

**MINNESOTA ENVIRONMENTAL QUALITY BOARD**  
**MEETING MINUTES**  
**Thursday, May 20, 2004**  
**Pollution Control Agency, Board Room**

**EQB Members Present:** Bruce Bomier, Sheryl Corrigan, Art Dunn, Gene Hugoson, Brian Lamb, Susan McCarville, Dianne Mandernach, Mary Mellen, Gene Merriam, Jonathon Bloomberg, Glenn Wilson, and Paige Winebarger

Also in attendance: Ron Harnack for BWSR and David Yecke for DEED

**EQB Members Absent:** Robert A. Schroeder, Jerome Deal, Matt Kramer and Lt. Governor Molnau

**I. Adoption of Agenda and Minutes from May 20, 2004 Environmental Quality Board Meeting**

Citizen Member Winebarger made a motion that the Agenda and Minutes be adopted and Citizen Member McCarville seconded. That motion carried.

**II. Executive Director's Report:**

Michael Sullivan summarized the handouts for this meeting; they are a Hutchinson document, a memo from the Nicollet County Auditor regarding drain tile, a High Level Radioactive report and modifications on two resolutions from your packets.

The next item is a brief wrap up of the legislative session in which a DNR bill clarifies the restrictions on the use of off highway vehicles on wetlands, this item does not affect the trails rulemaking taking place later in this agenda. Then there was a bill which required EQB to study and adopt mandatory categories for lakeshore developments and that item did not pass. Next there was a bill that required the EQB to amend it's rules to explicitly include mention of whether a project is consistent with local plans with EAWs and EISs and that also was not passed. Finally there was a bill that required the EQB to amend its guidance documents and include mitigation measures and again that bill was not passed.

The High Level Nuclear report is a by-product of statutes and there is a prescribed group of staff that receives that report. Staff have been contact by Xcel Energy to work with the Monticello Nuclear Power Plant where there is talk about extending the license of the facility, and that is likely to lead to questions, issues and discussion about dry cask storage.

**III. Committee Reports**

No Committee Reports

**IV. Legal Counsel Report:**

*Legal Counsel:* Dwight Wagenius stated that no one is suing the EQB.

**V. Agency and Citizen Update:**

Commissioner Merriam, DNR, brought to the Board's attention the AUAR problems and asked that the Board think about how the process works and how the process might be improved.

Commissioner Corrigan announced that the PCA has published a phosphorus report and said it might be of interest to the Board Members and the audience.

Mr. Harnack, BWSR, suggested that the report on phosphorus is a very significant report in regard to the priorities for water quality. He also added that BWSR is in the process of finalizing an agreement with the USDA which will provide a significant contribution to helping water quality.

Commissioner Wilson stated that the Commerce Department sponsored two energy conferences in the past month and both were attended very well by state and national participants with the material being well received and very beneficial to the conservation of energy in the state.

Commissioner Mandernach said that the Health Department annual review of the drinking water in the state reported good condition and good information in the report.

Commissioner Hugoson commented that with the cost of fuel in the state that there continues to be interest in renewable fuels for agricultural products and ethanol products. The lack of a federal energy bill is still causing us some concerns and some of the issues that might affect further development is somewhat stagnant.

Mr. Yecke, DTED, extended Commissioner Kramer's regards to the Board and that he was with the Governor on his way to announce some Job Z openings in Moorhead, Grand Rapids and Silver Bay.

#### **VI. \*Vice Chair election**

The Chair asked that Vice Chair elections not take place at this meeting.

#### **VII. \*Great River Energy – Plymouth/Maple Grove 115 kV Transmission Line**

George Johnson, EQB Staff, summarized the project as a 115 kV high voltage transmission line (HVTL) proposed by Great River Energy in the Plymouth/Maple Grove area. Mr. Lennon, Project Engineer from Great River Energy, and members of his team are also here today and he will answer the technical questions. In your Board packet you have a project memo, a copy of the administrative law judge's report and recommendations, a map of the proposed route, and you will find permit documents including a route permit, proposed finding of facts and conclusions and a resolution adopting that proposed route permit.

Mr. Johnson then stated that the EQB is asking the Board to issue a route permit to Great River Energy for a new 115 kV transmission line in the Plymouth/Maple Grove area. The new HVTL is approximately 14 miles in length and will connect seven existing substations. Ten miles of the new line is an upgrade of the existing 40 year old 69 kV line which is no longer adequate to service the area and four miles will be a new 115 kV line. The PUC has granted GRE a certificate of need on this project. The proposed HVTL is intended to provide better electric service and increase system reliability. GRE has examined many route segments and alternatives prior to submitting a route application. Several public meetings were held by both the EQB and GRE to inform people of the project and to let the public comment on the environmental assessment which was prepared for this project. The EQB Chair asked the Office of Administrative Hearings to assign an Administrative Law Judge to conduct a public hearing on this project. Judge Sheehy was the Administrative Law Judge on this project and she wrote a report and made recommendations to the Board. Judge Sheehy recommended that the EQB issue a route permit for the route proposed by GRE with appropriate permit conditions.

There are several issues you should be aware of. Residents along three segments of the route have objected to GRE's proposal and would like to see the line moved or placed underground. Three alternative route segments were considered to deal with the residents' concerns. The three areas are: 1.)73rd Avenue near Cedar Island Lake, 2.)Bass Lake Road alternative and 3.)Rockford Estates Townhome alternative.

There is no controversy on the first four substations to the north. The first objection comes near Cedar Island Lake and Highway 494 north. GRE's route runs along an existing right-of-way for the present 69 kV line on 73rd Avenue in Maple Grove. Residents want one-half mile of this route moved north following the Highway and their major concerns are electro magnetic fields (EMF), visual, and aesthetic impacts. Judge Sheehy recommended the route along 73rd Avenue. GRE presented information that moving the line across Highway 494 or locating the line underground would add more than 1 million dollars to the project cost and the judge found that this was a large additional expense for one-half mile of line. The Judge also found that moving the line from 73rd Avenue would require new right-of-way and would impact new landowners that were not already impacted by an existing transmission line. Larger and taller structures would have to be installed since Highway 494 would have to be crossed twice and would require special engineering.

The second alternative is called Bass Lake Road and this route extends from the point where the line comes from the west out of Cedar Island Lake substation after it crosses Highway 494 and then continues west and jogs south and goes to the Bass Lake substation and then south to the Plymouth substation. Residents in this area have proposed alternative route segments that would get the route out of their neighborhood entirely. The neighborhood has evolved since the 1960s and the population in this area has increased 10 fold. The Judge discussed these route options and did not recommend any of the Bass Lake route alternatives.

The third alternative is called Rockford Estates Townhome which occurs between the Plymouth substation in the south and the Parkers Lake substation to the extreme south. This line is all new line and we will be using Interstate 494 right-of-way under the GRE plan. It will require crossing the highway once near the Target Store near Rockford Avenue. GRE's proposed route would cross to the east side of 494 just north of Rockford Road then run south parallel to and on the east side of 494 to the Parkers Lake substation. The residents of the Rockford Estates Townhomes object to the placement of new poles within their backyards and the removal of trees. The proposed permit requires GRE to mitigate the impact of locating the line between the townhomes and freeway by hanging all the wires on the freeway side, installing a fence, and planting vegetation. The judge discussed this alternative but did not recommend it because there are major technical difficulties locating the line on the west side of the freeway. The cost of the line along this route is significantly higher and residents on the west side would similarly be affected.

GRE has committed to take measures to mitigate the visual and aesthetic impacts of this line on the townhome residents. GRE estimates that the additional cost of this alternative is between \$500,000 and 1 million depending on how far west the line must be located. It is not technically feasible to erect a large HVTL a span over large commercial buildings. Another question asked by residents was whether we could hang the new 115 kV line on the existing 345 kV towers and that is not technically feasible. The draft route permit contains a number of conditions that are consistent with the judge's findings and the commitments that GRE has made during the application and the course of the proceedings.

The findings of fact also contain a finding that the environmental assessment document prepared for this project addresses the issues identified in the scoping decision signed by the Chair. The permit contains certain conditions that are based on the information in the application and in the environmental review

documents. The conditions reflect the commitment and intentions of GRE in constructing the facility. GRE does not object to any of the proposed permit conditions.

The staff recommendation for you is that we agree with Judge Sheehy and recommend that the EQB grant the requested permit for the route preferred by GRE. The staff has prepared findings of fact, conclusions and order to implement this action.

Board Members asked if the commitment that GRE has made as part of the routing permit for the Rockford Road is verbal or whether it is written into the permit the Board asked, whether the issues made by the residents were both health and visual in nature, whether the vegetation that will be removed will be replaced, what the costs are for the Bass Lake Road alternatives, and if there could be shared responsibilities by communities, local governments and state to plan for the future for alternatives.

Mr. Johnson suggested that the conditions in the routing permit indicate GRE will mitigate impacts by installing the wires as far as possible away from the homes, building a fence and installing vegetation are in writing and that the issues are both health and visual in nature. He responded that the vegetation matter should be addressed by GRE.

Mr. Lennon, Project Engineer, GRE, responded to the vegetation matter by saying tree trimming would take place, that the trees are volunteer trees that have grown up in the fence line, that he didn't know the species of the trees and that there are a number of things still in discussion stages, that they are open to ideas from the residents within reasonable costs. He thinks sound barriers that meet MnDOT standards and which cost 1 million per mile are out of discussion but the neighbors realize that for them this would not resolve their concerns. Mr. Lennon suggested that cost is always a concern wherever the line is located but with Bass Lake Road, it is technical concerns that overshadow that part of the project.

Mr. Alan Mitchell, EQB Staff, added that this is one of the first route permits since the legislation change in 2001 and the format for the permit is that we describe the route, as approved, in specific terms and with specific permit conditions.

Mr. Sullivan suggested that shared responsibilities have been discussed by EQB staff whenever the opportunity arises with local units of government that consideration for putting in their comprehensive plans some kind of right-of-way or corridors for upgrading energy transmission lines.

Citizen Member Bloomberg suggested that the EQB staff more specifically nail down the mitigation issues prior to issuance of a permit and holding the regulated party responsible for these conditions that they make. He asked if there is an opportunity to create more specificity around those conditions so that we don't have that ambiguity later and whether there is anything this Board can do to manage potential backend disputes.

Mr. Mitchell stated that EQB staff are always thinking about what conditions would be appropriate in the permit at the end of the process and we have discussions with the applicants and interested persons as they are identified. Given past experiences when we define the route, we are becoming very specific to attempt to alleviate future disagreements. If there is ambiguity in these permits, we will try to be more specific in the future.

Vice Chair Bomier added that typically the companies doing development for utilities have tried to build a strong working relationship with us and it has worked but maybe it is time to change the process. The Vice Chair asked whether we have adequate controls with the people at GRE so that they will honor the conditions of the permit.

Mr. Mitchell said yes he thought they have adequate controls. Mr. Sullivan noted that there is a section on permit amendment which would represent a safety net or the ability to go back and revisit issues if there is a need to do that. On the general point that Members want specificity, we will drill it down to a level which you are comfortable.

Commissioner Corrigan suggested a brief break to discuss sprinkler system and planting of material issues and perhaps our legal counsel could write some language on those special conditions.

Vice Chair Bomier suggested that citizen testimony take place before the caucus.

### **Testimony:**

Mr. Canfield said he was a resident on Cedar Island. He brought in a sign saying LakeshoreDreams.com, acreage and lakeshore, his name and telephone number. He said he owned Lakeshore Dreams and has been in the lakeshore development business about 15 years. He lives on the lake just for the enjoyment of the lake, he has no dock or boat. His neighbor is a limnologist, who wrote the bible on lakescaping, a letter concerning this project and her mother lives next to us. We purchased the property knowing that there was a transmission line there but he believes there is an opportunity here to make a difference and to make a statement. Mr. Canfield worked closely with Mr. Larsen, EQB staff, on the lakeshore aspect and he questions why there is not more lakeshore interests. This whole corridor, 73rd Avenue, is part of a state shoreline area. The City Administrator was involved in discussions and we addressed this matter and got a letter from the Mayor that he supported burying the line. If a private developer brought this project in, we would have to bury the line, if there was an upgrade they require neighborhood involvement and a potential variance. He read a statement which summarized that staff did not adequately evaluate the line on lakeshore residential neighborhoods. We feel we have presented a strong case prior to this meeting and have been shocked at your response. We have the support of the Mayor of Maple Grove who is supportive of burying the power line. You have ignored this city's strong recommendation and the letter from the limnologist who has coauthored publications for the DNR who recommends burying the line. The State has designated the shoreline zone all along 73rd Avenue North and the proposed power line would run within the zone and in one area right up against the lakeshore. We have spoken to an expert in underground transmission systems and GRE uses that information. The reasons GRE doesn't want to bury this line are in contradiction to that expert's experience. Burying the line must be reconsidered and even GRE officials concede that houses in this neighborhood are unreasonably close to the power lines. We don't know whether the ALJ visited our neighborhood but perhaps the EQB could visit our neighborhood to see how close the lines are to the houses on Cedar Island Lake. GRE's entire route rests on already established easements or right-of-ways which were created as agriculture easements in the mid-1950s and were not established to house a major transmission power line as proposed. Have you considered all the possible alternatives? Have you considered underwater lines? Does it make sense to make a decision when you have not evaluated all the alternatives?

Mr. Johnson said that he was aware of Mr. Canfield's concerns and that they have been submitted in written form to Judge Sheehy and were considered as part of her record on the project. My understanding is that while we are sensitive to the concerns of the Cedar Island Lake residents, the Judge felt the existing right-of-way overwhelmed the concerns for lake restoration. In my opinion, the costs of moving the line to another location as was suggested appeared to be in excess of what was acceptable to the project. We are aware of the concerns and the Judge was aware of the concerns.

Commissioner Merriam asked if the judge specifically addressed the issues that Mr. Canfield had raised.

Mr. Johnson stated that the Judge did not specifically talk about Cedar Island Lake restoration project but made some general remarks about the route around Cedar Island Lake. Mr. Mitchell stated that the Judge talked about the underground system in finding number 70 but that there was a dispute over whether undergrounding causes greater line losses than overhead and she said she could not resolve that on the basis of this record and we agree with her.

Citizen Member Mellen asked how far away from the resident's home the HVTL was. Citizen Member Mellen asked about EMFs and visual impact of the lake but also wanted to know how far away from the houses was the transmission line.

Mr. Canfield responded very close and that the easement runs into many people's houses. I could get more detail.

Mr. Lennon responded that many of the homes in the Cedar Island Lake area are close to the transmission line. There are transmission lines in the area and we are following the existing path of the transmission lines. If you use the older style design transmission lines versus the new style, the newer style would have a lower magnetic field strength. The voltage would be different, the load flow on the line would be different and there is a phenomenon on this system, that in tying from Elm Creek down to Parkers Lake that until at least 2014 the magnetic field strength from the 115 kV line would be a little higher than it presently is from the 69 kV line, but if you left the 69 kV line to accommodate future load growth that magnetic field strength would increase. In 2014 the new line will have a lower magnetic field strength, we have run the numbers and they are the route application.

Vice Chair Bomier suggested that the parties caucus about specificity in the routing permit. After the caucus Vice Chair Bomier said that Deirdre Huitgren would also like to testify.

Deirdre Huitgren, 12500 - 73rd Avenue North across from Cedar Island Lake and she wanted to request that the Board have an onsite visit to view this special situation with this lakeshore issue, before members made their decision.

Vice Chair Bomier asked Legal Counsel Wagenius if they have an agreement to present between GRE and staff.

Legal Counsel Wagenius said he has an agreement. If you look at page 5 of the route permit the Board is looking at the provision H.2. for Rockford Estates Townhomes. We should perhaps change the title also, because we may only be talking about the Rockford Estates Townhomes but this is what we have come up with: "by July 1, 2004 the permittee shall submit to the EQB Chair for review and approval, a plan to address mitigation of the visual impact of the new line in residential areas on the east side of the Interstate and south of the Plymouth substation." Rather than us trying to get an extremely detailed list of what the permittee would do, we suggest that the permittee submit a plan. They understand what has to be done and the EQB Chair will have a good sense from the minutes of what has to be included in this plan. If the Chair wants he can bring it back to the Board, if GRE is not satisfied with the Chair's decision they can bring it back to the Board. This is a reasonable compromise to meet the needs of the Board and residents that will be affected by the new line.

Vice Chair Bomier responded that we can pass the resolution and issue the permit and still have recourse. Thanks to everyone. He would like to entertain a motion to incorporate the language into the resolution. Citizen Member Bloomberg made the motion and Commissioner Wilson seconded. The Vice Chair then stated that we have an amended resolution and now we should amend the permit in both places.

Legal Counsel Wagenius stated that be it resolved would read: Be It Resolved that the Minnesota Environmental Quality Board approves and adopts the findings of fact, conclusions and order designating a route for the new 115 kV transmission line in Hennepin County and issuing a route permit as amended for the line to GRE and Be It Further Resolved that Robert A. Schroeder, Chair of the Board is authorized to sign the adopted findings of fact, conclusions and order and route permit as amended.

Commissioner Wilson made a motion to adopt the amended resolution in regard to issuing a route permit to GRE and Commissioner Corrigan seconded. The Vice Chair asked for a roll call vote and the issue passed 12-0.

**PROPOSED RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD  
Designation of Route and Issuance of Route Permit To Great River Energy For a 115 kilovolt  
Transmission Line in Hennepin County MEQB Docket No. 03-65-TR-GRE PMG**

**BE IT RESOLVED**, that the Minnesota Environmental Quality Board approves and adopts the Findings of Fact, Conclusions and Order designating a route for a new 115 kilovolt transmission line in Hennepin County and issuing a Route Permit as amended for the line to Great River Energy.

**BE IT FURTHER RESOLVED**, that Robert A. Schroeder, chair of the Board, is authorized to sign the adopted Findings of Fact, Conclusions and Order, and the Route Permit as amended.

**VIII. \*Faribault Energy Park, LLC - Route Permit Decision and Site Permit**

- 1 LEPGP (large electric power generating plant) – Adequacy decision on the final EIS and Site Permit Decision**
- 2 HVTL (115 kV Transmission Line) – Route Permit Decision**
- 3 Pipeline (natural gas pipe line tap and extension) – Partial exemption application decision and Pipeline Routing Permit Decision**

Bill Storm, Project Manager, EQB Staff for the Faribault Energy Park project. In the audience is Jim Larson the President of Faribault Energy Park LLC and we are here today because Faribault Energy Park is proposing to construct and operate a large energy power generating plant, two high voltage transmission lines and a natural gas pipeline. The plant project is proposed to be located on one of two adjacent sites. Both sites are located approximately two miles north of downtown Faribault bordered on the west by Highway I-35 and on the east by County Road 76. The preferred site recently has been annexed by the City of Faribault and is zoned commercial/industrial and is bordered by an existing transmission line and a natural gas pipeline. Current use on both preferred site and alternative site is agricultural.

The project breaks down as follows: the Power Plant is a dual fuel fired, 250 Megawatt combined cycle intermediate generation power plant. The primary fuel will be natural gas and secondary fuel will be low sulfur number two fuel oil. The two transmission lines, 115 kV each, approximately 400 feet in length on the preferred site, 1,600 feet in length on the alternative site. The pipeline is a 10 inch, 720 psi natural gas pipeline, approximately 1,200 feet in length on the preferred site and 2,200 feet in length on the alternative site. The Faribault Energy Park plans on a phased construction, first building and having a single cycle unit operational by May, 2005 followed by the combined heat and recovery portion to be built and in operation by 2006.

A certificate of need is required for a generating plant of this size and the PUC issued the certificate of need on August 13, 2003. A certificate of need is not required for the transmission line or pipeline

because they are below the statutory thresholds. Because the dual fuel is used in the power plant, staff prepared an EIS on the power plant. The staff prepared a separate environmental assessment on the proposed transmission line and no environmental document is required for the pipeline but a public meeting was held on the pipeline also. In addition to several public meetings to inform the public about the projects, individual mailings, EQB Monitor, website posting, two public hearings were held. One public hearing on the power plant was presided over by Administrative Law Judge Beverly Hydinger on April 12, 2004, and the second public hearing which was on the high voltage transmission line was presided over by Mr. Alan Mitchell, EQB Staff, on May 3, 2004. Most of the issues, which have been resolved, arose at the public meetings and hearings that have been held.

The Administrative Law Judge found that both sites that were evaluated for the power plant location were acceptable but that the site preferred by FEP was the preferable site. The transmission lines and pipelines have to follow the selected site. The staff recommends that the Board grant the requested permits for the sites and route preferred by Faribault Energy Park. In your packet you will find separate findings of facts, conclusions and order for each of the permits. Additionally, the Board will need to find the EIS adequate and grant FEP a partial exemption for certain procedures regarding the pipeline.

Commissioner Hugoson asked if staff could assure me and this Board that granting a partial exemption for this pipeline will not create any problems.

Mr. Storm stated that the preferred site will be purchased by FEP and it will be their property.

Mr. Harnack asked about public or private drainage systems that might affect adjoining landowners.

Mr. Storm responded that the site will use its own individual septic system for treating domestic waste and wastewater generated by the facility will be discharged into a created wetland which was designed to be a no discharge wetland. There is no drainage from adjoining properties, the drainage way travels west to east across the top part of the property so no adjoining property owners will be affected. On the proposed preferred site there is wetland on the northwest corner of the site but the southeast half of the site is not wetland. They will utilize the existing wetland that is there for their discharge.

Citizen Member Winebarger made a motion for approval of the EIS and Commissioner Lamb seconded. A roll call vote was taken and the vote passed 12-0.

**PROPOSED RESOLUTION of the MINNESOTA ENVIRONMENTAL QUALITY BOARD  
Adequacy of Environmental Impact Statement for Faribault Energy Park Generating Station**

**BE IT RESOLVED**, that the Minnesota Environmental Quality Board approves and adopts the Findings of Fact, Conclusions and Order which determines that the Final Environmental Impact Statement for the Faribault Energy Park Generation Station is adequate.

**BE IT FURTHER RESOLVED**, that Robert A. Schroeder, chair of the Board is authorized to sign the adopted Findings of Fact, Conclusions and Order.

Commissioner Mandarnach made a motion for approval of the site and site permit and Commissioner Wilson seconded. A roll call vote was taken and the vote passed 12-0.

**PROPOSED RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD  
Designation of Site and Issuance of a Site Permit to Faribault Energy Park, LLC For the Faribault  
Energy Park Generating Station**

**MEQB Docket No. 02-48-PPS-FEP**

**BE IT RESOLVED**, that the Minnesota Environmental Quality Board approves and adopts the Findings of Fact, Conclusions and Order designating a site in the southwest quarter of the northeast quarter of Section 13, Township 110 north, Range 21 west, in Rice County, Minnesota, for a 250 megawatt large electric power generating plant and issuing a Site Permit for the Faribault Energy Park Generating Station to Faribault Energy Park, LLC.

**BE IT FURTHER RESOLVED**, that Robert A. Schroeder, chair of the Board, is authorized to sign the adopted Findings of Fact, Conclusions and Order, and the Site Permit.

With regard to the proposed pipeline Legal Counsel Wagenius said this is a very complex process and the resolution should include an amendment. On the second line after findings of fact, conclusions and order the words "granting a partial exemption from certain pipeline route selection procedures" should be added, and then continue.

Commissioner Lamb made a motion for this amended resolution for the approval of the partial exemption for the pipeline and seconded by Citizen Member McCarville. A role call vote was taken and the vote passed 10 to 1 Abstention.

**PROPOSED RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD  
Granting Partial Exemption from Certain Procedural Requirements and Designating a Route and  
Issuing a Pipeline Routing Permit To Faribault Energy Park, LLC For a Natural Gas Pipeline in  
Rice County, Minnesota MEQB Docket No. 04-80-PRP-FEP**

**BE IT RESOLVED**, that the Minnesota Environmental Quality Board approves and adopts the Findings of Fact, Conclusions and Order granting a partial exemption from certain pipeline route selection procedures and designating a route for a new ten inch natural gas pipeline in Rice County, Minnesota, and issuing a Pipeline Routing Permit for the pipeline to Faribault Energy Park, LLC.

**BE IT FURTHER RESOLVED**, that Robert A. Schroeder, chair of the Board, is authorized to sign the adopted Findings of Fact, Conclusions and Order, and the Route Permit.

Commissioner Corrigan moved the resolution on the route permit and issuance and Director Dunn seconded. A role call vote was taken and passed on a vote of 12-0.

**PROPOSED RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD  
Designation of Route and Issuance of Route Permit To Faribault Energy Park, LLC For Two 115  
kilovolt Transmission Lines in Rice County, Minnesota MEQB Docket No. 04-79-TR-FEP**

**BE IT RESOLVED**, that the Minnesota Environmental Quality Board approves and adopts the Findings of Fact, Conclusions and Order designating a route for two new 115 kilovolt transmission lines in Rice County and issuing a Route Permit for the lines to Faribault Energy Park, LLC.

**BE IT FURTHER RESOLVED**, that Robert A. Schroeder, chair of the Board, is authorized to sign the adopted Findings of Fact, Conclusions and Order, and the Route Permit.

**IX. \*Hutchinson Update and Board Certification of Hutchinson Expenses**

Michael Sullivan stated that before Commissioner Hugoson summarized the meetings that have taken place with Hutchinson that the Board Members had before them handouts which included a status report and an agreement with Hutchinson on the investigative study on whether Hutchinson was in compliance with the Agricultural Mitigation plan, which EQB staff is handling.

Commissioner Hugoson then summarized what has taken place with Hutchinson. First, the Board at the last meeting asked staff to look at the process by which information could be gathered on the mixing of soil and which is required by state law. A proposal was put together for a private vendor to do some soil testing to show what the situation was. The Commissioner said that because of the Chair's involvement with the end of session that he asked me to handle this issue. We have had a number of meetings and telephone calls with HUC's Board and Counsel and we finalized the agreement in the memo in front of you. The Commissioner asked Mr. Wagenius will go over the resolution with the Board Members.

Legal Counsel Wagenius stated that there were two proposed resolutions for Board Members to consider. The first resolution as discussed that will defer the action. Legal Counsel then stated that he was going to address the first be it resolved which should read: Be It Resolved that the Environmental Quality Board hereby certifies the projected expenditure of a sum of up to \$50,000 for a soils investigation conducted under conditions set out in the May 19, 2004, memorandum approved by the Hutchinson Utilities Commission and recommended by the Chair and costs reasonably incurred for assessment of permit compliance, etc. There is the one insertion to be incorporated into the resolution, starting with A. from an email to Mickey Sullivan it states: An EQB investigation, etc. and going to paragraph B addressing the cost. The amended resolution will incorporate by reference the contents of the memorandum and that is what Commissioner Hugoson will go forward and explain.

Commissioner Hugoson stated that the investigation needed to take place to see if the soil was restored as stated in state law after the pipeline was put in place. The problem alleged by some of the farmers and which Board Members saw in pictures was that soil was not restored properly. The investigation will verify whether the condition of the soil which was required by the permit actually did or didn't happen. The discussion between EQB and Hutchinson revolved around two issues: 1. which properties would this investigation take place on, and 2. when this investigation would take place. Initially we thought all properties should potentially be sampled but because of the \$50,000 sum of the proposal we decided to just concentrate on the properties that have not settled. The idea of when this investigation would take place is an issue because do we look at spring before the crops have been planted, obviously that is past so do we go in and try not to do any damage or do we wait until fall after the crops have been harvested. HUC preferred to wait until fall because the landowners are not happy with the situation and why aggravate the situation and from our perspective we said lets look at that as an option. We think it would be helpful to have some of this information this spring because if the farmers need the information for making a settlement or how they would proceed with a potential settlement it would be good to have that information. On the other hand, it becomes difficult if you have to pay damages. Where there are crops planted we would agree any damages alone or paid for going into this investigation rather it should be optional whether the landowners want to participate at this point or if they would prefer to wait until fall so that this would be in limbo. We are in essence looking at a pool of 77 minus those who have settled, probably 12.

Commissioner Hugoson said that he would like to go over the conditions of the study, the study is capped at \$50,000 and may proceed in the spring subject to the following conditions: 1. the owners would sign a release in essence waiving damages, 2. the investigation would concentrate on the nonsettled property owners, 3. the EQB would not pursue investigation with property owners that have signed a settlement, 4. the EQB would not pursue other investigations other than this study but if the investigation did show

noncompliance with restoring the land we would consult with Hutchinson and they then have the right to challenge the need to do something further, 5. HUC and its consultants can have the opportunity to be part of the investigation but not interfere, 6. the EQB will try to give an estimate of the costs for staff time from this point on with the actual investigation, and the last point number 7 deals with legal jargon. Part B of the settlement has to do with costs and HUC is responsible for costs incurred by EQB staff as it relates to this whole process and not surprisingly the bill has been high and so HUC is contesting some of the costs so that about half of the \$61,000 will be for staff time and the other half is legal costs. What that paragraph says is that before the EQB will certify those costs that there will be an opportunity for HUC to receive a detailed description of those costs and discuss that with staff before it comes back to the Board. Mr. Chair and Members this is not exactly what we wanted but it isn't exactly what HUC wanted either but it is a negotiated agreement. There needs to be changes as far as how this whole pipeline process works from this point on, in the law. My opinion of the current situation is that this is a good agreement to move ahead with.

Michael Sullivan then stated that staff was directed by the Board to go out and start gathering information on whether or not violations of the conditions of the permit had taken place. We have indeed selected a contractor to conduct the investigation primarily to deal with soil compaction, soil mixing, and stone debris left on the right-of-way. Hopefully this study will produce information on those matters covered by this investigation and at that point the Board's options can include whether you want to look at more parcels and to exercise any authorities that you have in the statutes to respond to violations of the permit. This is a first step to attempt to try to determine with greater certainty than the visual inspection that took place late last fall before the snow whether there have been violations.

Commissioner Corrigan asked whether the Board could ask the consultant or vice versa, to investigate adjacent or adjoining properties because we might want to have a full scope of impacts identified at the end of the investigation. The Commissioner asked if that was appropriate.

Commissioner Hugoson stated that in this particular agreement that we have agreed not to go on to adjacent or adjoining properties, on the other hand there is nothing that would preclude that property owner to decide at a subsequent time to do something on their own. One of the difficulties in this issue is that there are numerous agreements and there is some ambiguity in those settlements.

Director Dunn said that there were 77 property owners who have not settled, do we know what percentage of the total length of the pipeline that represents.

Commissioner Hugoson responded that it is a significantly higher percentage of property than property owners. He said he was not convinced that there were the same problems on the whole pipeline as did exist in some areas.

Michael Sullivan suggested that the Board needs to keep in mind that we are only going to sample about 30 sites. The other issues are that the permission of the landowner and waiver by that landowner of any damage claims associated with the taking of the sample may leave us with an unknown amount of viable test sites.

Commissioner Hugoson responded that it might be a positive that we would not be able to collect all 30 samples this spring, that there may not be any property owners that will want us on their land at this point because this issue has dragged on too long. On the other hand from the property owner's standpoint having some of that information sooner rather than later is certainly helpful in terms of knowing how they stand in this issue.

Vice Chair stated that we as a Board have a picture of what has happened and will we understand whether or not the conditions of the permit were honored from this investigation. We have a very good consultant doing the investigation, Hutchinson wants to watch the process and at some point this study will provide a piece of information that will tell us whether the permit conditions were honored.

Commissioner Hugoson stated that there is counsel here for both sides and it might be well worth asking them to either clarify or comment on any of the issues here.

Citizen Member Bloomberg said that as he understood it, what HUC is doing is waiving to contest reimbursement for this \$50,000 investigational study but Paragraph 4 creates this additional consultation duty that says that if we are going to spend beyond the \$50,000 we have to ask them and that they reserve the right to challenge the need and nature of any additional study. Mr. Bloomberg stated that he assumed that the Board is not waiving any rights to seek reimbursement of that \$50,000.

Legal Counsel Wagenius responded that this is consistent with the rule that talks about expenses that are incurred by the EQB staff after the original budget then the Board has an obligation to certify costs and the permittee has an opportunity to come and contest those costs. This embodies what is in the pipeline rules.

Mr. Harnack asked if problems are found what kind of corrective actions may be taken to achieve compliance. Further if Hutchinson is found not in compliance with the permit, will the soil assessment provide information on the productivity lost as a result?

Commissioner Hugoson responded that the only way to correct problems if there is mixing of soils, is to excavate the mixture and haul in new. A more practical solution would be some kind of compensation package developed to reflect lost productivity over a period of time for the landowner.

### **Testimony:**

Mr. Kevin Johnson, Attorney for Sib Ren Fair, wanted to thank the Board for pursuing this matter. Nicollet County has submitted a letter to HUC and HUC responded and there is also some discussion in the staff memo about the county drain tile that was not repaired impacting the University of Minnesota Watershed Study that was taking place. It has been alleged that Sib Ren Fair is a small group of disgruntled farmers and that everyone else is satisfied with the construction of the pipeline and he thought we could add the University of Minnesota and Nicollet County to the list of unsatisfied parties. Also this raises the question whether the Nicollet County inspector who submitted a letter to this Board stating that all the construction had been done properly and now we have the county itself with a damage claim against the City of Hutchinson.

It was identified that as part of the testing, the property owners would have to sign a release for any losses that they would incur. It was anticipated that this testing which we thought was going to occur in April prior to planting we developed a list at the time of 65 or 70 members who had agreed to test in April. Since that time planting has occurred and by our estimation the soonest this testing could occur is June and by then the crops will be up and growing and that presents a problem. Sib Ren Fair members suggest that the testing be put off until fall. He is concerned that the agreement reads says that the testing has to occur in spring or not at all. It is his understanding from discussion here today that the testing takes place in either spring or fall but that needs to be clarified. Lastly, at your last Board Meeting in March 2004 we reminded you that the Agricultural Mitigation Plan required HUC, within 45 days of completion of the entire pipeline, which by their account was mid-December, personally meet with each landowner to investigate measurable losses and 30 days after that prepare a proposal to resolve the damages. At the last

meeting, opposing counsel for the city implied that a schedule was being prepared and would be submitted to the EQB for those site visits to occur and it is now well beyond 45 days and are not aware of any visits that have occurred. This is a question, will the Board pursue that issue as well.

Commissioner Hugoson said that discussion did take place at length and we were told that letters have gone out to landowners explaining the procedure and those appointments would be made. He asked Mr. Johnson whether any of his members receiving those letters.

Mr. Johnson responded that he is not aware of those letters.

Mr. Chris Dietzen, Litigation Attorney for HUC, stated that he had mentioned to Commissioner Hugoson that the Utilities Commission had a change in general manager. The letter to the nonsettled farmers was presented to the staff on April 9, 2004, meeting with Chair Schroeder. Subsequent to that the letter was prepared for the previous general manager's signature and was then revised for the new general manager's signature and was told it went out this week and is in the form that the EQB legal counsel agreed to.

The issue came up about when the study should occur and we initially argued strenuously that it occur in the fall but the EQB staff argued that it should occur in the spring. He presented the agreement in front of you to his Board on Tuesday night to approve it, with all conditions. He said his only concern with some of the testing done in spring and some done in fall is that it might be more expensive to do the study piecemeal. My understanding of this study is that it can happen anytime during 2004, either spring or fall, as long as it doesn't exceed \$50,000.

Commissioner Corrigan asked for a point of clarification for Mr. Dietzen regarding letters for appointments in compliance with the Agricultural Mitigation Plan, did anyone from HUC contact the EQB and say that they would not be able to meet their obligation under the plan.

Mr. Dietzen responded that the timing of the sequence since he has been involved and that it was initially brought up by Mr. Johnson the evening before the Board meeting that he attended and as a result HUC prepared a draft letter to go to nonsettling farmers and provided it to HUC on the April 9th Board meeting and received verbal approval that the letter was appropriate and we sent it out. I don't know the answer to your question.

Vice Chair Bomier stated that typically in the past what has happened in cases such as this the permittee would tell the EQB that they were behind schedule and talk to the EQB about the issues but Mr. Dietzen took over this case at a late date but maybe you could communicate that to your client.

Mr. Dietzen responded that he would communicate that to his client.

Legal Counsel Wagenius suggested that Mr. Dietzen did present the letter in question to a couple members of the Board at the April 9th meeting and his response of puzzlement is because there is nothing in the Agricultural Mitigation Plan that talks about timing of contacts, there was no approval requirement.

Commissioner Hugoson stated that even as of April 9 the deadline had gone by but he thinks it is appropriate that HUC let the EQB know who they sent the letter to and what date the letter was actually sent along with a copy of the letter.

Mr. Dietzen responded that he has a list of people to whom the letter was sent and a copy of the letter and that he was going to forward that to Legal Counsel Wagenius.

Vice Chair Bomier suggested that there were two resolutions and that the initial resolution must be deferred until the June or July Board meeting because it has not been approved by Mr. Dietzen's client and that the second resolution is the resolution discussing the negotiations per Commissioner Hugoson's agreement.

Commissioner Hugoson moved the amended resolution as presented by Mr. Wagenius with the additional insertion in the point where the resolution talks about the May 19th memo, the second line of letter A where it would be stated that the study be capped at \$50,000 may proceed in spring 2004 and be completed by the end of the year, subject to following conditions.

Legal Counsel Wagenius responded that his understanding was that the agreement that had been negotiated applied if we proceed in spring of 2004 that if we don't proceed in the spring of 2004 then this is all set aside and we look again to see how the Board should proceed with this investigation in the fall. If my interpretation is correct then Commissioner Hugoson should not make the addition that you suggested but if his understanding is incorrect then your suggestion is entirely appropriate.

Mr. Dietzen responded no that is not correct. We spent several days trying to forge this agreement and it was an important first step, in his view if the EQB wanted to commence the investigation this spring and if for whatever reason you go out and can't get 30 farmers that are willing to do this, that you would complete it or take it back in the fall.

Commissioner Hugoson stood by the way he presented the agreement that if the landowners are not willing to provide access this spring, then it will be done in the fall.

Commissioner Corrigan clarified that the resolution that we are talking about in the second paragraph had been amended under conditions set out in memo of May 19<sup>th</sup>. Mr. Wagenius could you comment.

Legal Counsel Wagenius agreed with the statement.

Commissioner Hugoson moved the resolution and Commissioner Corrigan seconded the motion. A roll call vote was taken which passed 11-0.

**PROPOSED RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD**  
**Certifying Expenses**  
**Charge to**  
**Hutchinson Utilities Commission**

**BE IT RESOLVED** that the Environmental Quality Board hereby certifies the projected expenditure of the sum of [up to \$50,000] for a soils investigation conducted under conditions set out in the May 19, 2004 memorandum approved by the Hutchinson Utilities Commission and recommended by the Chair as costs necessarily and reasonably to be incurred for assessment of permit compliance by permittee City of Hutchinson (Hutchinson Utilities Commission) in the construction of its natural gas pipeline under its Amended Pipeline Routing Permit for Natural Gas Pipeline from the Environmental Quality Board.

X. **\*Mankato Energy Center LLC- Site Permit Application - EQB Authorization for joint hearing with PUC**

Alan Mitchell summarized the Mankato Energy Center as a large energy facility that is coming to the Environmental Quality Board for permits. This project is a 650 Megawatt natural gas fired combined cycle plant. The Mankato Energy Center is a project that requires a certificate of need from the Public

Utilities Commission (PUC), a site permit, a route permit for a pipeline, and a route permit for a transmission line. The statute allows the EQB to decide to hold a joint hearing with the PUC and that is what is before you today. The PUC has already passed a resolution saying the joint hearing would be appropriate, the hearing has been scheduled for July 12<sup>th</sup>, and we have alerted the judge to the possibility of holding this joint hearing. Staff will be working on the preparation of an environmental assessment which will look at alternatives to this gas plant and site specific impacts and that document will be ready by July 1, 2004. The reason we are bringing this to the Board is that this is the one procedural issue that has not been delegated to the Chair and the reason for that is that the statute says that the PUC and the EQB can make the decision. There is a resolution in your packet about the joint hearing to be held by the PUC and EQB. After the hearing, the matter will come back for a decision on all those permits.

Citizen Member Bloomberg made a motion to move the resolution and Commissioner Corrigan seconded the motion. A roll call vote was taken and passed 11-0.

**PROPOSED RESOLUTION AUTHORIZING JOINT HEARING WITH PUBLIC UTILITIES  
COMMISSION ON  
MANKATO ENERGY CENTER, LLC  
PROPOSED PROJECT**

WHEREAS, Mankato Energy Center, LLC, has applied to the Public Utilities Commission for a certificate of need for a natural gas combined cycle power plant to be located in Mankato, Minnesota; and

WHEREAS, Mankato Energy Center, LLC, has applied to the Environmental Quality Board for a site permit for the project; and

WHEREAS, the Public Utilities Commission has determined that it is appropriate to hold a joint hearing with the Environmental Quality Board on this matter; and

WHEREAS, the project will require construction of a transmission line and a pipeline in addition to the generating facility; and

WHEREAS, holding a joint public hearing is feasible and will expedite the review process, and

WHEREAS, a joint hearing will further the public interest by allowing interested persons to participate in a single hearing; and

WHEREAS, no person has objected to the holding of a joint hearing,

NOW, THEREFORE, BE IT RESOLVED that the Environmental Quality Board authorizes the holding of a joint hearing with the Public Utilities Commission on the applications by Mankato Energy Center (a wholly owned subsidiary of Calpine Corporation) for a certificate of need and a site permit.

BE IT FURTHER RESOLVED, that the EQB Chair is authorized to act on behalf of the EQB to perform such tasks as are necessary to carry out this resolution.

**XI. Recreational Trail Mandatory Review and Exemption Categories – public review draft of preliminary category concepts.**

Gregg Downing summarized what has happened in recent months with the rulemaking for recreational trail mandatory review and exemption categories. This item requires no action by the Board. Based on public comments received, the staff has developed proposed options that it would like to send out for public comment with approximately a six week comment period. Mr. Downing indicated staff will post this information to our website, send it electronically to the people who initially sent us comments on trails, and publish notice in the EQB Monitor. He stated the hope is that we would get useful input and feedback on these proposed options that would allow staff to draft a better rule so that the formal rulemaking process would go more smoothly.

Board Members asked several questions of Mr. Downing. The first was which agencies are staffing the work on rulemaking. Mr. Downing responded that staffing is entirely done by EQB staff. The second question was what did the proposed working mean by naturally” vegetated land use.” Mr. Downing indicated that the term referred to all land use except agricultural and urban lands. Another question was which agencies would be the Responsible Governmental Units (RGUs) for the review that would be required by the rules to be adopted by EQB. Mr. Downing’s answer was that the Department of Natural Resources would be the most frequent RGU, but counties and sometimes cities might also be RGUs. The final question was whether adoption of categories for recreational trails was a required action for EQB. Mr. Downing responded that it was required by legislative action in the 2003 session.

## **XI. Environmental Review Update**

Mr. Tim Scherkenbach, Environmental Review Study Director, summarized the General Work Plan for the EQB 2004 Study of Thresholds That Trigger Mandatory EAWs/EISs. He reminded the EQB Board that the study is to be completed in two phases. Phase I of the study is gathering information and trying to focus down on which categories to study and Phase II of the study is gathering stakeholder information regarding what it would mean to fix the identified problems. We have just completed sending out a survey to 190 local government responsible governmental units (RGUs) to gather information about the process and is in the process of setting up meetings with affected agencies to gather information on state agencies acting as RGUs. To address Commissioner Merriam’s comments about AUARs and problems with that process, Mr. Scherkenbach noted that AUARs are a priority category that this study will review.

Mr. Scherkenbach stated that the last stakeholders meeting took place on May 11 and that group had a chance to review the survey. Not everyone was happy with it, but staff did the best it could to balance how much to ask, and how long the survey would take to complete with including questions that would provide good information.

Lastly, Mr. Scherkenbach stated that he needed time with the Board to come up with initial recommendations on the findings, the focus in the future, any recommendations on actions, and a more detailed plan for the second phase. The study needs to decide what to focus on and what resources are needed to stay within the timeline. The Board will be asked to approve the detailed study recommendations of Phase II.

Commissioner Corrigan commented on the initiative as mission critical to the Board and asked that consideration be given to that fact while developing the agenda for the June and July Board meetings making time available at the beginning of the meeting rather than the end so that there can be robust discussion.

The Vice Chair reiterated that serious time should be allowed at future Board meetings because of the importance of the study.

The Vice Chair announced that Citizen Member Winebarger is taking over as Chair of the board of directors of the Minnesota Chapter of the Nature Conservancy. He also thanked EQB staff for all its hard work, particularly on the recent flurry of powerline and pipeline routing issues.

Citizen Member Bloomberg made a motion to adjourn; Commissioner Lamb seconded the motion and the Vice Chair adjourned the meeting.