

**STATE OF MINNESOTA
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

**In the Matter of the Proposed
Adoption of Amendments to
Environmental Review Rules
for Large Energy Facilities
and High Voltage Transmission Lines,
Repeal of Existing Rules ,and
Technical Amendments to
Power Plant Siting Rules**

**STATEMENT OF NEED
AND REASONABLENESS**

**Minnesota Rules chapter 4410
Minnesota Rules chapter 4400**

I. BACKGROUND AND INTRODUCTION

A. EQB Environmental Review Rules.

In 1973, the Minnesota Legislature passed the Minnesota Environmental Policy Act. Minn. Stat. ch. 116D. This Act provides for the conduct of environmental review of major projects that have the potential for significant environmental effects. Minn. Stat. § 116D.04, subd. 4. The Minnesota Environmental Quality Board (EQB) was given the authority to promulgate rules establishing the specific requirements for carrying out environmental review. Minn. Stat. § 116D.04, subd. 5a.

The EQB first adopted rules for environmental review in 1974. Rules MEQC 21 – 36. (At that time the Environmental Quality Board was called the Environmental Quality Council.) These rules did not provide anything specific for environmental review of large energy facilities.

In 1977 the Environmental Quality Board amended the rules for environmental review. Language was added to MEQC 25 to specifically address how environmental review would be conducted on large power plants and high voltage transmission lines. Rule MEQC 25.G. That rule provided that the Minnesota Energy Agency (the predecessor to the Public Utilities Commission) would prepare an Environmental Report when it received a certificate of need application. A separate Environmental Report would be prepared by the EQB when a permit was applied for from the EQB. A copy of Rule MEQC 25.G. is included in the record as Exhibit A. A list of the Exhibits referred to in this document is attached at the end.

The environmental review rules were amended again by the Environmental Quality Board in 1981. By this time the codification of state agency rules had been

changed to the Minnesota Code of Agency Rules (MCAR). The environmental review rules were codified at 6 MCAR §§ 3.021 to 3.056. Sections 3.055 and 3.056 were the rules entitled “Special Rules for Certain Large Energy Facilities.” These rules stated that the Department of Energy, Planning and Development would prepare an Environmental Report for inclusion in the record of the certificate of need hearing, and the EQB would prepare an Environmental Impact Statement when a permit was applied for. A copy of those two rules are included in the record as Exhibit B.

In 1983 the State Revisor began publication of Minnesota Rules, which is the codification of agency rules at the present time. The old MCAR sections are now found at Minnesota Rules parts 4410.7000 to 4410.7500.

In 1986 the rules were amended to add subparts 4 and 5 to part 4410.7500, which recognize that the Public Utilities Commission could request approval from the EQB of an alternative form of review for high voltage transmission lines. No corresponding language was included for large electric power generating plants. The Public Utilities Commission has never asked the EQB for approval of an alternative form of review for HVTLS.

In 1990 the EQB again amended parts 4410.7000 to 4410.7500. Some editing was made, and parts 4410.7200 and 4410.7300 were repealed. 15 State Register 1597. The rules have not been amended since 1990.

B. EQB Power Plant Siting Rules

The Environmental Quality Board has separate rules for the siting of large power plants and the routing of high voltage transmission lines. These rules are codified at Minn. Rules chapter 4400. Both the Power Plant Siting Act, Minn. Stat. §§ 116C.51 – 116C.69, and the EQB rules in chapter 4400 require the EQB to conduct environmental review and prepare either an Environmental Impact Statement or an environmental assessment as part of the EQB permitting process when an applicant, who holds a certificate of need or other need determination from the PUC, seeks a permit for a specific site or a specific route from the EQB. This environmental review at the permitting stage is separate from the environmental review required when the PUC is considering the need for a new facility.

The rules under consideration for amendment here –the Special Rules for Environmental Review of Electric Power Generating Plants and High Voltage Transmission Lines in Proceedings Before the Public Utilities Commission – address the question of what environmental review must be conducted when the PUC considers the need for a new power plant or transmission line. Environmental review must be conducted at both the PUC need stage and the EQB permitting stage because the decisions are different and both involve matters that can have significant environmental effects. The PUC decides whether a new project of a certain size and type or voltage is needed. Once the PUC makes that decision, the EQB is precluded by law from considering these matters. Minn. Stat. § 116C.53, subd. 2 (“When the public utilities

commission has determined the need for the project under section 216B.243 or 216B.2425, questions of need, including size, type, and timing; alternative system configurations, and voltage are not within the board's siting and routing authority and must not be included in the scope of environmental review conducted under sections 116C.51 to 116C.69.”)

Therefore, it is necessary to conduct environmental review when the Public Utilities Commission considers the need for a new large power plant or high voltage transmission line, and also when the EQB determines the best site to construct the new plant or the best route for the a new transmission line between two endpoints determined by the PUC.

C. Public Utilities Commission Rules and Practice

The Public Utilities Commission adopted rules for administration of the certificate of need process in 1987. Minn. Rules chapter 7849. 12 State Register 2624. Minn. Rules part 7849.0310 requires an applicant for a certificate of need to provide certain environmental data as part of the certificate application.

One provision of chapter 7849 requires the applicant for a certificate of need for a high voltage transmission line to prepare a draft environmental report as part of the application. Part 7849.0230. The draft environmental report must be distributed in accordance with EQB rules, and the public must be afforded an opportunity to submit written comments in response. The applicant must then reply in writing to the comments. No responsible governmental unit prepares any environmental document regarding a high voltage transmission line at the certificate of need stage under PUC rules.

With regard to power plants, the process is different. The applicant for a certificate of need must include certain environmental data with the application, but is not required to submit a draft environmental report. Instead, the Public Utilities Commission directs the Department of Commerce to prepare an environmental report. Notice is given when the draft environmental report is available and the Department of Commerce responds to any comments that are received.

D. Examples of Environmental Review of Projects

Since 1977 when the EQB first adopted rules for environmental review of power plants and transmission lines, very few projects have undergone review under these rules because not many projects have been proposed. The LS Power cogeneration facility at the 3M plant in Cottage Grove, the Lakefield Junction natural gas fired peaking plant in Jackson County, the Pleasant Valley natural gas fired peaking plant in Mower County, and a repowering of the Black Dog plant in Dakota County are the only power plants to require a certificate of need in the past 25 years. The only high voltage transmission lines to have undergone environmental review under these rule provisions are the lines in southwestern Minnesota proposed by Xcel Energy in 2001. The PUC decided on January

30, 2003, to issue certificates of need for four lines proposed by Xcel to transmit wind power off Buffalo Ridge. PUC Docket No. E-002/CN-01-1958.

Two projects are presently in the initial stages of application for a certificate of need from the Public Utilities Commission. One is a 115 kilovolt transmission line in Hennepin County that has been proposed by Great River Energy (PUC Docket No. ET-2/CN-02-536). The second is a 250 megawatt natural gas fired intermediate plant that has been proposed by the Minnesota Municipal Power Agency that will be located in Faribault, Minnesota (PUC Docket No. IP-6202/CN-02-2--6). Both of these projects will undergo environmental review under the existing rules. The Department of Commerce will prepare an Environmental Report on the Faribault power plant, and Great River Energy has already submitted an Environmental Report as part of its certificate of need application for the 115 kV line.

E. Development of Proposed Amendments

The EQB staff first prepared draft amendments to parts 4410.7000 to 4410.7500 in the spring of 2002. Draft language was made available to interested persons, including citizens, utilities, and state agencies, and the staff continued to revise the draft language in response to feedback from various persons. In July 2002 the staff distributed another version of the rule amendments to interested persons and generally to the public by posting the draft on the EQB web page. A meeting that was attended by approximately 40 interested persons to discuss the amendment of the rules was held by the EQB staff on August 28, 2002. The staff again made changes in response to comments at the meeting.

Notice was published in the State Register on October 14, 2002, that the EQB was considering the amendment of these rules, and the public was invited to submit comments on the proposed rulemaking by December 6, 2002. A draft of the amendments was available in October when the notice was published. A number of comments were submitted to the EQB in response to the notice soliciting public input. These comments are identified as Exhibits C – G.

In response to the comments that were received, the staff prepared another version of the rules and distributed that version to interested persons in January 2003. Various parties submitted additional comments, and these comments were considered in crafting the version of the rules that has been proposed by the Board.

During this time the EQB staff was also working on amendments to the Power Plant Siting Rules in chapter 4400. These amendments were necessitated by the changes in the Power Plant Siting Act passed by the Legislature in 2001. Minnesota Laws 2001, chapter 212. A rulemaking hearing on proposed amendments to chapter 4400 was held in September, and on December 19, 2002, the EQB Board adopted the final amendments. The final amendments to chapter 4400 were published in the State Register on February 10, 2003. 27 State Register 1295.

The Environmental Quality Board is now prepared to go ahead with proposed amendments to the rules for environmental review of large energy facilities that require a need decision from the Public Utilities Commission. When the amendments to chapter 4410 are promulgated, they will work in conjunction with chapter 4400 to ensure that environmental review of large electric power plants and high voltage transmission lines will be conducted in a complete and expeditious fashion.

In addition, there are some minor technical amendments that are required to chapter 4410 to make the language consistent with other changes in the Power Plant Siting Act and the power plant siting rules. Similarly, some technical amendments of the power plant siting rules in chapter 4400 are required to correct some inconsistencies. All these changes are not substantive and are simply editing changes.

F. Summary of Environmental Review Under Proposed Rules

In deciding the manner in which environmental review will be conducted before the Public Utilities Commission, there are three major questions to be addressed: (1) who is going to prepare the environmental review document; (2) what document is going to be prepared; and (3) what process is going to be followed in preparing the document. The proposed rules address all three of these questions.

(1) Responsible Governmental Unit. The proposed rules designate the Environmental Quality Board as the Responsible Governmental Unit that will prepare an environmental report on both large power plants and high voltage transmission lines at the certificate of need stage. The EQB has staff that is experienced in conducting environmental review of large energy projects. The EQB has prepared Environmental Impact Statements and Environmental Assessment Worksheets on other large energy projects over the years. It is also anticipated that involving the EQB at the certificate of need stage will result in a shorter time period between the time a project is first proposed and the time when a site or route can be permitted by the EQB.

(2) Environmental Report. The proposed rules require the EQB to prepare what is called an environmental report. Several commenters preferred that term to others. An environmental report is not an EIS, it is not an Environmental Assessment Worksheet, and it is not an environmental assessment – other environmental review documents specified in the EQB rules for other kinds of projects. The content of an environmental report is spelled out in the rules. The intent is to gather the pertinent information that will allow the PUC to be fully informed of the environmental consequences of deciding upon a project to satisfy a need for electricity. The process for developing the document is different from that followed for preparing an EIS. There is not a draft and a final. It is also not like an EAW, which provides information to decide whether to prepare an EIS. An environmental report is the only environmental review the EQB will conduct on a large energy project at the certificate of need stage.

(3) Process. The process for preparing an environmental report is spelled out in the rules. A public meeting will be held shortly after an application is submitted and the

EQB will solicit input from the public to determine what impacts and what alternatives to investigate in the environmental report. Once the environmental report is completed, the EQB staff will participate in the PUC proceeding and be available to answer questions about the information in the report. The environmental report will become part of the administrative record that the Public Utilities Commission relies on in making a final decision regarding need for a new facility.

The specific provisions of the rules are discussed in more detail below in the rule-by-rule analysis.

Alternative Format

Upon request, this Statement of Need and Reasonableness can be made available in a different format, such as large print, Braille, or cassette tape. To make a request, contact Alan Mitchell at the Minnesota Environmental Quality Board, 658 Cedar Street, St. Paul, Minnesota 55155, phone (651) 296-3714, fax (651) 296-3698, or e-mail, alan.mitchell@state.mn.us For TTY, contact Minnesota Relay Service at 800-627-3529 and ask for EQB.

II. STATUTORY AUTHORITY

The EQB's authority to adopt rules governing environmental review can be found in Minnesota Statutes section 116D.04, subd. 4a. and subd. 5a. Subdivision 5a provides:

Subd. 5a. The board shall, by January 1, 1981, promulgate rules in conformity with this chapter and the provisions of chapter 15, establishing:

- (1) the governmental unit which shall be responsible for environmental review of a proposed action;
- (2) the form and content of environmental assessment worksheets;
- (3) a scoping process in conformance with subdivision 2a, clause (e);
- (4) a procedure for identifying during the scoping process the permits necessary for a proposed action and a process for coordinating review of appropriate permits with the preparation of the environmental impact statement;
- (5) a standard format for environmental impact statements;
- (6) standards for determining the alternatives to be discussed in an environmental impact statement;

(7) alternative forms of environmental review which are acceptable pursuant to subdivision 4a;

(8) a model ordinance which may be adopted and implemented by local governmental units in lieu of the environmental impact statement process required by this section, providing for an alternative form of environmental review where an action does not require a state agency permit and is consistent with an applicable comprehensive plan. The model ordinance shall provide for adequate consideration of appropriate alternatives, and shall ensure that decisions are made in accordance with the policies and purposes of Laws 1980, chapter 447;

(9) procedures to reduce paperwork and delay through intergovernmental cooperation and the elimination of unnecessary duplication of environmental reviews;

(10) procedures for expediting the selection of consultants by the governmental unit responsible for the preparation of an environmental impact statement; and

(11) any additional rules which are reasonably necessary to carry out the requirements of this section.

The EQB has ample authority to adopt rules for the conduct of environmental review of large energy projects as part of the process by which the Public Utilities Commission determines the need for the project.

III. NEED FOR THE RULES

Environmental review at the certificate of need stage has taken on added significance recently because of two factors. One is the fact that several large energy facilities have been proposed in the last year or so. In the previous 25 years, no controversial large energy facilities that require a certificate of need from the PUC were proposed in the State of Minnesota. Recently, however, several large energy projects have been talked about or proposed by various project proposers, including large coal plants and 345 kilovolt transmission lines. The public has raised questions about the manner in which environmental review of these facilities would be or was conducted.

The other is the fact that the Legislature changed the law in 2001 to provide that the only time certain issues will be reviewed is at the certificate of need stage. Issues of size, type, and timing, and issues of system configuration and voltage for transmission lines, can only be examined at the need stage when the Public Utilities Commission determines whether a large power plant or high voltage transmission line is needed. Minn. Stat. §§ 116C.53, subd. 2, and 116C.57, subd. 2.c. If these issues are to be examined as part of environmental review, they must be examined before the PUC makes a decision on the need for the proposed facility. The EQB heard from the public during

the rulemaking hearing on amendments to the Power Plant Siting Rules – Minn. Rules chapter 4400 – that it was important to provide for environmental review before the Public Utilities Commission because that was the only place, and the only forum, in which issues of size, type, and timing, and voltage and system configuration, would be considered.

Thus, amendment of the Special Rules for Certain Large Energy Facilities and High Voltage Transmission Lines in Minn. Rules parts 4410.7000 to 4410.7500 is needed to clarify what governmental unit is going to be responsible for the environmental review and to provide opportunities for the public to participate in the conduct of environmental review. Amendments are needed to help ensure the development of a comprehensive administrative record for the Public Utilities Commission on the environmental consequences of selecting a particular type and size of project to satisfy an established need for electricity.

There are a number of minor technical amendments to chapters 4410 and 4400 that are being proposed as part of this rulemaking proceeding. These editing changes are needed simply to make the language consistent with other changes that are being made and to correct some minor errors in the wording.

IV. COMPLIANCE WITH VARIOUS STATUTORY REQUIREMENTS

A. SOLICITATION OF OUTSIDE OPINION

Prior to the commencement of the formal rulemaking process, EQB staff circulated a draft of possible amendments to the EQB special rules for environmental review of power plants and transmission lines at the certificate of need stage before the Public Utilities Commission to interested persons and organizations. The EQB held a meeting on August 28, 2002, to discuss the draft language. Based on comments received at the August 28 meeting, EQB staff made revisions to the proposed amendments.

Minn. Stat. § 14.101 requires an agency to solicit public comment on the subject of proposed rulemaking. On October 14, 2002, the EQB published a Request for Comments on Possible Amendments to Rules Governing Environmental Review of Large Electric Power Generating Plants and High Voltage Transmission Lines, *Minnesota Rules* Parts 4410.7000 to 4410.7500 and Part 4410.4300, subparts 3 and 6 and Part 4410.4400, subparts 3 and 6. 26 State Register 551 (Exhibit H.) The public was given until December 6, 2002, to submit comments. The Board received five comments on the proposed amendments. Exhibits C – G.

B. DISCUSSION OF TOPICS IDENTIFIED IN SECTION 14.131

Minnesota Statutes section 14.131 requires that an agency that is proposing to adopt rules must address a number of factors in the Statement of Need and Reasonableness. The required factors are addressed below:

1) A description of the classes of persons who probably will 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.

One group of persons who will primarily be affected by these rules are the people and organizations that seek a certificate of need from the Public Utilities Commission for proposed large electric power generating plants and high voltage transmission lines. The project proposers will have to bear the costs incurred by the EQB in conducting environmental review of their proposed projects. They will also be expected to provide the EQB with information about their proposed project.

The public will also be affected by these rules. The public will have the opportunity to participate in the scoping of the environmental report. The public will also have the benefit of reviewing the environmental analysis conducted by the EQB in the report. Local government, too, will benefit from these rules, as local officials will have the benefit of the EQB's environmental analysis.

The Public Utilities Commission and other state agencies will also be affected by these rules. The PUC will no longer be designated as the Responsible Governmental Unit. The Department of Commerce will no longer be assigned the task of preparing an environmental report on proposed large power plants by the PUC. Both agencies will be able to draw on the expertise of the EQB to address the potential environmental impacts of proposed projects.

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.

The project proposers will have to pay the necessary and reasonable costs incurred by the EQB in preparing an environmental report on the project. The Public Utilities Commission has the authority to assess fees for the administration of a certificate of need application. Minn. Stat. § 216B.243, subd. 6 and Minn. Rules part 7849.0210. The applicant would have to pay the costs directly to the PUC if the PUC were the Responsible Governmental Unit. The applicant has to pay the costs of an Environmental Impact Statement, Minn. Stat. § 116D.045, and this process is being established as an alternative form of review to an EIS. Minn. Stat. § 116D.04, subd. 4a.

Thus, there will be no effect on state revenues. Project proposers will incur the costs of environmental review of their specific projects.

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

Environmental review of a proposed large energy project cannot be conducted by a state agency, regardless of which agency is designated as the Responsible

Governmental Unit, without imposing costs on a project proposer. The EQB can probably prepare these documents with as much efficiency as anybody since it has the most experience in this regard. The rules establish a process for determining at the initial stages of review exactly what alternatives and issues are going to be considered. This process will result in an identification of the probable alternatives and significant impacts that must be evaluated. Other unrealistic alternatives or unlikely impacts can be eliminated from review at this early stage. The rules are designed to complete the environmental review within just a few months, to avoid intrusion into the scheduling of other procedures to complete the PUC review process.

4) A description of any alternative methods for achieving the purposes of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

The alternative methods considered for conducting environmental review are the procedures and requirements followed under the existing PUC rules, where either the applicant (in the case of a transmission line) or the Department of Commerce (in the case of a power plant) prepared an environmental report. The reasons for the changes are described throughout this document, but basically the EQB is proposing to change the rules to better utilize the expertise of the Environmental Quality Board, to ensure that a Responsible Governmental Unit prepares the actual environmental report, to afford the public more defined opportunities to participate in the environmental review, and to provide a more expeditious and harmonious process from the time a certificate of need is applied for until a specific permit from the EQB is granted.

5) The probable costs of complying with the proposed rule.

It is difficult to estimate the cost of preparing an environmental report on a proposed large energy facility. It will depend on a number of factors, including the size and type of the project and the quality and quantity of the data provided by the applicant. The larger the project, the more extensive the environmental review, the higher the cost. The greater the number of alternatives to a proposed project, the higher the costs will be since there will be more alternatives to analyze. The type of project will affect the costs, since those with more significant environmental impacts will require more evaluation and analysis.

It is safe to say that preparation of an environmental report will cost thousands of dollars. In routine cases, where the project is not controversial and is not projected to have significant environmental impacts, environmental review will proceed smoothly and costs will be minimal. Controversial projects, with significant environmental impacts, like a proposed coal-fired power plant, will take longer to evaluate and the costs will be substantially higher than for the routine projects. To put these costs in perspective, a 1000 MW power plant could cost in excess of a billion dollars, and a new 100 mile transmission line could cost more than \$1 million per mile.

6) 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.

This statutory requirement to assess the differences between state and federal law is primarily designed to address the situation where a proposed state rule is more stringent than a corresponding federal requirement. In this case, however, there is no corresponding federal regulation. The federal government does not get involved in the question of need for new large energy facilities.

It is possible that a particular project could have federal grant funds involved or some other kind of federal promotion that triggers a requirement for environmental review at the federal level. Federal environmental review requirements are likely to come into play after the state has determined the need for a proposed facility, and federal environmental review will occur at the same time the EQB is conducting environmental review of a specific site or route under its Power Plant Siting Rules, Minn. Rules chapter 4400. In such event, the state and the federal government would coordinate their environmental review obligations to avoid duplication.

C. PERFORMANCE-BASED ANALYSIS – MINNESOTA STATUTES, SECTION 14.002

Minn. Stat. § 14.002 requires an agency that is developing rules to describe in the Statement of Need and Reasonableness how it considered performance based regulatory systems and ways it might afford flexibility in complying with the regulatory requirements being proposed while still meeting the agency's objectives.

The purpose of these rules is to provide meaningful environmental review and yet at the same time ensure an expeditious determination of the need for new energy infrastructure. The designation of the Environmental Quality Board as the Responsible Governmental Unit responsible for preparation of an environmental report is a significant way in which the proposed rules carry out these state policies. Naming the EQB as the one agency responsible for environmental review of all large energy projects before the Public Utilities Commission should lead to efficiency in the conduct of the review and will allow the EQB to bring its experience to bear in conducting the review.

Another example of how flexibility has been considered is the requirement to prepare an environmental report rather than an Environmental Impact Statement. By utilizing the administrative hearing as a forum for the public to comment on the environmental report and a place for an applicant and others to supplement the environmental report, a complete environmental record can be compiled in a more expeditious fashion than when an EIS is prepared. Also, the requirement to advise the general public early on about the project and to hold a public meeting at which the public can suggest matters to consider as part of the environmental report, will make it possible to identify quickly the issues and concerns to address.

Another change in the rules that provides additional flexibility is the designation of the EQB Chair as the person to make certain decisions to keep the process moving. For example, the Chair determines what matters will be considered in the environmental report. If parties disagree with the Chair, there is always the option of bringing the matter to the EQB Board, but in most cases allowing the chair to make decisions is acceptable to all and keeps the project on track.

Another way in which the proposed rules afford flexibility is in the provisions that allow the EQB to combine environmental review for both the Public Utilities Commission on the need question and the EQB on the site or route selection if possible. Combining environmental review into one document will allow the process to proceed in a more expeditious fashion. Combining the two procedures into one will depend on the ability of the applicant to identify a preferred site or route and gather the necessary information at an early stage in development of the project. If an applicant does not have site or route selection information available at the time a certificate of need is applied for, it is not likely the processes can be combined.

D. NOTICE TO COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE

Minnesota Statutes section 14.111 provides that before an agency may adopt rules that affect farming operations, the agency must provide a copy of the proposed rules to the Commissioner of the Department of Agriculture at least 30 days before publishing notice in the *State Register*. In this case, these proposed rules will not directly regulate farming operations, and this notice is probably not required. However, because power plants and high voltage transmission lines can be located on or cross farm land, farming operations can be impacted when these projects are constructed, and it is appropriate to notify the Commissioner.

The Commissioner of the Department of Agriculture, Gene Hugoson, is a member of the Environmental Quality Board. Commissioner Hugoson has, of course, been advised of the possible adoption of these rules and voted with the Board to proceed with rulemaking to amend these rules. This statutory requirement has been complied with.

E. ADDITIONAL NOTICE GIVEN TO THE PUBLIC

Minnesota Statutes section 14.23 requires an agency to describe in the Statement of Need and Reasonableness the efforts the agency made to notify persons or classes of persons who might be affected by the proposed rules about the proposed rulemaking. In addition to the statutory requirements to publish notice in the *State Register* and to mail notice to persons on the EQB rulemaking list, the EQB will also undertake other efforts to notify the public about these proposed rules.

The EQB will publish notice in the *EQB Monitor* of the proposed rulemaking. Each issue of the *EQB Monitor* is distributed to a lengthy list of persons and published on the EQB webpage. Many groups and individuals in Minnesota and elsewhere who are

active and interested in environmental matters in the state are aware of the *EQB Monitor* and read it regularly.

In addition, the EQB will post a copy of the notice, the proposed rules, and this Statement of Need and Reasonableness directly on the EQB webpage.

Not only will the EQB provide the additional notice described above regarding the proposed rulemaking, but the EQB has already engaged in substantial efforts to notify interested persons of this ongoing rulemaking effort. These efforts have been described earlier in this document. In summary, the efforts involved holding a public meeting to solicit comments from interested parties and sending the interested parties e-mail notice of activities in development of the rules, including various versions of the draft rule amendments.

V. RULE-BY-RULE ANALYSIS

4410.2000 DEFINITIONS AND ABBREVIATIONS

Subp. 38 High voltage transmission line: This amendment simply is intended to rely on the definitions in this chapter 4410 rather than referring to definitions contained in chapter 4400 as was previously the case. Including the definitions in this chapter makes the rule easier for readers to follow.

Subp. 41. Large electric generating plant. The purpose of this amendment is the same as for subpart 38, to include all definitions in this chapter rather than referring to another chapter.

Subp. 42. LEPGP. There are no actual amendments to this definition but since it is an acronym for the term in subpart 41, the same change is implemented.

4410.3100 PROHIBITION OF FINAL GOVERNMENTAL DECISIONS

Subpart 1. Prohibitions. The amendment here clarifies that the more general provisions of chapter 4410 do not apply to environmental review under these rules for energy projects pending before the Public Utilities Commission. There are other rules that will provide the same limitations on commencing projects as this subpart does for other projects. Subpart 4410.7660, subpart 1 prohibits the PUC from making a final decision until the environmental report is complete. Minn. Rules part 4400.0400, subp. 5 provides that no person can commence construction of a new power plant or high voltage transmission line until a permit has been issued by the EQB. These rules will have the same effect as this subpart on projects that are not energy facilities. Since this subpart refers to EISs and EAWs, two documents that are not prepared under these rules, and to petitions for environmental review, which is not necessary since review is mandated, it is appropriate to eliminate any reference to parts 7010 to 7070.

Subp. 2. Public projects, prohibitions. The amendment here does the same thing as the amendment to subpart 1, and the rationale is the same.

Subp. 9. Emergency action. In earlier versions of the rules, the EQB had proposed specific language regarding emergency situations. The language stated that these rules (parts 7010 to 7070) did not apply in emergency situations. The Public Utilities Commission stated that since the PUC statutes do not recognize emergencies, such a provision was unnecessary. Exhibit C. Therefore, there is no need to address the matter of emergency situations in this rule either, and it is appropriate to provide that this provision applies only to other projects reviewed under parts 4410.0200 to 4410.6500. Also, Minn. Rules part 4400.4050 specifically addresses the situation where a new power plant or transmission line has to be permitted by the EQB in an emergency. That rule will determine how the EQB will proceed in an emergency when a permit is applied for.

4410.4300. MANDATORY EAW CATEGORIES.

Subp. 3. Electric generating facilities. Because a new power plant of 50 MW or more must now undergo review under both these new rules (7010 to 7070) when the PUC is considering the need for the facility, and under chapter 4400 when the EQB is considering a permit for a specific site, it is necessary to clarify that an Environmental Assessment Worksheet will be prepared only on those power plants that are between 25 and 50 MW. See Minn. Stat. §§ 116C.52, subp. 5 and 216B.2421, subp. 2(1). The last sentence of this proposed rule indicating that power plants of 50 MW or more will be reviewed under parts 7010 to 7070 and chapter 4400 is included for emphasis and clarity.

Subp. 6. Transmission lines. As with subpart 3, this definition has to be revised to be consistent with the new statutory definition. Minn. Stat. §§ 116C.52, subp. 4 and 216B.2421, subp. 2(3) now define a high voltage transmission line as one of 100 kilovolts or more. As with subpart 3, the second sentence reminds the reader that environmental review of high voltage transmission lines will occur under the special rules for that kind of project.

4410.4400. MANDATORY EIS CATEGORIES.

Subpart 1. Threshold test. This change is necessary simply to include all the subparts of this rule.

Subp. 3. Electric generating facilities. This rule describes the projects for which an Environmental Impact Statement is mandatory. Because environmental review of large energy facilities is now covered by parts 7010 to 7070 of this chapter and by chapter 4400, it is unnecessary to include any reference to power plants in this provision. However, because the public may turn to the mandatory categories to determine what kind of environmental review is required for large power plants, it makes sense to keep a subpart for power plants and to refer to these other rules for environmental review requirements.

Subp. 6. Transmission lines. The change here is for the same reason that subpart 3 is being changed.

4410.5200 EQB MONITOR PUBLICATION REQUIREMENTS

Subpart 1. Required notices. This rule imposes a requirement on governmental bodies to publish certain notices in the EQB newsletter called the *Monitor* that environmental review of a project has been completed. Since no governmental body other than the EQB will be conducting environmental review of large energy projects, this provision has no application here. Also, since items P and Q refer to the old rules, which are being repealed, they have no application here.

Subp. 3. Required EQB notices. This is the provision that requires the EQB to publish certain notices in the EQB *Monitor*. Item F is the requirement to publish notice in the *Monitor* that EQB has issued a permit for a new large energy facility. The documents used to be called a certificate of site compatibility for a power plant and a construction permit for a high voltage transmission line. The terms now used in the statutes and the rules are site permit and route permit. Those changes are reflected in the amendments to item F.

Item G is proposed to be amended simply to update the new number for the rule referenced.

New item H is proposed to be added to state that the EQB must publish notice in the EQB *Monitor* when an environmental report prepared pursuant to these new rules is available for public review. This is the same requirement proposed to be included in part 4410.7030, subp. 10.

ENVIRONMENTAL REVIEW OF ELECTRIC POWER GENERATING PLANTS AND HIGH VOLTAGE TRANSMISSION LINES IN PROCEEDINGS BEFORE THE PUBLIC UTILITIES COMMISSION

Parts 4410.7010 to 4410.07070 contain all new language. It replaces the existing language in parts 7000 to 7500. Parts 7000 to 7500 are proposed to be repealed. The intent of the rules, to require environmental review of proposed large energy projects at the time the Public Utilities Commission is considering the need for new facilities, remains the same. The new language changes the manner in which that environmental review is conducted, but the purpose is still to ensure meaningful environmental review is conducted before a decision is made.

4410.7010. APPLICABILITY AND SCOPE

Subpart. 1. Applicability. This rule merely describes that parts 7010 to 7070 apply to any high voltage transmission line project and to any large electric power

generating plant for which a certificate of need or other need determination is required by the PUC under applicable law. High voltage transmission line projects would be those over 100 kV and that are longer than 10 miles or cross state boundaries and those lines over 200 kV of any length. Large electric power generating plants are any power plants of 50 megawatts or more.

The most common way for a project proposer to apply for a need determination from the PUC is through a certificate of need application. However, with regard to transmission lines, a utility could also seek a need determination from the PUC through submission of a transmission planning report and a request for certification that one or more new transmission lines are needed. Minn. Stat. § 216B.2425. These certification requests will also fall under these rules and will require the preparation of an environmental report by the EQB. The PUC is in the process of adopting new rules regarding the transmission planning process. Minn. Rules chapter 7848. The proposed rules contain a provision recognizing the fact that the EQB will conduct environmental review of these certification requests. Minn. Rules part 7848.1600 [proposed]. 27 State Register 1150 (January 14, 2003).

Subp. 2. Scope. This provision explains that parts 7010 to 7070 apply when the Public Utilities Commission is considering the need for a new facility. These provisions do not apply in other settings. The rule clarifies that chapter 4400, the EQB power plant siting rules, will apply when an applicant applies to the EQB for a site permit or route permit for a project that has been certified as to need by the PUC.

The Minnesota Transmission Owners would like to see language included in this provision stating that no other environmental review is required at the certificate of need stage. Exhibit I. The Public Utilities Commission was concerned that language to that effect might restrict the Commission's ability to require certain information that it deemed necessary to carry out its statutory obligations. Exhibit C. The intent here is while no other formal environmental review is anticipated, the Public Utilities Commission is not prohibited from requiring certain information to be submitted as part of a certificate of need application if the Commission determines such information is necessary to fulfilling its duties. Ideally, the crucial environmental information will be developed as part of the environmental review process established in these rules.

4410.7015. DEFINITIONS

Subpart 1. Scope. This provision establishes that the definitions included apply when interpreting parts 7010 to 7070.

Subp. 2. Associated facilities. With any large electric power generating plant or high voltage transmission line, there are always "associated facilities" that are part of the proposed facility. Therefore, it is appropriate to define the term. The definition proposed here is identical to the definition recently adopted in the power plant siting rules. Minn. Rules part 4400.0200, subp. 2a. It makes sense to use the same definition in these rules since both rules are applicable to the same kind of facilities.

In the power plant siting rules, specific examples of “associated facilities” are included in the definitions for large electric power generating plants and high voltage transmission lines. Minn. Rules part 4400.0200 subps. 8 and 10. This language is not included in these rules because the definitions for large electric power generating plant and high voltage transmission line are taken from the PUC statute rather than the Power Plant Siting Act. Nonetheless, the types of associated facilities described in the power plant siting rules will still have application here in identifying associated facilities. Examples of associated facilities with large electric power generating plants include coal piles, cooling towers, ash containment, fuel tanks, water and wastewater treatment systems, and roads. Part 4400.0200, subp. 10. Associated facilities with high voltage transmission lines include insulators, towers, substations, and terminals. Part 4400.0200, subpart 8.

Subp. 3. **Chair.** This definition is added because there are a number of places in the rules where it is the Chair of the EQB that performs certain tasks. The Chair, of course, is the person appointed by the Governor to serve as Chair. Minnesota Statutes section 116C.03, subdivision 3a. The definition is the same one found in Minn. Rules part 4400.0200, subp. 3a.

Subp. 4. EQB. The acronym EQB is used in places in the rules so it is appropriate to define it. EQB, of course, is the Environmental Quality Board. When the acronym EQB is used in the rules, it means the 15 member Board, and not the Chair and not the staff, although some tasks of the EQB, such as mailing notices, are of necessity, performed by the staff.

Subp. . **Environmental report.** “Environmental report means a written document that describes the human and environmental impacts of a proposed large electric power generating plant or high voltage transmission line and alternatives to the project and methods to mitigate anticipated adverse impacts. The definition is essentially the same as the definition for “environmental assessment” in Minn. Rules part 4400.0200, subp. 6a. The specific information that must be included in the environmental report is spelled out in other rules, and the reasons for requiring the information are discussed below under the applicable provisions.

Initially, the EQB suggested that the document the EQB will prepare as part of the PUC need proceeding be called an environmental assessment, but several commenters preferred the term “environmental report.” The existing rules require the preparation of an environmental report at the certificate of need stage. Parts 7100 and 7500. Also, the PUC rule calls the document an applicant for a certificate of need for a high voltage transmission line must prepare an environmental report. It makes sense to continue to call the document prepared at this stage of the proceedings an “environmental report.”

Subp. 6. **High voltage transmission line or HVTL.** The definition of high voltage transmission line is taken verbatim from the statutory definition in the PUC statutes. Minn. Stat. § 216B.2421, subd. 2(2) and (3). The definition is slightly different

from the definition in the Power Plant Siting Act, Minn. Stat. § 116C.52, subd. 4, and in Minn. Rules part 4400.0200, subd. 8, but it makes sense to use the definition from the PUC statute because these are the transmission lines that will require a certificate of need and will undergo environmental review as part of that process. The major difference in the definitions – a line between 100 kilovolts and 200 kilovolts has to be over ten miles long or cross the state line under the PUC definition but not under the EQB definition – should not lead to any problems in identifying what is a high voltage transmission line because while the PUC language places a limit on the jurisdiction of the PUC, it does not change the basic definition of what is a high voltage transmission line. Also, the PUC definition does not make a reference to “associated facilities” but other provisions of these rules provide that associated facilities will be considered as part of the environmental review to be conducted.

Subp. 7. **Large electric power generating plant or LEPGP.** As with the definition of high voltage transmission line, this definition comes from the PUC statutes. Minn. Stat. § 216B.2421, subd. 2(1). It is somewhat different from the definition in Minn. Stat. § 116C.52, subd. 5, and in Minn. Rules part 4400.0200, subd. 10, but similarly, it makes sense to rely on the PUC definition because these are the rules that apply to the PUC proceedings. As with the high voltage transmission line definition, the slight differences in the language should not lead to any difficulties in applying the definition to identify a large electric power generating plant.

Subp. 8. **Mail.** This definition has been added to clarify that when the rules require notice to be given, electronic mail will suffice for U.S. postal service delivery, unless a statute specifically requires U.S. post. Electronic mail in most instances is both quicker and less costly to the agency. Many members of the public prefer electronic notice of upcoming events and of the availability of documents. This language is the same as the language recently adopted by the EQB in Minn. Rules part 4400.0200, subp. 11a.

Subp.9. **Public Utilities Commission or PUC.** This rule establishes that any references in the rule to Public Utilities Commission or the PUC means the Minnesota Public Utilities Commission. The Minnesota Public Utilities Commission is the five member body established under Minn. Stat. § 216BA.03.

4410.7020. ENVIRONMENTAL REVIEW BEFORE PUBLIC UTILITIES COMMISSION.

This rule establishes the requirement for the Environmental Quality Board to prepare an environmental report on a proposed high voltage transmission line or large electric power generating plant when the project proposer seeks a decision on the need for the new facility from the Public Utilities Commission. This rule sets forth the general obligation to prepare the report and other parts of the rules set forth the more specific tasks and requirements.

The document to be prepared is called an “environmental report.” One reason the EQB proposes to call the document an environmental report is because that is what interested parties prefer. Exhibits E and F. Also, it is the term used in the existing rules and in PUC rules. Minn. Rules parts 4410.7100 and 7500 and 7849.0230. The title of the document is less important than the content of the document. This rule describes generally what must be included in an environmental report, and more specific requirements are found in subsequent rule provisions described later.

The last sentence of this rule provides that the EQB shall be responsible for the completeness and accuracy of all information in the environmental report. This language is included to emphasize that while an applicant may be required to submit a substantial amount of information about a proposed project and its potential environmental impacts, the EQB, as the Responsible Governmental Unit, remains responsible for the content of the report. This is the same obligation all RGUs have when preparing environmental documents. Minn. Rules parts 4410.0400, subp. 2, and 4410.1400.

Several commenters suggested that the EQB should make a recommendation on a proposed project as part of the environmental report. Exhibits E. and F. There is nothing in these rules that requires the Environmental Quality Board to make a recommendation on the size or type of project that the PUC should find is least environmentally damaging to address an anticipated need for more electricity. That is not the purpose of environmental review. Environmental review is intended to provide information to a decisionmaker. It is not unusual for one RGU to conduct environmental review that will be relied upon by other governmental bodies in making decisions.

4410.7025. COMMENCEMENT OF ENVIRONMENTAL REVIEW.

Subpart 1. Certificate of need application. This provision requires the applicant for a certificate of need to submit a copy of the application and any other material that is part of its application for a certificate of need to the EQB at the same time the application is submitted to the PUC. It is necessary to do this because the timeframe for the EQB to complete its environmental review is quite short. In order to allow the EQB to begin immediately to undertake the environmental review, the EQB must be made aware from the outset that a certificate of need has been applied for.

Subp. 2. Transmission planning report. Since the EQB will also conduct environmental review of high voltage transmission line projects that come through the new transmission planning process, it is necessary that the EQB be informed early on that a utility is seeking certification of a new transmission line. The PUC has proposed rules recognizing that the EQB will be conducting environmental review of these projects. Minn. Rules chapter 7848. It is not burdensome or unreasonable to require a utility to submit a copy of its transmission planning report and any other accompanying materials. Indeed, the new PUC rules will likely require utilities to submit their transmission planning reports to EQB regardless of whether there are any lines for which certification will be sought. Minn. Rules part 7848.2000 (27 State Register 1153 (January 21, 2003).

4410.7030. PROCESS FOR PREPARATION OF ENVIRONMENTAL REPORT.

Subpart 1. Notice to interested persons. The public is always anxious to learn about proposed large energy projects and wants notice of such projects as early as possible. The proposed PUC rules for transmission planning, Minn. Rules chapter 7848 (27 State Register 1143 – 1155) and the EQB’s power plant siting rules, Minn. Rules part 4400.1350, contain extensive requirements for alerting the public to the existence of proposed projects and of the submission of applications for approval of proposed projects. Similarly, this rule is intended to give the public notice that the EQB is about to begin the process of conducting environmental review of a proposed project for which a certificate of need application or transmission planning report has been filed with the PUC.

The proposed language provides that it is the EQB, not the applicant, who will give the first notice. Because time is of the essence, it seems advisable to have the EQB send out the first notice, rather than to impose that requirement on the applicant. Also, since this first notice will announce the date of an upcoming meeting to be held by the EQB, the EQB can best take care of the details involved in preparing the notice.

The rule specifies a number of individuals who must be notified by the EQB of the receipt of a certificate of need application or transmission planning report. The following list identifies the persons specified in the rule who must get a direct mailed notice from the EQB:

A. Persons on the EQB general project list. The EQB maintains as part of its power plant siting rules, a general list of persons who want to receive notice of every large energy project that comes before the EQB. Minn. Rules part 4400.1350, subp. 1. It makes sense to rely on this same list when the EQB is about to conduct environmental review for a project pending before the PUC. Anybody can add his or her name to this list, and it can be done electronically on the EQB’s webpage.

B. Persons on the utility’s list. The Public Utilities Commission requires each utility to maintain its own list of persons who want notice of various matters by that utility before the PUC. Minn. Rules part 7829.0600. It makes sense to rely on this list to notify persons of the pending environmental review by the EQB.

C. Persons on the PUC list. The Public Utilities Commission will also begin to generate its own service list when it first opens a docket for a new transmission line or power plant. This list may be quite short at the outset of a project, but nonetheless, it makes sense to rely on it for notifying people about the environmental review.

D. Persons known to EQB who own property or reside in the area. The persons who are directly affected by a proposed project because they own property or live in the area where the proposed project is proposed to be located surely want to get notice as early as possible about the pending project. The language does not require the

EQB to go out and determine who owns property or lives in the area, and sometimes the affected area is not readily available because the site or route of the project may not be known at this stage of development, but if the EQB is aware of persons who could be directly affected by a proposed project, these people surely want to receive notice about the project. The EQB will become aware of property owners and residents if a project has been discussed openly for some period of time before the certificate of need application is filed and the project proposer has a specific site or route in mind during this time. It will often be the case that the public and local officials will be aware of a proposed project for months before any proceedings are commenced before the Public Utilities Commission. In such event, the EQB will provide notice to those property owners and residents who have been identified.

E. Local governmental officials. Local governmental officials usually are aware of possible projects well in advance of actual applications being filed, but these officials do want to get the official notices that will announce formal processing of a certificate of need application or transmission line certification request. It is easy enough to determine which local officials should be notified and notice will go out to these officials. It is also important to notify local officials because they often get phone calls and questions from their constituents about the project, and they need the latest information to respond completely.

Subp. 2. Content of notice. This provision describes the information that must be included in this first notice that is mailed out to interested persons.

A. Description of the proposed project. Obviously, interested persons must be advised of the type of project that is being proposed. If a possible site or route for the project is known at the time, that information will be included in the notice as well.

B. PUC jurisdiction. Not everybody receiving the notice will understand what the status of the project is, so it is necessary to include in the notice an explanation of the PUC certificate of need process or transmission certification process. Once language for this part of the notice is developed, it will likely be identical in subsequent notices for other projects.

C. EQB role. It is also necessary to explain to the public what role the EQB is playing and to describe the process that will be followed so the public will know what to expect and how to participate.

D. Public meeting. The notice will also announce an upcoming public meeting to be held by the EQB. This is a crucial piece of information because interested persons will want to attend the meeting so they can get their questions addressed. The public meeting will also be a time for the public to participate in the development of the issues to be addressed in the environmental report.

E. Eminent domain authority. Property owners are always concerned about whether a utility may require their property to build a new power plant or transmission line. The notice will state whether the project proposer may exercise the power of eminent domain and the basis for such authority. It is important to get this issue before the public as early as possible so concerned landowners can know that they better be involved in the process if their property could be affected by the project.

Subp. 3. **Public meeting.** Once the certificate of need application or transmission planning report comes in to the EQB, the EQB will schedule a public meeting to provide the public with an opportunity to learn more about the project. The rule provides that the meeting must be held within 40 days after receipt of the application or planning report. The reason for holding the meeting quickly is that the EQB has only a few months to complete the entire process.

The rule requires the EQB to give at least 20 days notice of the meeting. Some commenters thought that the public should be given more time to review an application and prepare for the meeting, but since the EQB must complete the environmental review within four months, there simply isn't more time to give.

The notice that is mailed out by the EQB will contain the specifics on the meeting – the time, place, and date. The meeting will be held in a location that is convenient to persons who live near a proposed project. If a project is proposed for the Duluth area, for example, the meeting will likely be held in Duluth. The EQB will also post notice of the meeting on its web page and publish notice in the *EQB Monitor* to help spread the word about the project and the meeting.

Subp. 4. **Conduct of public meeting.** The purpose of the public meeting is twofold: (1) to provide information to the public, and (2) to solicit input from the public on what matters should be examined in the course of the environmental review.

To provide information, the EQB will have available at the meeting either a copy of the certificate of need application or the transmission planning report. These documents will be available for public inspection. The rule does not require it but the EQB will try to make as much information available on the web as possible in advance of the meeting. At the public meeting, the EQB staff will explain the process that is going to be followed to prepare the environmental report. The public will have an opportunity to ask questions of the EQB staff and utility personnel who are present at the meeting. The meeting will be conducted in an informal fashion. The EQB will keep an audio recording of the meeting for future reference.

The public will also have an opportunity to suggest to the EQB matters and issues that should be addressed in the environmental report. It may be difficult for people to make specific suggestions if the meeting is the first time the person hears about the project, but again, there isn't much time for the process to be completed. Oftentimes, the public is well aware of a project by the time a formal application is submitted. This is certainly the case with transmission lines that come through the transmission planning

process. Also, the public will have at least ten days to submit comments in writing to the EQB after the public meeting ends.

Subp. 5. **Applicant role.** The applicant will be the one most knowledgeable about the project and will have one or more representatives at the public meeting to answer questions and provide information to the public.

Subp. 6. **Alternatives and impacts.** This is the provision that is intended to develop the matters that will be addressed in the environmental report. It is the Chair of the EQB who will decide what to address in the environmental report. The reason for delegating this responsibility to the Chair is because there isn't time to bring the matter to the Board for decision, since the Board only meets once per month. The Chair can elect to bring the decision to the Board if it involves controversy, but in most instances, the Chair will decide what will be addressed in the report. This is the same process that is involved when the EQB conducts environmental review at the time a permit is applied for. Minn. Rules parts 4400.1700, subp. 2 and 4400.2750, subp. 2.

Any person can request that certain issues or alternatives be a part of the environmental report. It is not enough, however, to simply make the request. The Chair is only going to include certain matters if there is good reason to examine the issue or to consider a particular alternative. The rule provides that the matter will be included if the Chair determines that evaluation will assist the PUC in making a decision on the need for a new project. The person requesting inclusion of the matter in the report would be well advised to submit supporting information justifying the analysis of the matter. The Chair will also allow the applicant an opportunity to respond to the request. However, this response is going to have to happen quickly, within a few days, because the Chair will be making a decision on the matters to include in the environmental report within ten days after close of the comment period.

The rule provides that if the PUC requests that the EQB evaluate a certain alternative or a certain impact associated with a project, the EQB is obviously going to include that matter in the environmental report. Other agencies, like the Department of Commerce and the Pollution Control Agency, might also suggest certain items to include, and the Chair will certainly take those requests into account.

Subp. 7. **Chair decision.** The rule gives the Chair only ten days to decide on what should be included in the environmental report after the close of the public comment period following the public meeting. This allows the process to move expeditiously.

The rule specifies that the items the Chair will address in the order are (1) the alternatives to be addressed in the environmental assessment; (2) the specific potential impacts to be addressed; (3) the schedule for completion of the environmental assessment; and (4) other matters to be included in the environmental assessment. These are the same four items the Chair will include in a scoping decision on an environmental assessment when an applicant has applied for an EQB permit for a specific project that

has come through the PUC certificate of need or transmission planning process. Minn. Rules part 4400.2750, subp. 3.

An important part of the Chair's order will be identification of the alternatives to be examined. These will be selected from the alternatives identified in the application. But there may be other alternatives added as a result of public input or input from other agencies or the EQB staff.

The Chair's order will also identify the specific impacts that will be addressed. A good number of impacts that will be included in all environmental reports is spelled out in part 4410.7035. Other impacts will be developed as the specifics of a proposed project are considered. As the EQB prepares a number of these environmental reports, the universe of environmental impacts to consider will become more specifically identified.

It is also important for the Chair to establish the schedule for completing the environmental report. This is important to give the public and the applicant an idea of when the environmental report will be available. It will also help the Public Utilities Commission plan for its public hearing. The schedule will also alert the applicant and the public that the process is going to proceed expeditiously because the EQB has only four months to complete the process.

The rule goes on to provide that once the Chair has established the parameters of the environmental report, the scope of the report is not going to be changed unless there are substantial changes in the project or new information has come to light that significantly changes the project or suggests a reasonable alternative that was not known before. This is the same standard used in the power plant siting rules and the environmental review rules. Minn. Rules part 4400.2750, subp. 3 and 4410.2100, subp. 8. This rule emphasizes the importance of all interested parties participating fully from the beginning in the development of the environmental report. To afford aggrieved persons an opportunity to bring their request to the full Board, the rules do recognize that the Chair could elect to bring any of these matters to the Board for decision. Because changes in the Chair's order could quite likely result in a delay in completion of the environmental report, it could be advisable to ask the Board to make the decision to change the environmental report.

Subp. 8. **Notice of decision.** Once the Chair has made a decision on the matters to be included in the environmental report, the Chair will arrange to give notice to persons interested in the matter. The persons notified will include those who submitted comments and those who asked to be notified. Not all persons who got the original notice about the public meeting will be notified automatically. These persons will have to take some initiative to let the EQB know that they want to continue to receive notices about the project.

Subp. 9. **Time frame for completion of environmental assessment.** This rule states that the EQB will complete the environmental report within four months from the time the EQB receives the certificate of need application or transmission planning report.

There is no doubt that this will be a tight timeframe with larger, more controversial projects. The reason for the tight schedule is because the Public Utilities Commission has only six months by statute to complete its review of a certificate of need application, Minn. Stat. § 216B.243, subd. 5, and only seven months to act on a certification request when a transmission planning report is filed in November. Minn. Stat. § 216B.2425, subd. 3. However, the rule recognizes that the Chair is going to set a schedule for each project for which an environmental report is prepared under these rules. Of course, it stands to reason that if an applicant has submitted an incomplete application or report, and the PUC so finds, the EQB's schedule will be extended accordingly.

Subp.10. Notification of availability of environmental assessment. This rule describes what the EQB will do when the environmental report is completed. The important task is to alert interested persons that the report is available, and this rule is designed to do that. The EQB will publish notice in the *EQB Monitor*, which is the place many people have come to expect notices of the completion of environmental review to be published. Of course, if a person has requested to be notified of completion of the environmental report, that will be done directly by mailing notice to that person. The EQB has also expanded its use of the web as a means of notifying the public, and notice will be published on the web. Hopefully, the actual environmental report document can be made available on the web, although the rule does not require it. Also, the PUC must be provided with a copy of the report and the rule so provides. Those state and local agencies that have been identified in the report as governmental bodies with some jurisdiction over the project will also be given notice. For example, the Pollution Control Agency will require several permits for new power plants, and the PCA will be notified when the environmental report is available.

4410.7035. CONTENT OF ENVIRONMENTAL REPORT.

Subpart 1. Content of environmental report. This rule is intended to set forth some minimum requirements for what must be included in an environmental report. The list is similar to the list that is set forth in the power plant siting rules for preparation of an environmental assessment when a permit is applied for. Minn. Rules part 4400.2750, subp. 4.

A. General description of the proposed project. Every environmental review document is going to include a description of the project under review.

B. General description of alternatives. It is helpful to describe each of the alternatives that will be addressed in the environmental report. The list of alternatives that will be addressed in the environmental report included in the rule language comes from the PUC rules regarding a certificate of need application. Minn. Rules parts 7849.0250.B. and 7849.0260.B. If the PUC requires an applicant to discuss various alternatives as part of its application, those alternatives will be addressed in the environmental report prepared by the EQB.

C. Human and environmental impacts. The whole purpose of environmental review is to analyze the human and environmental impacts of a proposed project at an early stage before decisions approving the project are made. The EQB Chair will attempt in the order determining the matters to be included in the environmental report to identify the impacts to be evaluated.

D. Project specific impacts. Item C. is intended to cover those impacts that are associated with any project of the size and type of the one proposed, while this Item D. is intended to focus on any specific impacts associated because of the nature or location of the particular project under review.

E. Mitigative measures. As with any environmental review process, an important topic is an analysis of ways in which the environmental and human impacts can be mitigated.

F. Feasibility of alternatives. It is important to provide a decisionmaker not only with the potential impacts of a proposed project and of alternatives to the project, but also with an evaluation of the feasibility of the various alternatives examined.

G. Permits required. An important piece of information for the public to consider is what permits would be required to actually construct the project being proposed. For large energy facilities, there are always more permits than just authorization by the Public Utilities Commission on the need for the project. A site permit or route permit from the EQB is always required for these large energy projects. This determination of what permits are required will allow the EQB to inform the various permitting agencies of the existence of the environmental report.

H. Other matters. It is possible that the Chair will identify certain matters specific to the project under review that must be evaluated. This item H. simply captures those additional items that are specific to the individual project.

Subp. 2. Impact of power plants. One of the reasons that an environmental report should be able to be completed within a few months at the certificate of need stage is that over time, as these reports are prepared, much of the information will be the same or similar from project to project. For example, once an environmental report is prepared on a proposal to build a natural gas fired power plant, the environmental report on a second natural gas fired power plant will contain some of the same information. This subpart 2 is intended to identify basic information that will be examined as part of the environmental report for any large power plant. The list of information here comes primarily from comments of the Pollution Control Agency. Exhibit No. J.

A. Air emissions. The pollutants listed here are essentially what are called criteria pollutants under the Clean Air Act. Mercury is not a criteria pollutant but it is certainly a pollutant of concern with the burning of fossil fuels. We know upfront that these pollutants will be ones of concern with any proposal to burn fossil fuels to generate electricity. The list of pollutants contained here does not mean that other

pollutants will not be considered if appropriate; it only means that we know these pollutants must be considered.

B. Hazardous air pollutants. It may not be possible to identify specific hazardous pollutants upfront (other than mercury which is included in A above), but it is reasonable to recognize that emissions of hazardous pollutants are certainly a matter that will be addressed in an environmental report on a proposed new power plant.

C. Impact on visibility. Visibility impacts associated with power plant emissions are becoming more of a concern to regulatory agencies. It is reasonable to evaluate such impacts for a new power plant.

D. Ozone formation. The Minnesota Pollution Control Agency has monitored high levels of ozone on occasion in the Twin Cities area in the last few years. There are national ambient air quality standards for ozone, Title 40 of the Code of Federal Regulations, parts 50.9 and 50.10, and state standards established by the Pollution Control Agency. Minn. Rules part 7009.0080. Ozone creation is a factor that must be taken into account if a new fossil fuel fired power plant is proposed.

E. Fuel. There are impacts associated with the manner in which a fuel, whether it is coal or gas or petroleum or anything else, is delivered to a power plant. The impacts of fuel delivery must be addressed in the environmental report.

G. Water consumption. The Department of Natural Resources is always alert to increasing demands for water. It will be necessary to address this matter in the environmental report.

H. Wastewater. It will be necessary for the operator of any power plant to obtain the necessary permits for handling wastewater generated by the plant. Information on wastewater streams and treatment technologies will be helpful in evaluating the project.

I. Solid and hazardous wastes. The types of wastes to be generated is an important issue to evaluate. The manner in which the project proposer intends to handle these wastes is also a necessary element of the environmental report.

J. Noise. Large power plants will generate noise. The predicted noise levels at nearby receptors will have to be included as part of the environmental report.

Subp. 3. Impacts of high voltage transmission lines. The list of potential impacts associated with high voltage transmission lines is not as extensive as anticipated impacts from large power plants. However, there are certain impacts from transmission lines that can be identified upfront and these impacts must be addressed in the environmental report. These impacts may not change dramatically from project to project and information from one report may be able to be included in a report on a second project.

A. Right-of-way requirements. Landowners in particular will want to know how much right-of-way would be required to build a particular high voltage transmission line, and it is an important factor for decisionmakers to take into account in evaluating a transmission project.

B. Structure size and type. Voltage and conductor size will determine to a great extent what kind of structures will be required to carry the new line. The structures will determine to a large degree how much right-of-way would be required, but structure type also determines the visual impact associated with a particular line.

C. EMF. Electric and magnetic fields are always matters of concern to the public and decisionmakers. This information must be included in the environmental report.

D. Noise. Data must be provided in the environmental report to estimate what noise levels might occur at receptors within a certain distance of a proposed power line.

E. Visual impacts. This is related to structure size and type but requires analysis in the report.

Subp. 4. Incorporation of information. As was discussed above, some of the information to be included in an environmental report on a proposed project will be the same as information found in other environmental reports. This rule recognizes that it is perfectly acceptable to incorporate other information into an environmental report. Reference is made in the rule language to a provision of the EIS rules, part 4410.2400, not because an EIS may be required here, but because that rule confirms that incorporation is always available and the rule establishes criteria for how to incorporate the information. As with an EIS, if the EQB in preparing an environmental report decides to incorporate certain information, it will cite to the incorporated material and briefly describe it in the report. Also, part 4410.2400 requires that the incorporated information must be readily available for inspection so in the event the EQB incorporates information into an environmental report, the EQB will have to ensure that the incorporated information is readily available for public review.

4410.7040. AGENCY ASSISTANCE

It is readily apparent that if the EQB is to complete these environmental reports in a timely and complete fashion, the agency will have to call on other agencies to assist in gathering information for inclusion in the report. One of the agencies that will be looked to is the Pollution Control Agency. In fact, the PCA has already compiled a great deal of information regarding power plant emissions. The EQB will rely heavily on the PCA's expertise with regard to power plant emissions. Other agencies that will be of assistance are the Department of Health and the Department of Natural Resources. This rule simply recognizes that other agencies may have to assist the EQB in preparing these

environmental reports. Existing environmental review rules already provide that governmental bodies may be called upon to assist in the preparation of environmental review documents. Minn. Rules part 4410.2200.

4410.7045. APPLICANT ASSISTANCE.

An applicant for a certificate of need or certification of a new transmission line project knows that the Public Utilities Commission and the EQB are going to require the applicant to submit a great deal of information about the proposed project and possible alternatives to the project. Indeed, the quality of the environmental report, and the time it takes to complete the report, depend to a significant degree on the quality of the data provided by the applicant. This rule recognizes that applicants might be asked to supply certain information. The rule only requires an applicant to provide information “to which it has reasonable access” so it does not require an applicant to go out and get data that does not presently exist. Of course, if the data does not exist and it is necessary for completion of the environmental report, there could be a delay in completion of the document. If the applicant can collect the data more expeditiously than the EQB, the applicant might want to volunteer to do that.

4410.7050. ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.

Subpart 1. PUC decision. This rule provides that the Public Utilities Commission should not commence any public hearing or render a final decision on a certificate of need or for certification of a high voltage transmission line until after the environmental report is completed. This is a simple tenet of environmental review – that the environmental review should precede any final decisions in the matter. Minn. Stat. § 116D.04, subd. 2b and Minn. Rules part 4410.3100.

This rule does not mean that the PUC cannot undertake preliminary matters regarding the public hearing that must be held on the application or certification request. An administrative law judge can be assigned, the judge can conduct preliminary matters such as prehearing conferences and discovery matters, and the parties can prepare and submit their written testimony. Indeed, these matters should go forward simultaneously with preparation of the environmental report to ensure that the process continues expeditiously and within the statutory deadline. What is intended here is that the actual public hearing not be held until the report is available both for the public and for the formal parties in the proceeding.

Since the EQB is the agency that will prepare the environmental report, it is reasonable to expect that the staff who work on the report be available to answer questions at the PUC hearing about information in the report. There may be information in the report, however, that was prepared by staff of other agencies or by the applicant, in which case the staff will have to refer to those other persons. But for the most part, the EQB staff will be able to answer questions about information in the report.

The rule contains the statement that the PUC must consider the environmental report in making a final decision on the certificate of need or HVTL certification request. It stands to reason that the information in the report will be an important part of the administrative record the PUC will consider in reaching its final decision.

Subd. 2. Completeness of environmental report. Unlike an environmental impact statement, which can take one year to complete, an environmental report must be done in four months or less if the PUC is to meet its statutory deadline. There is not time to prepare both a draft environmental report and a final environmental report. However, it is still important that the environmental review be conducted in a complete and thorough fashion. This rule directs the PUC to determine that the environmental report, along with any additional information that was developed during the public hearing process, address the issues that the EQB Chair determined should be addressed back when the process began. The PUC certainly maintains the option of requesting the EQB to supplement the environmental report if some matter should be identified during the course of the proceedings that is crucial to the PUC's decision.

4410.7055. REVIEW BY OTHER GOVERNMENTAL BODIES.

There are likely to be other governmental bodies besides the Public Utilities Commission with permitting jurisdiction over a proposed new power plant or high voltage transmission line. Indeed, the environmental report will identify these other governmental bodies from whom a permit will be required. This rule simply directs that these other governmental bodies take the information in the environmental report into account when making decisions on permits for the proposed project. The Minnesota Environmental Policy Act, Minn. Stat. ch. 116D, requires governmental bodies to be aware of the environmental consequences of their actions. The public expects government to take these matters into account. The rule does not say anything about the decision a governmental body should make on a permit; it only says that decisionmakers must be cognizant of the environmental consequences of their actions.

4410.7060. JOINT PROCEEDING.

Subpart 1. Environmental assessment. One of the ways in which the consideration of a new large energy project can be expedited is if the PUC need process and the EQB permitting process are combined in some fashion. The Legislature provided that the PUC and the EQB could elect to hold a joint hearing if appropriate. Minn. Stat. § 216B.243, subd. 4 (“If the commission and the environmental quality board determine that a joint hearing on siting and need under this subdivision and section 116C.57, subdivision 2d, is feasible, more efficient, and may further the public interest, a joint hearing under those subdivisions may be held.”) The EQB recognized this possibility in its new power plant siting rules. Minn. Rules part 4400.1800, subp. 3.

This rule recognizes that whether or not a joint hearing is held, it may be possible to combine the environmental review requirements of these rules with those of chapter 4400. For some projects, the EQB prepares an environmental assessment at the

permitting stage. Minn. Rules part 4400.2000, subp. 2 identifies the projects that qualify for this review. The EQB has the same six months the PUC has to make a decision under that process. Minn. Stat. § 116C.575, subd. 7. If an applicant has submitted an application to the EQB for a permit for a proposed site for a new plant or a proposed route for a new HVTL for which it seeks a need decision from the PUC, it makes sense to allow the EQB to combine the site specific environmental review with the environmental review required under these rules. Since the time period for both reviews is the same, the rule allows the EQB to simply decide on its own accord that it will combine the environmental review. The EQB, of course, will notify the PUC, the applicant, and all interested parties if the review should be combined.

The rule says that the EQB can combine the environmental review if the applicant for a certificate of need has also applied for a site permit or route permit from the EQB. The two applications do not have to be filed on the same day, but if any significant number of days have passed between the filing of the certificate of need application and the filing of the permit application, it may be too late to combine the review processes. An applicant could, perhaps, waive the six month deadline under the PUC statute in order to accommodate the EQB permitting schedule, but the EQB would not combine environmental review in that circumstance without the concurrence of the PUC.

Subp. 2. Environmental impact statement. For larger projects, the EQB has to prepare a environmental impact statement on the project, and the EQB has one year from the time the permit application is accepted to complete the process. If environmental review were combined in that circumstance, the PUC six month deadline could not be met, so the EQB would not do that without the agreement of the applicant.

Subp. 3. Joint hearing. This language is taken from the statute, which allows the EQB and the PUC to hold a joint hearing. Minn. Stat. § 216B.243, subd. 4. The EQB could elect to combine environmental review without the PUC and the EQB deciding to hold a joint hearing. This language is also included in Minn. Rules part 4400.1800, subd. 3.

4410.7065. ALTERNATIVE FORM OF REVIEW.

The purpose of this rule is to establish that the process set forth in these rules is an alternative form of review that is acceptable to the EQB. That means that an environmental impact statement is not required under other provisions of chapter 4410. It also means that neither the PUC nor any other governmental body need specifically request that preparation of an environmental report under these rules be approved as an alternative form of review. That approval is granted right in this rule.

4410.7070. COST OF PREPARATION OF ENVIRONMENTAL REPORT.

Subpart 1. Applicant required to pay costs. Project proposers are required to pay the costs of preparation of an environmental impact statement. Minn. Stat. § 116D.045. The environmental review process set forth in these rules is an alternative

form of review to the EIS process. Also, applicants for certificates of need must pay the costs associated with PUC administration of the application. Minn. Stat. § 216B.243, subd. 6. Applicants must pay the costs associated with the preparation of an environmental report under these rules.

The rule recognizes that what the applicants must pay are the reasonable costs incurred by the EQB in preparing the environmental report. As it does with applicants seeking site permits or route permits, the EQB will create a separate fund for each project. The applicant will be provided with a complete accounting of the costs incurred in preparing the environmental report. The cost to prepare the environmental report will depend on a number of factors, including the size and type of the proposed project, the controversy surrounding the project, and the quality of the information provided by the applicant, to name a few. Based on EQB experience with the conduct of environmental review at the permitting stage, preparation of an environmental report will cost in the range of \$10,000 for the small, noncontroversial projects, to costs several times that amount for the larger projects. Reducing costs could be a reason to combine environmental review if the project proposer is prepared to submit a permit application at the same time as the certificate of need application is submitted.

Subd. 2. Payment schedule. The rule requires the applicant to submit \$5000 at the time the application or request is submitted with the PUC. Since the public meeting will be held in the first 40 days after the application is submitted, the EQB will begin incurring expenses immediately. It is necessary to require payment of some amount from the beginning. As the work commences, the EQB will periodically request the applicant to make additional payments if necessary. Once the environmental report is complete and the PUC hearing is over, the EQB will prepare a final accounting and zero out the account by requesting a final payment or refunding an overpayment.

VI. REPEAL OF EXISTING RULES

The EQB is proposing to repeal the existing rules entitled “Special Rules for Certain Large Energy Facilities and High Voltage Transmission Lines” found in Minn. Rules parts 4410.7000 to 4410.7500. These rules need to be repealed because the new rules are taking the place of the old rules. Environmental review will no longer be conducted under parts 7000 to 7500.

VII. TECHNICAL AMENDMENTS TO CHAPTER 4400

4400.1700 PREPARATION OF EIS.

Subpart 1. **EIS required.** “Large electric generating plant” is amended to read “large electric power generating plant” to make the language consistent with terminology used throughout these rules. The correction was inadvertently omitted from the version of the rules adopted by the Board in December, 2002.

Subp. 3. **Alternative sites or routes.** The phrase “environmental assessment” is replaced with “environmental impact statement,” since part 4400.1700 relates to

preparation of environmental impact statements. Preparation of environmental assessments are addressed in part 4410.2750 .

4400.2750 PREPARATION OF ENVIRONMENTAL ASSESSMENT.

Subp. 8. **No additional environmental review.** The proposed change reflects the numbering changes in the environmental review rules governing projects at the Public Utilities Commission.

VII. CONCLUSION

It is appropriate for the Environmental Quality Board to take another look at the manner in which environmental review is conducted when a project proposer has applied to the Public Utilities Commission for a determination of need for a new large energy facility. Repealing the old rules and replacing them with a new set of rules providing for preparation of an environmental report by the EQB is a reasonable and necessary improvement in the environmental review process for such projects. The EQB believes that these rule amendments will establish a process that will result in the early and comprehensive evaluation of the potential environmental impacts of large energy facilities and afford the public an opportunity to be involved.

Dated: March 20, 2003

BRUCE BOMIER
Vice Chair
Minnesota Environmental Quality Board

SONAR Exhibit List
Ch. 4410 Rules Amendments

Exhibit Number	Description
A	Rules Minnesota Environmental Quality Council 25.G
B	6 Minnesota Code of Agency Rules §§3.055- 3.056
C	Comment Letter from Dr. Burl Haar, Minnesota Public Utilities Commission, December 4, 2002
D	Comment Letter from Kate O’Connell, Minnesota Department of Commerce, December 6, 2002
E	Comment Letter from David Zoll and Noah Hall, Minnesota Center for Environmental Advocacy, December 6, 2002
F	Comment Letter from Paula Maccabee, Sierra Club, December 6, 2002
G	Comment Letter from Todd Guererro, Minnesota Transmission Owners, December 6, 2002
H	Notice of Intent to Solicit Comments, <i>State Register</i> , October 14, 2002
I	Comment Letter from Todd Guerrero, Minnesota Transmission Owners, February 20, 2003
J	Letter from Ann Seha, Deputy Commissioner, Pollution Control Agency, September 13, 2002.