts identified by the task force, as well as sites or routes recommended for inclusion in the scope of environmental review. This requirement is necessary and reasonable for clarifying the role of the task force, consistent with current practice, without significantly altering the meaning of the rule.

Subp. 4. Termination of task force.

Proposed changes to this rule part modify the language to increase clarity without altering the meaning of the rule.

7850.2450 FULL PERMITTING PROCESS.

This subpart specifies that rule parts 7850.2500 to 7850.2700 apply to all proposed projects that are not eligible for alternative review. This language is a necessary and reasonable way to further clarify the organizational structure of the rules by eliminating from this review process those projects that are eligible for review under the alternative review process.

7850.2500 EIS PREPARATION.

Under the proposed rules, existing subparts are divided into separate rules to increase clarity. The separate parts address the following: the scoping process; alternative sites or routes; notice to the Commission (of the intended scoping decision); the scoping decision; the supplemental filing by the applicant; the draft EIS; the public hearing; the final EIS; the procedure after ALJ report; and the Commission's final decision. Keeping these steps tog

ether in one rule can cause confusion over how the process works. Separating them is a necessary and reasonable way to increase clarity and to ensure that regulated entities and members of the public better understand the process.

To increase clarity, the proposed rule repeals subparts 4, 5, 6, 7, 8, 9, 10, 11, and 12 but largely retains their requirements with modifications, as discussed below.

Subp. 2. Scoping process.
The proposed rule repeals provisions of this subpart that no longer apply to the scoping process. It also clarifies the Department's role in the scoping portion of the meeting. These changes are necessary and reasonable to increase clarity.

This subpart also clarifies that members of the public will have the opportunity to comment on the scope of the EIS, including on potential human environmental impacts and possible mitigation measures, and to submit supporting documentation. It is necessary and reasonable to clarify how the public may comment in a way that facilitates meaningful participation. The proposed rule also reiterates existing language originally located in subpart 3 stating that the applicant must also be provided an opportunity to respond to public input. It is reasonable for the proposed rule to encourage dialogue and discussion that can shed light on possible impacts and mitigation measures.

Subp. 3. Alternative sites or routes.
This subpart clarifies that the applicant will have the opportunity to respond to recommendations and include certain routes in the scope of the EIS. Addressing the feasibility of alternatives at this stage facilitates record development and informed decision-making, and these clarifications are a reasonable way to further this goal.

Subp. 3a. Comment period.
The proposed rule requires the Department to provide a ten-day public comment period following the meeting, giving the public the opportunity to file comments on the scope of the EIS. In subpart 2 of the existing rule, the public has seven days to comment. A slight extension of this comment period is a necessary and reasonable way to ensure that the public has reasonably sufficient time to give informed and thoughtful input following discussion at the meeting.

7850.2520 NOTICE TO COMMISSION.
This proposed rule requires the Department to notify the Commission of the alternatives the Department intends to include in the scope of the EIS, and it requires the Commission make a decision on whether to modify the list by the time of the Commission's decision on record development under part 7850.2120. This ensures that the any alternatives included in the scope of the EIS are also included in the referral order for contested case proceedings. Involving the Commission at this stage of the process is consistent with current practice and with Minn. Stat. § 216E.03, subd. 5, which directs the Department to study and evaluate any site or route the Commission deems necessary. This is a necessary and reasonable way to increase clarity and enhance the organizational structure of the rule.

7850.2530 SCOPING DECISION.

Subpart 1. Scope of EIS.

This proposed rule tracks existing language in part 7850.2500, subp. 3 and 4. That language is largely taken from Minn. R. 4410.2100, an EQB rule that governs the EIS scoping process. The proposed rule also clarifies that the Department must study any proposed site or route that the Department believes would assist the Commission's decision, a necessary and reasonable way to clarify that the Department has the authority to identify site or route alternatives for further record development.

Subp. 2. Filing with commission.

As the scope of the EIS is developed, it is possible that an alternative site or route is identified for further consideration. As a result, the proposed rule requires the applicant to work with the Department to update the landowner list prior to the issuance of the scoping decision. This is likely to ensure that any newly identified landowners not previously on the landowner list will be notified of the scoping decision and subsequent procedural steps. This gives those landowners a reasonable opportunity to participate in the Commission's proceedings and provide input from that point forward.

Subp. 3. Notice of Decision.

The proposed rule requires the Department, within five days after filing the scoping decision with the Commission, to give notice of the decision to the project contact list, the public agency contact list, the landowner list, and the local and tribal government list. This requirement is a necessary and reasonable way to ensure that persons interested in, or affected by, the decision are informed.

Subp. 4. Changes to scoping decision.

The proposed rule includes relocated language from existing subpart 2. The language requires that, after the scope of the EIS is determined, it must not be changed except upon decision by the Department that substantial changes have been made to the project or substantial new information has arisen that significantly affects the potential environmental impacts of the project or the availability of reasonable alternatives. This requirement is a necessary and reasonable way to balance the need for consistency throughout the process and the need for flexibility when a significant change arises. These requirements continue to be useful in facilitating full record development.

7850.2540 SUPPLEMENTAL FILING BY APPLICANT.

The proposed rule requires an applicant to supplement its application with information on each alternative site or route that the Commission determines must be examined, in addition to alternatives identified by the Department or the applicant. This requirement is a necessary and reasonable way to ensure that the applicant's filing contains relevant information to facilitate record development on all alternatives under consideration.

7850.2550 DRAFT EIS.

Subpart 1. Matters excluded.

The proposed rule relocates language from part 7850.2500, subp. 5 to this subpart. The existing language continues to be needed and reasonable. Relocating it to this subpart increases clarity and enhances the organizational structure of the rules.

Subp. 2. Draft EIS
The proposed rule states that the draft must be completed and filed with the Commission consistent with the process schedule. Using the process schedule to establish the applicable timeframe for completion of the draft EIS is a reasonable way to give the parties the flexibilitythey need to respond to project-specific timing issues.

Subp. 3. Public review.
The proposed rule adds the landowner list to those persons the Department must notify of the availability of the draft EIS. It is necessary and reasonable to give notice to landowners to ensure that they are given relevant information on potential project impacts that could affect their land.

Subp. 4. Environmental review meeting.
The proposed rule requires an environmental review meeting (no longer called an "informational" meeting). This is a necessary and reasonable clarification that emphasizes the fact that the meeting is focused on environmental review.

Additionally, the Department must now send notice of the meeting to the general list; the government agency contact list; the landowner list; and the local and tribal government contact list. It is necessary and reasonable to require broad notice of environmental review meetings to all persons who are likely to be interested in attending the meeting.

7850.2570 PUBLIC HEARING.
Subpart 1. Hearing.
Minn. Stat. 216E.03, subd. 6, requires a public hearing to be held after the Department files a draft EIS. It is therefore necessary and reasonable to cite to this statutory requirement to increase clarity.

Subp. 2. Public hearing notice.
The proposed rule requires the Commission to give notice of the hearing consistent with Minn. Stat. § 216E.03, subd. 6. It is necessary and reasonable to set forth basic notice requirements including: the time, date, and location of each hearing; and a statement notifying landowners that the applicant could exercise the power of eminent domain.

Subp. 3. Notice recipients.
The proposed rule specifies that notice must be sent to the project contact list; the public agency contact list; the landowner list; and the local and tribal government list. It is necessary and reasonable to codify this requirement and to ensure broad notice to all potentially interested or affected persons.

Subp. 4. Newspaper notice.
The proposed rule requires the applicant to 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. Such notice must be published at least 10 days before the date of the hearing, and the applicant must file a copy of the affidavit of publication with the Commission within five days of receiving the affidavit.

It is necessary and reasonable to require notice by newspaper to reach as many members of the impacted community as possible. It is also necessary and reasonable to require at least 10 days

between publication and the date of the hearing to allow interested parties time to prepare. Filing a copy of the affidavit of publication with the Commission is a necessary and reasonable way to ensure that the applicant has complied with these requirements.

The existing rules require newspaper notice by the applicant of the following: the proposed project (7850.2100, subp. 4); the public information and scoping meeting (7850.2300, subp. 2); and the final EIS (7850.2500, subp. 9). It reasonable to also require newspaper notice of the public hearing, as explained above.

7850.2600 ~~CONTESTED CASE HEARING.~~
The proposed rule repeals this part because contested case hearings are governed by proposed rule part 7850.2570.

7850.2650 FINAL EIS.
Subpart 1. Contents.
The proposed rule incorporates existing language from part 7850.2500, subp. 9. The last sentence of that subpart is not incorporated into the proposed rule, however, because the Commission, not the Department, publishes notice of the availability of the final EIS. The existing language, which the proposed rule incorporates, continues to be needed and reasonable because it ensures that the Department is responsive to comments filed and can easily append the comments to the final EIS.

Subp. 2. Filing and public access.
This proposed subpart specifies that the final EIS must be completed and filed with the Commission in accordance with the process schedule. This requirement is a necessary and reasonable way to ensure that the final EIS is completed in a timely manner that reflects project-specific considerations.

Subp. 3. Public comment.
This proposed subpart states that the public will have 25 days to comment on the final EIS and that the comment period will be set by Commission staff in consultation with the ALJ assigned to the case. This time period gives the public a reasonable opportunity to respond after the final EIS is made available, ensuring that the record is fully developed on any remaining or outstanding issues related to the adequacy of the EIS for Commission consideration.

Subp. 4. Cost.
Subp. 5. Environmental review requirements.
These two proposed subparts relocate existing language in part 7850.2500, subp. 11 and 12. The rules continue to be needed and reasonable to ensure that the process is clear. Relocating them into this rule part increases clarity and enhances the organizational structure of the rules.

7850.2675 PROCEDURE AFTER ADMINISTRATIVE LAW JUDGE REPORT.
Subpart 1. Parties.
This new subpart codifies the requirement that parties must file exceptions to an ALJ's report, consistent with the existing requirement under part 7829.2700. It is necessary and reasonable to include this language in this rule chapter to ensure that parties who may not participate in other Commission proceedings are aware of the requirement.

Subp. 2. Participating agencies.
This proposed subpart requires a state or federal agency participating in a site or route permit process to file final comments in the case within the same time period in which exceptions are due for parties. This requirement necessarily and reasonably distinguishes between party comments and agency comments and further ensures that final comments are duly filed and publicly available.

7850.2700 FINAL DECISION.
Subp. 2. EIS adequacy.
The proposed rule includes a housekeeping change to increase clarity in language usage without altering the meaning of the rule.

Subp. 2a. Adequacy determination.
The proposed rule relocates existing language from part 7850.2500, subp. 10, into this part. This language continues to be needed and reasonable; determining the adequacy of the EIS is necessary to facilitating informed decision-making. Relocating the language increases clarity and enhances the organizational structure of the rules.

7850.2800 ELIGIBLE PROJECTS.
Subpart 1. Eligible projects.
The proposed rule adds large electric power generating plants that are powered by solar energy to the list of eligible projects. It is necessary and reasonable to incorporate this recent statutory amendment made to Minn. Stat. § 216.04, subd. 2 (8).

Subp. 2. Notice to ~~PUC~~ commission.
Under these proposed rule changes, an applicant who intends to follow the alternative review procedures must notify the Commission of such intent at the time the applicant files a draft permit application under part 7850.1640. The previous requirement, that an applicant provide at least ten days' notice prior to filing an application, is no longer necessary, considering that a separate proposed rule requires such notice with a draft permit application. The proposed rule therefore repeals the 10-day requirement and replaces it with the requirement that the applicant notify the Commission of its intent in the draft application.

~~7850.2900 PERMIT APPLICATION UNDER ALTERNATIVE PROCESS~~.
~~7850.3000 PERMIT FEES~~.
~~7850.3100 CONTENTS OF APPLICATION~~.
~~7850.3200 APPLICATION REVIEW~~.
~~7850.3300 PROJECT NOTICE~~.
~~7850.3400 PUBLIC ADVISOR~~.
~~7850.3500 PUBLIC MEETING~~.
~~7850.3600 CITIZEN ADVISORY TASK FORCE~~.

The parts are repealed because they largely set forth redundant requirements that are described in other parts. Instead of retaining these parts, which include citations to other parts, separate proposed rule parts clarify which requirements apply to various types of projects. It is therefore no longer necessary or reasonable to retain these parts.

7850.3700 ENVIRONMENTAL ASSESSMENT PREPARATION.
Under the proposed rules, existing subparts are divided into separate rules to increase clarity. The separate parts address the following: the scoping process; notice to the Commission (of the intended scoping decision); the scoping decision; supplemental filing by applicant; the Environmental Assessment; the public hearing; and final decision. Keeping them together in one rule part can make it difficult to understand the steps in relation to each other. Separating them is a necessary and reasonable way to increase clarity and to ensure that regulated entities and members of the public better understand the process.

To increase clarity, the proposed rule repeals subparts 3, 4, 5, 6, 7, 8, and 9 but largely retains their requirements with modifications, as discussed below.

Subpart. 1. Environmental assessment required.
The proposed rule includes housekeeping changes to increase clarity in language usage without altering the meaning of the rule. The is a reasonable way to increase clarity.

Subp. 2. Scoping process.
The proposed rule states that the public information and scoping meeting must include an opportunity for public participation in the development of the scope of the environmental assessment, a necessary and reasonable way to ensure that the public has the opportunity to comment on the merits of the application, potential impacts, and possible mitigation measures.

Subp. 2a. Alternative sites and routes.
The proposed rule includes housekeeping changes that increase clarity in language usage without altering the meaning of the rule.

Subp. 2b. Public comment.
This proposed subpart requires the Department to provide a ten-day comment period following the close of the public information and scoping meeting to allow interested persons the opportunity to file comments on the scope of the EA. The existing rule (subp. 2, item A) gives the public seven days to comment. Extending this comment period slightly is a necessary and reasonable way to ensure that the public has reasonably sufficient time to give informed and thoughtful input.

7850.3720 NOTICE TO COMMISSION.
This proposed rule requires the Department to notify the Commission of the alternatives the Department intends to include in the scope of the EA, and it requires the Commission to make a decision on whether to modify the list by the time of the Commission's decision on record development under part 7850.2120. This ensures that any alternatives included in the scope of the EA are also included in the referral order for contested case proceedings. Involving the Commission at this stage of the process is consistent with current practice and with Minn. Stat. § 216E.03, subd. 5, which directs the Department to study and evaluate any site or route the Commission deems necessary. This is a necessary and reasonable way to increase clarity and to ensure that the record can be fully developed.

7850.3730 SCOPING DECISION.

Subpart 1. Scoping decision.

Rather than maintaining specific periods within which the Department must determine the scope of the EA, the proposed rule requires the Department to determine the scope of the environmental assessment "in accordance with the process schedule." It is reasonable to use the process schedule to set the applicable timeframe, which gives the parties the flexibility they need to respond to project-specific timing issues.

Subp. 2. Notice of decision.

This subpart requires that, within five days after filing the scoping decision with the Commission, the Department give 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. This requirement is a necessary and reasonable way to ensure that interested persons receive notice of the scoping decision in a timely manner.

As the scope of the EA is developed, it is possible that an alternative site or route will be identified for further consideration. As a result, the proposed rule requires the applicant to work with the Department to update the landowner list prior to the issuance of the scoping decision. This is a reasonable way to ensure that any newly identified landowner not previously on the landowner list will be notified of the scoping decision and subsequent procedural steps. This gives those landowners a reasonable opportunity to participate in the Commission's proceedings from this point forward.

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

This subpart requires that any alternative identified by the applicant must be included and considered in the EA. This requirement is a necessary and reasonable way to ensure that alternatives identified by the applicant, in addition to those identified by the Commission, are included and considered in the scope of the EA.

7850.3740 SUPPLEMENTAL FILING BY APPLICANT.

The proposed rule requires an applicant to supplement its application with information on each alternative site or route that the Commission determines must be examined, in addition to alternatives identified by the Department or the applicant. This requirement is a necessary and reasonable way to ensure that the applicant's filing contains relevant information to facilitate record development on all alternatives under consideration.

7850.3750 ENVIRONMENTAL ASSESSMENT.

Subpart 1. Content of EA.

The proposed rule relocates existing language from part 7850.3700, subp. 4, which includes language that continues to be needed and reasonable. The relocation of the language is necessary and reasonable to increase clarity and to enhance the organizational structure of the rules without altering the meaning of the rule.

Subp. 2. Time frame for completion of environmental assessment.
This subpart has been simplified to require that the Department file the EA with the Commission in accordance with the process schedule. This requirement is a necessary and reasonable way to ensure that the EA is completed in a timely manner that reflects project-specific considerations.

Subp. 3. Notification of availability of EA; and
Subp. 4. Matters excluded.
These subparts include the language in existing subparts 6 and 7. The language has been relocated to these subparts to enhance the organizational structure of the rule chapter and to increase clarity. The language of these subparts continues to be needed and reasonable to ensure that the EA is promptly available and to clarify that the EA will not address questions of need, which are addressed under Chapter 7849.

Subp. 5. No additional environmental review; and
Subp. 6. Cost.
These proposed rules relocate language from part 7850.3700, subp. 8 and 9. The existing language continues to be needed and reasonable and its relocation to this part increases clarity and enhances the organizational structure of the rule without altering the meaning of the rule. Subpart 5 is consistent with Minn. Stat. § 216E.04, subd. 5, which states that an EA is the only form of environmental review required. Further, it is necessary and reasonable to retain language in subpart 6 that assesses the costs for the EA by the Department to the applicant.

7850.3800 PUBLIC HEARING.
Subpart 1. Public hearing.
This proposed subpart has been simplified to state that the Commission must hold a public hearing, conducted by an ALJ, on a site or route permit application as required under Minn. Stat.§ 216E.04. This is a necessary and reasonable way to clarify that the Commission will follow the statutory framework.

Subp. 1a. Public hearing notice.
This proposed rule requires that the Commission give notice of the public hearing at least ten days in advance but no more than 45 days prior to the hearing, consistent with Minn. Stat. § 216E.03, subd. 6 (and as required by Minn. Stat. § 216E.04, subd. 6). The proposed rule also requires that the notice inform recipients that their land could be in the final site or route selected. These are necessary and reasonable ways to ensure that the public is properly notified of the hearing and is aware that their property could be affected.

Subp. 1b. Notice recipients.
This proposed rule requires the Commission to send notice of the hearing to the project contact list; the public agency contact list; the landowner list; and that notice be sent by certified mail to the local and tribal government list, consistent with the statutory requirement that notice of the meeting be sent to those entities by certified mail (Minn. Stat. § 216E.03, subd. 6). It is reasonable to give broad notice of the hearing to increase the likelihood of participation by these persons and organizations.

Supb. 2. Hearing examiner.
The proposed rule modifies this subpart to reflect the fact that the Commission will ask an ALJ to preside over the public hearing using procedures of the Office of Administrative Hearings, a necessary and reasonable clarification, which facilitates a disciplined and effective hearing process.

Subp. 3. Hearing procedure.
The proposed rule adds item D to this subpart to ensure that the Department files the EA as part of the record at the public hearing. This is a necessary and reasonable way to ensure record development on issues related to the Commission's consideration of the permit.

Subp. 4. Issues; and
Subp. 5. Environmental Assessment.
These rules include housekeeping changes to increase clarity without altering the meaning of the rule.

7850.3900 FINAL DECISION.
The proposed rule includes housekeeping changes to increase clarity without altering the meaning of the rule.

~~**7850.4000 STANDARDS AND CRITERIA.**~~
The proposed rule repeals this part because it is clearer to cite to the governing statute, Minn. Stat. 216E, in the subsequent rule part.

7850.4100 FACTORS CONSIDERED.
This proposed rule—in conjunction with the proposed repeal of rule part 7850.4000 (which unnecessarily restates the language of several statutory provisions)—clarifies the factors that the Commission must consider in addition to statutory factors. The proposed rule adds consideration of "information on electric and magnetic fields" as requested by some advisory committee members. It is necessary and reasonable to require this data to ensure that all potential impacts of a project are identified and considered.

~~**7850.4200. FACTORS EXCLUDED.**~~
The proposed rule repeals this part because it is not necessary to state that the Commission will not consider questions of need, which are governed by Chapter 7849.

7850.4400 PROHIBITED SITES.
7850.4500 PERMIT APPLICATION REJECTION.
7850.4600 PERMIT CONDITIONS.
These proposed rules include housekeeping changes to increase clarity without altering the meaning of the rule.

<u>7850.4650 COMPLIANCE FILING.</u>
The proposed rule codifies existing practice in which applicants file a plan and profile of the project, prior to construction, for Commission consideration.

Subpart 1. Plan and profile.
This proposed subpart requires an applicant to file a proposed plan and profile at least 30 days prior to construction. This ensures that detailed project information is publicly available prior to construction, a necessary and reasonable addition to the existing rules.

Subp. 2. Commission decision.
This subpart delegates to the Commission's Executive Secretary the authority to determine whether the plan and profile is consistent with the project's permit conditions. This ensures that there is prompt review and that the permittee is notified in writing of the decision. The proposed rule also requires the permittee to notify the Commission of any subsequent changes to the plan and profile, a reasonable requirement to ensure that the Commission is informed of any changes that could affect the project's operations.

7850.4700 DELAY IN ROUTE OR SITE CONSTRUCTION.
The proposed changes to this rule are housekeeping clarifications to enhance the notice requirements and ensure that persons likely to be affected are notified and given the opportunity to participate in the Commission's process.

7850.4800 MINOR ALTERATION TO GENERATING PLANT OR TRANSMISSION LINE.
Subpart 1. Applicability.
Proposed rule changes to this subpart include a clarification that the rule applies to changes in projects that have not yet been constructed. It is necessary and reasonable to clarify that project changes that a permittee anticipates making are subject to Commission approval.

Subp. 2. Application for minor alteration of a site or route.
Proposed rule changes to this subpart expand notice requirements to ensure that persons potentially affected by a minor alteration are notified of the filing and have the opportunity to comment and participate in the Commission's process. It is reasonable to facilitate opportunity for comment and record development by broadening the notice requirements.

Subp. 3. Commission decision.
The proposed rule repeals this part because it is not possible for the Commission to meet within ten days to make a decision on a minor alteration. The Commission is subject to the Open Meeting Law, which requires the Commission to issue a ten-day notice before holding a meeting. Requiring the Commission to make a decision within ten days after the close of the public comment period would not enable the Commission to reasonably prepare for, and notify people of, a Commission meeting. Further, the Commission acts promptly to develop the record in individual cases, reach decisions, and issue orders. The existing rule was originally applicable to the EQB, and as a result, this rule part is no longer needed and reasonable.

7850.4900 AMENDMENT OF PERMIT CONDITIONS.
Subpart 1. Authority.
Proposed changes to this subpart clarify that the Commission will consider a permit amendment request from someone who claims to be affected by a permit condition, a necessary and reasonable way to ensure that such claims can be considered.

Subp. 2. Process.
Changes to this subpart expand the notice requirements to ensure that persons reasonably likely to be affected by the amendment are notified and will have the opportunity to comment. This is a necessary and reasonable way to facilitate record development on such issues.

Subp. 3. Decision.
The proposed rule repeals this part because it is not possible for the Commission to meet within ten days to make a decision on permit amendments. The Commission is subject to the Open Meeting Law, which requires the Commission to issue a ten-day notice before holding a meeting. Requiring the Commission to make a decision within ten days after the close of the public comment period would not enable the Commission to reasonably prepare for, and notify people of, a Commission meeting. Further, the Commission acts promptly to develop the record in individual cases, reach decisions, and issue orders. The existing rule was originally applicable to the EQB, and as a result, this rule part is no longer needed and reasonable.

7850.4950 REPORTS.
This is a new rule part that requires permittees to file reports on complaints received. It codifies existing practice in which applicants notify the Commission of complaints. Requiring a permittee to file a monthly report until the project's construction is completed facilitates clear communication between the permittee and the Commission on potential issues arising from operation of the facility. This is a necessary and reasonable way to facilitate timely and effective resolution of complaints.

7850.5000 PERMIT TRANSFER.
The proposed rule includes housekeeping changes to increase clarity without altering the meaning of the rule. Additionally, subpart 2 strikes language authorizing the Commission to hold a public meeting on the matter. Instead, the proposed rule requires the permittee to notify the Commission of ownership changes within ten days of the change. The Commission will then consider whether to take further steps to develop the record on the matter and apply the rules of practice and procedure under Chapter 7829 as warranted. This is a necessary and reasonable way to ensure that the record is developed based on the information that is filed.

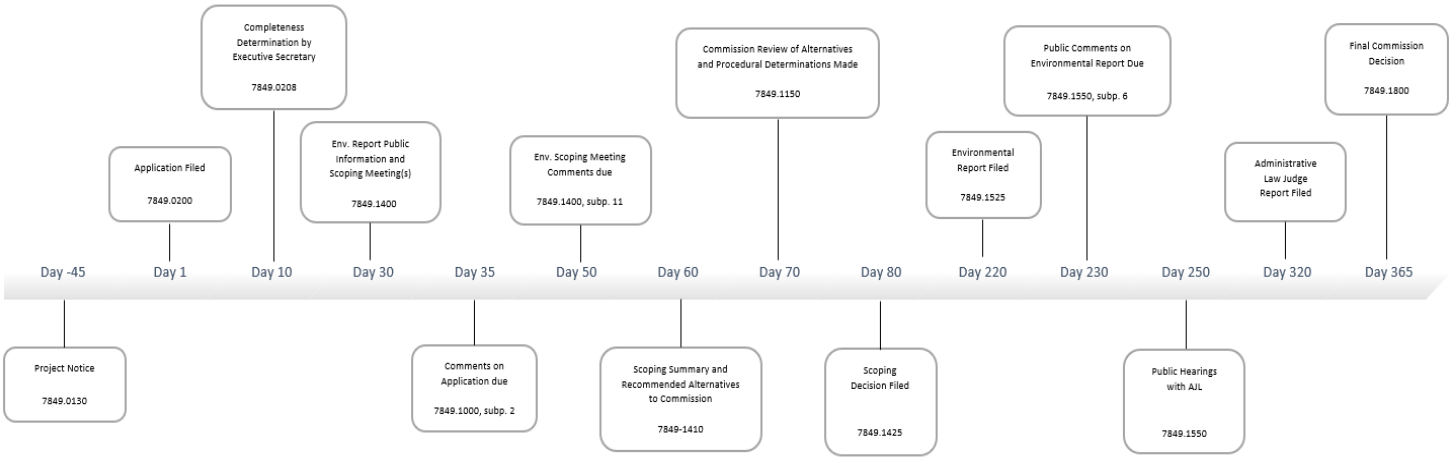
7850.5100 PERMIT REVOCATION OR SUSPENSION.
Subpart 1. Initiation of action to revoke or suspend.
The proposed rule includes a housekeeping clarification to ensure that the applicable statute is cited.

Subp. 2. Hearing.
This proposed subpart clarifies that the Commission is not required to proceed with a contested case when conducting a hearing on possible revocation or suspension of a permit. This is a necessary and reasonable change, which ensures that the Commission will determine, on case on a case-by-case basis, whether there are material facts in dispute, considering the issues raised in the filings. It is reasonable to authorize the Commission to make this procedural decision based on the factual assertions made in an individual case.

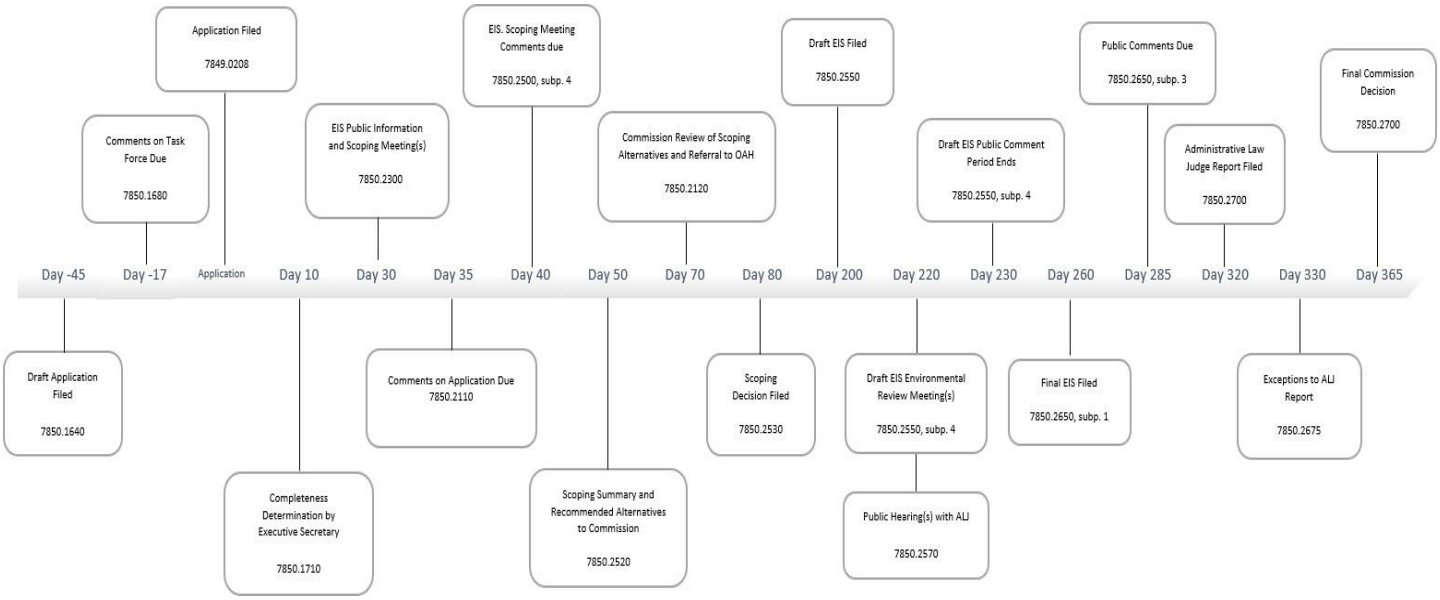
Subp. 3. Finding of violation.
This subpart includes housekeeping changes to increase clarity without altering the meaning of the rule.

Parts 7850.5200 to 7850.5600
The chapter's remaining rule parts, parts 7850.5200 to .5600 include housekeeping changes to increase clarity without altering the meaning of the rules.

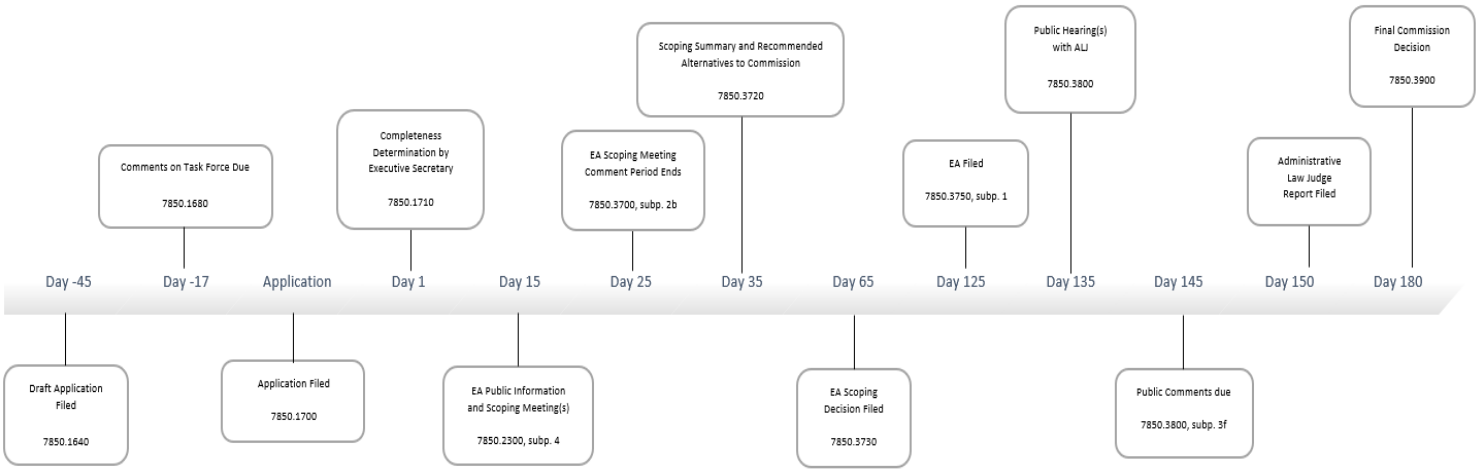
CERTIFICATE OF NEED REVIEW PROCESS
Chapter 7849



FULL PERMITTING PROCESS
Chapter 7850



ALTERNATIVE REVIEW PERMITTING PROCESS
Chapter 7850



VII.
REGULATORY ANALYSIS

The Administrative Procedure Act requires the statement of need and reasonableness to address the regulatory issues set forth and addressed below.

(1) A description of the class of persons who will probably be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule. Minn. Stat. § 14.131 (1).

The following persons will probably be affected by the proposed rules:

- All Minnesota energy utilities, transmission companies, and independent power producers that intend to construct electric power plants or power lines subject to Commission approval.
- Local and tribal government officials and interested members of the public who will be affected by proposed power plants or power lines in their areas.
- Residents and landowners who may be affected by the proposed location of power plants or power lines.
- Government agencies with regulatory responsibilities for power plants and power lines.

The following persons will probably bear the costs of the proposed rules:

- All Minnesota energy utilities and independent power producers that own or operate power plants or power lines and which must implement the rule's requirements and make filings under the rule.
- Customers of energy utilities that own or operate power plants and power lines whose rates will eventually include the costs of compliance and regulatory enforcement.
- Local and tribal governments who will expend time and resources to participate in, or to consider participating in, the certificate of need or permit proceedings.
- Landowners, residents, business owners, and members of the public who expend time and resources to participate in certificate of need or permit proceedings.
- Government agencies with regulatory responsibilities over power plants and power lines that will expend resources to help develop the record in Commission certificate of need or permit proceedings.

The following persons will probably benefit from the proposed rules:

- Minnesota energy utilities, transmission companies, and independent power producers that own or operate power plants and power lines, who will benefit from clear procedural rules and from early public engagement and early involvement of local and tribal government officials in Commission proceedings.
- Local and tribal government officials and interested members of the public, who will have new opportunities for early involvement in Commission proceedings.

- Residents and landowners who may be affected by proposed power plants or power lines and who will receive earlier notice of plans to construct such facilities on or near their properties or places of residence and who will have new opportunities for early involvement in Commission proceedings.
- Members of the public who may be affected by proposed power plants and power lines and who will receive earlier notice of plans to construct such facilities.
- Government agencies with regulatory responsibilities whose mission will be advanced by early and new opportunities for participation in Commission proceedings by local and tribal government officials, interested members of the public, and potentially affected residents and landowners.

(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues. Minn. Stat. § 14.131 (2).

The proposed rules will make claims on the resources of the Commission and the Department of Commerce, government agencies with regulatory responsibilities for developing analyses that facilitate informed decision-making by the Commission and with specific enforcement responsibilities related to power plants and power lines. The proposed rules may also make claims on the resources of the Antitrust and Utilities Division of the Office of the Attorney General, which represents the interests of residential and small business ratepayers. In relation to existing rules, however, the probable costs to these agencies to implement and enforce the proposed rules are negligible.

The Commission does not expect this rule to have any effect on state revenues.

(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule. Minn. Stat. § 14.131 (3).

The proposed rules were developed to update the existing rule procedures and to comply with statutory changes, and no less costly or less intrusive methods were identified by stakeholders or the Commission in the course of rule development.

(4) A description of any alternative methods for achieving the purpose of the proposed rules that were seriously considered by the agency and the reason why they were rejected in favor of the proposed rule. Minn. Stat. § 14.131 (4).

The Commission concluded that the 2005 legislative transfer of authority from the EQB to the Commission over the environmental report process in Chapter 7849 and over the siting and routing processes in Chapter 7850 required amending the rules to effectively implement and establish clear procedures, precluding use of other less intrusive or less costly approaches.

(5) The probable costs of complying with the proposed rules. Minn. Stat. § 14.131 (5).

The proposed rules do not impose costs on anyone. Without the proposed rule changes, compliance with, and enforcement of, the rules could ultimately result in increased costs by creating uncertainty as to how the rules apply or by requiring frequent rule variances.

(6) The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals; Minn. Stat. § 14.131 (6).

The rules are necessary to incorporate statutory changes, which the Legislature implemented in 2005. In the absence of a rule change, the existing rules would not fully comply with changes made to Minn. Stat. § 216B.2421; Minn. Stat. § 216B.243; and Minn. Stat. 216E. This could hinder both enforcement and compliance with applicable law. Only through this rulemaking proceeding can the Commission's rules be updated to effectively incorporate the legislative changes and therefore the Commission has determined there is no less costly or less intrusive method for achieving the purpose of the proposed rule.

(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference. Minn. Stat. § 14.131 (7).

The Commission has examined federal regulations and is not aware of any differences between the proposed rules and any federal regulations.

(8) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. Minn. Stat. § 14.131 (8).

The Commission is not aware of any cumulative effects of the rule with other federal and state regulations related to the specific purpose of the rule, which sets forth the applicable procedures governing certificates of need and site and route permits for large electric generating facilities and high-voltage transmission lines, consistent with governing statutes. The Commission worked with an advisory committee during this rulemaking proceeding and no one on the committee or attending the advisory committee meetings identified any such cumulative effects.

VIII.
CONSIDERATION OF PERFORMANCE BASED REGULATORY SYSTEMS

Minn. Stat. § 14.002 requires agencies to develop rules and regulatory programs that emphasize superior achievement in meeting regulatory goals while retaining maximum flexibility for agencies and regulated parties in meeting those goals. Minn. Stat. § 14.131 requires agencies to explain in their statements of need and reasonableness how they have taken this legislative policy into account.

The Commission was guided by performance-based regulatory principles as it developed these rules. The rules incorporate recent statutory changes and extend duties and burdens no further than necessary to incorporate and implement the legislative changes, to clarify the Commission

procedures, and to fulfill the Commission's regulatory responsibilities. The proposed rules maintain flexibility to ensure that the parties and the public have opportunities to facilitate record development in individual Commission proceedings, while establishing a clear procedural framework and updated application content requirements. Balancing these interests and goals facilitates informed decisions and effective and efficient case-by-case decisions by the Commission.

IX.
COST OF RULE COMPLIANCE

The Commission has consulted with the Department of Minnesota Management and Budget (MMB), as required by Minnesota Statutes § 14.131, to help evaluate the fiscal impact and fiscal benefits of the proposed rule on local units of government. MMB stated that local units of government are not expected to incur costs as a result of the proposed rule changes.

While Minnesota Statutes § 14.127 directs agencies to evaluate the cost its rules will impose on small businesses or cities, the proposed rules are exempt from this requirement. See Minnesota Statutes § 14.127, subdivision 4(d).

X.
EFFECTS ON LOCAL GOVERNMENT

The Commission has determined, under Minn. Stat. § 14.128, that no local unit of government will be required to adopt or amend an ordinance or other regulation to comply with the proposed rule changes governing certificates of need and site and route permits for large electric generating facilities and high-voltage transmission lines.

The Commission makes this determination based on its Statement of Need and Reasonableness (SONAR), the comments received, the review conducted by the Commissioner of Management and Budget, and the input and feedback provided by the advisory committee.

On pages 74-76 of the SONAR, the Commission identified persons who would likely be affected by and bear the costs of the rules. These include members of the public and regulated entities, as well as agencies with regulatory responsibilities. The rules do not impose specific requirements, administrative responsibilities, or costs on local units of government. The Commission has therefore determined that local governments will not be required to adopt or amend ordinances or other regulations to comply with the proposed rules.

Additionally, neither the comments received from stakeholders nor the feedback from the advisory committee indicated that local governments would be significantly affected by, or required to adopt or amend local regulations to comply with, the proposed rules.

XI.
LIST OF WITNESSES

The Commission does not plan to rely on any non-agency witnesses at any rule hearing.

XII.
ADDITIONAL NOTICE PLAN

To ensure the public has sufficient notice to participate in a proposed rulemaking, the Administrative Procedure Act requires agencies to take certain prescribed steps to publicize their rulemakings. In addition, Minn. Stat. § 14.14, subd. 1a, requires agencies to make unspecified additional efforts to notify persons who might be affected by the proposed rules, and § 14.131 requires agencies to describe these efforts in their Statements of Need and Reasonableness.

The Commission plans to publicize its proposed rule changes in the following manner:

- Publishing the Notice of Intent to Adopt Rules, and text of the proposed rule changes, in the *State Register*.
- Mailing a copy of the Notice of Intent to Adopt Rules to everyone who has requested to receive it pursuant to Minn. Stat. § 14.14, subd. 1a.
- Giving notice to the Legislature as required by Minn. Stat. § 14.116.
- Publishing the Notice of Intent to Adopt Rules and this Statement of Need and Reasonableness, including the text of the proposed rules, on the Commission's website at http://mn.gov/puc/index.html.
- Mailing the Notice of Intent to Adopt Rules to Minnesota's electric utilities; independent power producers; and transmission companies.
- Mailing the Notice of Intent to Adopt Rules to everyone on the Commission's notification list under Minn. R.7850.2100, subp. 1, item A.
- Mailing the Notice of Intent to Adopt Rules to local and tribal governments throughout the state.
- Mailing the Notice of Intent to Adopt Rules to everyone on the Commission's official service list for this proceeding.
- Issuing a press release to all newspapers of general circulation throughout the state.

XIII.
CONCLUSION

For all the reasons set forth above, the Commission respectfully submits that the proposed rules are both needed and reasonable.

Will Seuffert
Executive Secretary