

Environmental Quality Board

Proposed Permanent Rules Relating to Power Plant Siting

**4400.0200 DEFINITIONS.**

Subpart 1. **Scope.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Act.** "Act" means the Power Plant Siting Act of 1973, as amended, Minnesota Statutes, sections 116C.51 to 116C.69.

Subp. 2a. **Associated facilities.** "Associated facilities" means buildings, equipment, and other physical structures that are necessary to the operation of a large electric power generating plant or a high voltage transmission line.

Subp. 3. **Board.** "Board" means the Minnesota Environmental Quality Board.

Subp. 3a. **Chair.** "Chair" means the person who is the chair of the Environmental Quality Board.

Subp. 4. **See repealer.**

Subp. 4a. **Certified HVTL list.** "Certified HVTL list" means the transmission projects certified by the Public Utilities Commission as priority projects under Minnesota Statutes, section 216B.2425.

Subp. 5. **See repealer.**

Subp. 6. **See repealer.**

Subp. 6a. **Environmental assessment.** "Environmental assessment" means a written document that describes the human and environmental impacts of a proposed large electric power generating plant or high voltage transmission line and alternative routes or sites and methods to mitigate such impacts.

Subp. 6b. **Environmental impact assessment; EIA statement or EIS.** ~~"Environmental impact assessment"~~ or "EIA statement" or EIS means a detailed written statement that

1 describes proposed ~~HVTLS~~ high voltage transmission lines and ~~LEPGPs~~ large electric power  
2 generating plants and satisfies the requirements of Minnesota Statutes, section 116D.04.

3 Subp. 7. **See repealer.**

4 Subp. 7a. **EQB.** "EQB" means the entire environmental quality board, including the board  
5 and staff.

6 Subp. 8. **High voltage transmission line; or HVTL.** "High voltage transmission line" or  
7 "HVTL" means a conductor of electric energy and associated facilities designed for and  
8 capable of operating at a nominal voltage of ~~200~~ 100 kilovolts or more either immediately or  
9 without significant modification. Associated facilities shall include, but not be limited to,  
10 insulators, towers, substations, and terminals.

11 Subp. 9. **Large electric power facilities.** "Large electric power facilities" means high  
12 voltage transmission lines and large electric power generating plants.

13 Subp. 10. **Large electric power generating plant; or LEPGP.** "Large electric power  
14 generating plant" ~~and or~~ "LEPGP" mean means electric power generating equipment and  
15 associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or  
16 more.

17 Subp. 11. **See repealer.**

18 Subp. 11a. **Mail.** "Mail" means either the United States mail or electronic mail by e-mail,  
19 unless another law shall requires a specific form of mailing.

20 Subp. 12. **Person.** "Person" means any individual, partnership, joint venture, private or  
21 public corporation, association, firm, public service company, cooperative, political  
22 subdivision, municipal corporation, government agency, public utility district, or any other  
23 entity, public or private, however organized.

24 Subp. 13. **See repealer.**

25 Subp. 14. **See repealer.**

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

4 Subp. 16. **Route.** "Route" means ~~an area of land~~ the location of a high voltage  
5 transmission line between two end points. A route may have a variable width of up to 1.25  
6 miles ~~wide~~ within which a right-of-way for ~~an HVTL~~ a high voltage transmission line can be  
7 located.

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

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

11 Subp. 19. **See repealer.**

12 Subp. 20. **Utility.** "Utility" means any entity engaged or intending to engage in this state  
13 in the generation, transmission, or distribution of electric energy including, but not limited to,  
14 a private investor owned utility, a cooperatively owned utility, a public or municipally owned  
15 utility, a limited liability company, or a private corporation.

#### 16 **4400.0300 PURPOSE AND AUTHORITY.**

17 Parts 4400.0200 to ~~4400.4900~~ 4400.8000 are prescribed by the Minnesota Environmental  
18 Quality Board pursuant to the authority granted to the board in the Power Plant Siting Act, as  
19 amended, Minnesota Statutes, sections 116C.51 to 116C.69, to give effect to the purposes of  
20 the act.

21 It is the purpose of the act and the policy of the state to locate large electric power ~~facilities~~  
22 generating plants and high voltage transmission lines in an orderly manner compatible with  
23 environmental preservation and the efficient use of resources. In accordance with this policy,  
24 the board shall choose locations that minimize adverse human and environmental impact  
25 while ensuring continuing electric power system reliability and integrity and ensuring that  
26 electric energy needs are met and fulfilled in an orderly and timely fashion. The board shall  
27 provide for broad spectrum citizen participation as a principle of operation. To ensure

1 effective citizen participation, the board shall maintain a public education program on, but  
2 not limited to, the considerations identified in Minnesota Statutes, section 116C.57,  
3 subdivision 4.

4 **4400.0400 PERMIT REQUIREMENT.**

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

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

11 **Subp. 3. Expansion of existing facility.**

12 A. No person shall increase the voltage of a HVTL without a route permit or other  
13 approval from the EQB.

14 B. No person shall increase the voltage of a transmission line under 100 kilovolts to  
15 over 100 kilovolts without a route permit from the EQB.

16 C. Except as provided in part 4400.0650 or 4400.3820, no person shall increase the  
17 output of an existing LEPPG without a permit from the board.

18 D. No person shall increase the output of a electric power plant from under 50  
19 megawatts to more than 50 megawatts without a site permit from the EQB.

20 **Subp. 4. Local authority.** A site permit from the board is not required for a large electric  
21 power generating plant that is permitted by local units of government under Minnesota  
22 Statutes, section 116C.576. A route permit from the board is not required for a high voltage  
23 transmission line that is permitted by local governmental authorities under Minnesota  
24 Statutes, section 116C.576.

25 **Subp. 5. Commence construction.** No person may commence construction of a large  
26 electric power generating plant or a high voltage transmission line until a permit has been  
27 issued by the board or by the appropriate local units of government if local review is sought.

1 "Commence construction" means to begin or cause to begin as part of a continuous program  
2 the placement, assembly, or installation of facilities or equipment, or to conduct significant  
3 physical site preparation or right-of-way preparation work for installation of facilities or  
4 equipment. Conducting survey work or collecting geological data or contacting landowners  
5 to discuss possible construction of a power plant or transmission line is not commencement  
6 of  
7 construction.

8 **4400.0500 SMALL PROJECTS.**

9 Subpart 1. No EQB permit required. A permit from the EQB is not required to construct  
10 a power plant of less than 50 megawatts or a transmission line of less than 100 kilovolts.  
11 Proposers of such projects must obtain whatever approvals may be required by local, state, or  
12 federal units of government with jurisdiction over the project.

13 Subp. 2. Environmental review. Proposers of power plants of less than 50 megawatts or  
14 transmission lines of less than 100 kilovolts must comply with the environmental review  
15 requirements of Minnesota Statutes chapter 116D and Minnesota Rules chapter 4410.

16 **4400.0650 EXCEPTIONS TO PERMITTING REQUIREMENT FOR CERTAIN**  
17 **EXISTING FACILITIES.**

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

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

26 B. high voltage transmission lines:

1       (1) maintenance or repair of a high voltage transmission line within an existing  
2 right-of-way;

3       (2) reconductoring or reconstruction of a transmission line with no change in voltage and  
4 no change in right-of-way, provided any new structures that are installed are not designed for  
5 and capable of operation at higher voltage; or

6       (3) relocation of a high voltage transmission line that is required by a local or state  
7 agency as part of road, street, or highway construction

8       C. large electric power generating plants:

9       (1) maintenance or repair of a large electric power generating plant;

10       (2) modification of a large electric power generating plant to increase efficiency as long  
11 as the capacity of the plant is not increased more than ten percent or more than 100  
12 megawatts, whichever is greater, and the modification does not require expansion of the plant  
13 beyond the developed portion of the site. If a subsequent modification results in a total of  
14 more than 100 megawatts of additional capacity, this provision does not apply; or

15       (3) refurbishment of a large electric power generating plant that does not expand the  
16 capacity of the plant or expand the plant beyond the developed portion of the site and the  
17 refurbishment does not require a certificate of need from the public utilities commission; or

18       (4) conversion of the fuel source of a large electric power generating plant to natural  
19 gas, as long as the plant is not expanded beyond the developed portion of the site; or

20       (5) start-up of an existing large electric power generating plant that has been closed for  
21 any period of time at no more than its previous capacity rating and in a manner that does not  
22 involve a change in the fuel or an expansion of the developed portion of the site.

23       Subp. 2. **Minor alteration.** In the event a modification or other change in an existing  
24 substation, high voltage transmission line, or large electric power generating plant does not  
25 qualify for an exception under this part, the modification or change may qualify for a minor  
26 alteration under part 4400.3820.

1     Subp. 3. Notice. Any person proposing to move transmission line structures under subpart  
2     1, Item A., or to reconductor or reconstruct a HVTL under Item B(2), or to implement  
3     changes to a LEPGP under Item C(2), C(3), C(4), or C(5), must notify the chair in writing at  
4     least thirty days before commencing construction on the modification or change.

5     Subp. 4. Local review. Any project that does not require a permit from the EQB under  
6     this part is also exempt from any requirement to obtain site or route approval from local units  
7     of government with jurisdiction over the project pursuant to Minnesota Statutes section  
8     116C.576.

9     **4400.0710 JOINT PROCEEDING.**

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

17           **FULL PERMITTING PROCESS FOR LARGE ELECTRIC POWER**  
18           **GENERATING FACILITIES**

19    **4400.1025 PERMIT APPLICATION UNDER FULL PERMITTING PROCESS.**

20    Subpart 1. Filing of application for permit. A person seeking a site permit or route  
21    permit for a large electric power generating facility must file three copies of the application  
22    for the permit with the EQB. Upon acceptance of the application, the chair will advise the  
23    applicant of how many copies of the application must be submitted to the EQB.

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

1 **4400.1050 PERMIT FEES.**

2 Subpart 1. Requirement. An applicant for a site permit or route permit shall pay a fee in  
3 accordance with Minnesota Statutes, section 116C.69. The estimated fee for processing the  
4 permit application must be determined in accordance with Minnesota Statutes, section  
5 116C.69.

6 Subp. 2. Initial payment. The applicant shall submit with the application 50 percent of  
7 the total estimated fee or another lesser portion that the chair deems satisfactory. The chair  
8 shall not process a permit application until the first portion of the fee is submitted. The EQB  
9 shall deposit all money received from the applicant for permit fees in a special account.

10 Subp. 3. Additional payments. The applicant shall pay an additional 25 percent of the fee  
11 within 90 days after the application has been accepted by the chair. Additional payments  
12 must be made within 30 days of notification by the chair that additional fees are necessary for  
13 completion of the permitting process. The board shall not make a final decision on a permit  
14 application if any assessed fees have not been paid.

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

25 **4400.1150 CONTENTS OF APPLICATION.**

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

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

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

6     C. at least two proposed sites for the proposed large electric power generating plant and  
7     identification of the applicant's preferred site and the reasons for preferring the site;

8     D. a description of the proposed large electric power generating plant and all associated  
9     facilities, including the size and type of the facility;

10    E. the environmental information required under subpart 3;

11    F. the names of the owners of the property for each proposed site;

12    G. the engineering and operational design for the large electric power generating plant at  
13    each of the proposed sites;

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

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

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

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

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

26    Subp. 2. Route permit for HVTL. An application for a route permit for a high voltage  
27    transmission line shall contain the following information:

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

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

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

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

10    E. the environmental information required under subpart 3;

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

12    G. the names of the owners of the property of the land to be crossed by the high voltage  
13    transmission line within the two routes proposed;

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

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

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

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

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

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

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

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

6 **Subp. 3. Environmental information.** An applicant for a site permit or a route permit  
7 shall include in the application the following environmental information for each proposed  
8 site or route to aid in the preparation of an environmental impact statement:

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

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

13 C. a description of the effects of the facility on land-based economies, including, but not  
14 limited to, agriculture, forestry, tourism, and mining;

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

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

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

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

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

#### 24 **4400.1250 REVIEW OF APPLICATION.**

25 **Subpart 1. Review by chair.** Within ten working days of receipt of an application for a  
26 site permit or a route permit, the chair shall determine whether the application is complete  
27 and notify the applicant in writing of the acceptance or rejection of the application. If the

1 chair rejects an application, the chair shall advise the applicant of the deficiencies in the  
2 application.

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

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

12 Subp. 4. Schedule. The date of the chair's determination that an application is complete  
13 marks the start of the schedule for the board to make a final decision on a permit application.

14 **4400.1350 NOTICE OF PROJECT.**

15 Subpart 1. Notification lists. The EQB shall maintain the notification lists described in  
16 items A and B.

17 A. The EQB shall maintain a list of persons who want to be notified of the acceptance of  
18 applications for site permits or route permits. Any person may request to have his or her  
19 name or an organization's name included on the list. The EQB may from time to time  
20 request that persons whose names are on the list advise the EQB whether they want to remain  
21 on the list, and the EQB may delete any names for which an affirmative response is not  
22 received within a reasonable time. A person whose name has been removed may request to  
23 have the name added back on the list. The EQB shall provide an applicant with the general  
24 list upon acceptance of an application.

25 B. The EQB shall maintain a project contact list for each project for which an application  
26 for a permit has been accepted. The project contact list must contain the names of persons  
27 who want to receive notices regarding the project. Any person may request to have his or her

1 name or an organization's name included on a project contact list. The EQB may add a  
2 person's name to the list if the EQB believes the person would like to receive notices about  
3 the particular project. The EQB shall provide an applicant with the project contact list upon  
4 request.

5 Subp. 2. Notification to persons on general list. Within 15 days after submission of an  
6 application, the applicant shall send written notice of the submission and a description of the  
7 proposed project to those persons whose names are on the general list maintained by the  
8 EQB for this purpose. The notice must also advise those persons where a copy of the  
9 application may be reviewed and how a copy may be obtained, and that persons who want to  
10 continue to receive future notices regarding the matter must notify the EQB of such intent  
11 and request that their names be placed on the project contact list.

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

17 Subp. 4. Notification of local officials. Within 15 days after submission of an application,  
18 the applicant shall send a copy of the application by certified mail to each regional  
19 development commission, county, incorporated municipality, and township in which any part  
20 of the site or route or any alternative is proposed to be located.

21 Subp. 5. Notification of property owners. Within 15 days after submission of an  
22 application, the applicant shall send written notice of the submission and a description of the  
23 proposed project to each owner whose property is adjacent to any of the proposed sites for a  
24 large electric power generating plant or within any of the proposed routes for a high voltage  
25 transmission line. The notice must also advise the owners where a copy of the application  
26 may be reviewed and how a copy may be obtained. For purposes of giving notice under this  
27 subpart, owners are those persons shown on the records of the county auditor or, in any

1 county where tax statements are mailed by the county treasurer, on the records of the county  
2 treasurer, or any other list of owners approved by the chair.

3 Subp. 6. Confirmation of notice. Within 30 days after providing the requisite notice, the  
4 applicant shall submit to the EQB documentation that all notices required under this part  
5 have been given. The applicant shall document the giving of the notice by providing the  
6 EQB with affidavits of publication or mailing and copies of the notice provided.

7 Subp. 7. Failure to give notice. The failure of the applicant to give the requisite notice  
8 does not invalidate any ongoing permit proceedings provided the applicant has made a bona  
9 fide attempt to comply, although the chair may extend the time for the public to participate if  
10 the failure has interfered with the public's right to be informed about the project.

11 **4400.1450 PUBLIC ADVISOR.**

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

17 **4400.1550 PUBLIC MEETING.**

18 Subpart 1. Scheduling public meeting. Upon acceptance of an application for a site or  
19 route permit, the chair shall schedule a public meeting to provide information to the public  
20 about the proposed project and to answer questions and to scope the environmental impact  
21 statement. The public meeting must be held no later than 60 days after acceptance of the  
22 application. The public meeting must be held in a location that is convenient for persons  
23 who live near the proposed project.

24 Subp. 2. Notice of public meeting. The EQB shall give at least ten days' notice of the  
25 public meeting by mailing notice to persons whose names are on the project contact list  
26 maintained pursuant to part 4400.1350, subpart 1. The EQB shall also publish notice of the  
27 public meeting in a legal newspaper of general circulation in the area where the project is

1 proposed to be located. If appropriate, the EQB may request the applicant to include notice  
2 of the public meeting in the notice to be provided by the applicant pursuant to part  
3 4400.1350.

4 Subp. 3. **Conduct of public meeting.** The chair shall appoint a person, who may be an  
5 EQB staff person, to conduct the public meeting. The public meeting must be conducted in  
6 an informal manner designed to encourage public participation. The public must be afforded  
7 an opportunity to present comments and ask questions. The EQB shall make available at the  
8 public meeting a copy of the application and other pertinent documents in the EQB files  
9 regarding the application. The staff shall explain the permitting process to the persons in  
10 attendance. A transcript of the meeting need not be maintained, although the EQB may elect  
11 to keep an audio recording of the meeting.

12 Subp. 4. **Applicant role.** The applicant shall provide representatives at the public  
13 meeting who are capable of answering general questions about the proposed project.

14 Subp. 5. **EIS scoping.** At the public meeting, the public must be provided an opportunity  
15 to comment on the scope of the environmental impact statement in accordance with part  
16 4400.1700.

17 **4400.1600 CITIZEN ADVISORY TASK FORCE.**

18 Subpart 1. **Chair authority.** The board delegates to the chair the authority to appoint a  
19 citizen advisory task force. The chair shall determine whether to appoint such a task force as  
20 early in the process as possible. The chair shall establish the size of the task force and  
21 appoint its members in accordance with Minnesota Statutes, section 116C.59. The chair shall  
22 advise the board of the appointment of the task force at the next monthly board meeting.

23 Subp. 2. **Board decision.** If the chair decides not to appoint a citizen advisory task force  
24 and a person would like such a task force appointed, the person may request that the board  
25 create a citizen advisory task force and appoint its members. Upon receipt of such a request,  
26 the chair shall place the matter on the agenda for the next regular monthly board meeting.

1     Subp. 3. Task force responsibilities. Upon appointment of a citizen advisory task force,  
2     the chair or the board, whichever creates the task force, shall specify in writing the charge to  
3     the task force. The charge shall include the identification of additional sites or routes or  
4     particular impacts to be evaluated in the environmental impact statement. The chair or the  
5     board may establish additional charges, including a request that the task force express a  
6     preference for a specific site or route if it has one.

7     Subp. 4. Termination of task force. The task force expires upon completion of its  
8     charge, designation by the chair of alternative sites or routes to be included in the  
9     environmental impact statement, or the specific date identified by the chair or board in the  
10    charge, whichever occurs first.

#### 11    **4400.1700 PREPARATION OF EIS.**

12    Subpart 1. EIS required. The EQB shall prepare an environmental impact statement on  
13    each proposed large electric generating plant and high voltage transmission line for which a  
14    permit application has been accepted by the chair.

15    Subp. 2. Scoping process. The EQB shall provide the public with an opportunity to  
16    participate in the development of the scope of the environmental impact statement by holding  
17    a public meeting and by soliciting public comments. The public meeting required under part  
18    4400.1550 satisfies the requirement to hold a scoping meeting. The EQB shall provide a  
19    period of at least seven days from the day of the public meeting for the public to submit  
20    comments on the scope of the EIS. The chair shall determine the scope of the environmental  
21    impact statement as soon after holding the public meeting as possible. The chair may elect to  
22    bring the matter of the scope of the EIS to the board for resolution. Within five days after the  
23    decision, the EQB shall mail notice of the scoping decision to those persons whose names are  
24    on either the general list or the project contact list. Once the chair has determined the scope  
25    of the environmental impact statement, the scope must not be changed except upon decision  
26    by the chair or the board that substantial changes have been made in the project or substantial

1 new information has arisen significantly affecting the potential environmental effects of the  
2 project or the availability of reasonable alternatives.

3 **Subp. 3. Alternative sites or routes.**

4 A. The chair shall include in the scope of the EIS any alternative sites or routes  
5 proposed by the citizen advisory task force or by any member agency of the EQB prior to the  
6 close of the scoping period.

7 B. During the scoping process, any person may suggest an alternative site or route to  
8 evaluate in the environmental impact statement. A person desiring that a particular site or  
9 route be evaluated shall submit to the EQB, during the scoping process, an explanation of  
10 why the site or route should be included in the environmental impact statement and all  
11 supporting information the person wants the chair to consider. The chair shall provide the  
12 applicant with an opportunity to respond to each request that an alternative be included in the  
13 environmental impact statement. The chair shall include the suggested site or route in the  
14 scope of the EIS only if the person has established that evaluation of the proposed site or  
15 route will assist in the board's ultimate decision on the permit application.

16 **Subp. 4. Scope of EIS.** The scoping process must be used to reduce the scope and bulk of  
17 an environmental impact statement by identifying the potentially significant issues and  
18 alternatives requiring analysis and establishing the detail into which the issues will be  
19 analyzed. The scoping decision by the chair shall at least address the following:

20 A. the issues to be addressed in the environmental impact statement;

21 B. the alternative sites and routes to be addressed in the environmental impact statement;  
22 and

23 C. the schedule for completion of the environmental impact statement.

24 **Subp. 5. Matters excluded.** When the Public Utilities Commission has issued a  
25 Certificate of Need for a large electric power generating plant or high voltage transmission  
26 line or placed a high voltage transmission line on the certified HVTL list maintained by the  
27 commission, the environmental impact statement shall not address questions of need,

1 including size, type, and timing; questions of alternative system configurations; or questions  
2 of voltage.

3 Subp. 6. **Draft EIS.** The draft environmental impact statement must be written in plain  
4 and objective language. The draft environmental impact statement shall follow the standard  
5 format for an environmental impact statement prescribed in part 4410.2300 to the extent the  
6 requirements of that rule are appropriate.

7 Subp. 7. **Public review.** Upon completion of the draft environmental impact statement,  
8 the EQB shall make the document available for public review by placing a copy of the  
9 document in a public library or other governmental office in each county where the proposed  
10 project may be located. The EQB shall send notice of the availability of the draft  
11 environmental impact statement to each person on the project contact list maintained by the  
12 board under part 4400.1350, subpart 1. The EQB shall also place a notice in the EQB  
13 Monitor of the availability of the draft environmental impact statement. The EQB shall post  
14 the environmental impact statement on the agency's Web page if possible.

15 Subp. 8. **Informational meeting.** The EQB shall schedule an informational meeting to  
16 provide an opportunity for the public to comment on the draft environmental impact  
17 statement. The meeting must not be held sooner than 20 days after the draft environmental  
18 impact statement becomes available. The meeting must be held in a location convenient to  
19 persons who live near the proposed project. The EQB shall send notice of the informational  
20 meeting to each person on the project contact list maintained by the EQB under part  
21 4400.1350, subpart 1. The EQB shall also place notice in the EQB Monitor. The  
22 informational meeting may be held just prior to the holding of a contested case hearing on the  
23 permit application. The EQB shall hold the record on the environmental impact statement  
24 open for receipt of written comments for not less than ten days after the close of the  
25 informational meeting.

26 Subp. 9. **Final EIS.** The EQB shall respond to the timely substantive comments received  
27 on the draft environmental impact statement consistent with the scoping decision and prepare

1 the final environmental impact statement. The EQB may attach to the draft environmental  
2 impact statement the comments received and its response to comments without preparing a  
3 separate document. The EQB shall publish notice of the availability of the final  
4 environmental impact statement in the EQB Monitor and shall supply a press release to at  
5 least one newspaper of general circulation in the areas where the proposed sites or routes are  
6 located.

7 **Subp. 10. Adequacy determination.** The board shall determine the adequacy of the final  
8 environmental impact statement. The board shall not decide the adequacy for at least ten  
9 days after the availability of the final environmental impact statement is announced in the  
10 EQB Monitor. The final environmental impact statement is adequate if it:

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

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

16 C. was prepared in compliance with the procedures in this chapter.

17 If the board finds that the EIS is not adequate, the board shall direct the staff to respond to  
18 deficiencies and to resubmit the revised EIS to the board as soon as possible.

19 **Subp. 11. Cost.** The applicant for a site permit or route permit shall pay the reasonable  
20 costs of preparing and distributing an environmental impact statement. The costs must not be  
21 assessed separately from the assessment under part 4400.1050 unless that assessment is  
22 inadequate to cover the board's reasonable costs of considering the permit application.

23 **Subp. 12. Environmental review requirements.** The requirements of chapter 4410 do  
24 not apply to the preparation or consideration of an environmental impact statement for a large  
25 electric generating power plant or high voltage transmission line except as provided in this  
26 chapter.

1 **4400.1800 CONTESTED CASE HEARING.**

2 Subpart 1. **Hearing.** The EQB shall hold a contested case hearing after the draft  
3 environmental impact statement is prepared on all applications for a site permit or a route  
4 permit. The hearing must be conducted by an administrative law judge from the Office of  
5 Administrative Hearings pursuant to the contested case procedures of Minnesota Statutes,  
6 chapter 14. Notice of the hearing must be given in accordance with Minnesota Statutes,  
7 section 116C.57, subdivision 2d. At least a portion of the hearing must be held in a county  
8 where the proposed large electric power generating plant or high voltage transmission line  
9 would be located.

10 Subp. 2. **Issues.** Once the Public Utilities Commission has determined questions of need,  
11 including size, type, and timing; questions of system configuration; and questions of voltage,  
12 those issues must not be addressed in the contested case hearing.

13 Subp. 3. **Joint hearing.** If the board determines that a joint hearing with the Public  
14 Utilities Commission to consider both permitting and need issues is feasible, more efficient,  
15 and may further the public interest, the board may decide to hold a joint hearing with the  
16 approval of the commission. The board may also elect to hold a joint hearing with other  
17 states pursuant to Minnesota Statutes, section 116C.53, subdivision 3.

18 **4400.1900 FINAL DECISION.**

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

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

1     Subp. 3. Certificate of need decision. The EQB shall not make a final decision on a  
2     permit for a project that requires a certificate of need from the Public Utilities Commission  
3     until the applicant shall have obtained the necessary approval from the PUC.

4     Subp. 4. Notice. The EQB shall publish notice of its final permit decision in the State  
5     Register within 30 days of the date the board makes the decision. The EQB shall also  
6     publish notice in the EQB Monitor. The EQB shall mail notice of its final permit decision to  
7     those persons whose names are on the project contact list. The EQB shall post notice of the  
8     final decision on the agency's Web page, if possible.

9     **ALTERNATIVE PERMITTING PROCESS FOR CERTAIN FACILITIES**  
10    **4400.2000 QUALIFYING PROJECTS.**

11    Subpart 1. Qualifying projects. An applicant for a site permit or a route permit for one of  
12    the following projects may elect to follow the procedures of parts 4400.2000 to 4400.2950  
13    instead of the full permitting procedures in parts 4400.1025 to 4400.1900:

14    A. large electric power generating plants with a capacity of less than 80 megawatts;

15    B. large electric power generating plants that are fueled by natural gas;

16    C. high voltage transmission lines of between 100 and 200 kilovolts;

17    D. high voltage transmission lines in excess of 200 kilovolts and less than five miles in  
18    length in Minnesota;

19    E. high voltage transmission lines in excess of 200 kilovolts if at least 80 percent of the  
20    distance of the line in Minnesota will be located along existing high voltage transmission line  
21    rights-of-way;

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

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

1     Subp. 2. Notice to EQB. An applicant for a permit for one of the qualifying projects in  
2     subpart 1, who intends to follow the procedures of parts 4400.2000 to 4400.2750, shall notify  
3     the EQB of such intent, in writing, at least ten days before submitting an application for the  
4     project.

5     **4400.2010 PERMIT APPLICATION FOR ALTERNATIVE PERMITTING**  
6     **PROCESS.**

7     Part 4400.1025, regarding submission of a permit application, applies to projects being  
8     considered under the alternative permitting process.

9     **4400.2050 PERMIT FEES.**

10    Part 4400.1050, regarding permit fees, applies to projects being considered under the  
11    alternative permitting process.

12    **4400.2100 CONTENTS OF APPLICATION.**

13    The applicant shall include in the application the same information required in part  
14    4400.1150, except the applicant need not propose any alternative sites or routes to the  
15    preferred site or route. If the applicant has rejected alternative sites or routes, the applicant  
16    shall include in the application the identity of the rejected sites or routes and an explanation  
17    of the reasons for rejecting them.

18    **4400.2200 REVIEW OF APPLICATION.**

19    Part 4400.1250 regarding the chair's review of the application, applies to projects being  
20    considered under the alternative permitting process.

21    **4400.2300 NOTICE OF PROJECT.**

22    Part 4400.1350, regarding obligations to give notice of the project, applies to projects being  
23    considered under the alternative permitting process.

24    **4400.2400 PUBLIC ADVISOR.**

25    Part 4400.1450, regarding appointment of a public advisor, applies to projects being  
26    considered under the alternative permitting process.

1 **4400.2500 PUBLIC MEETING.**

2 Subpart 1. Public meeting. Part 4400.1550, subparts 1 to 4, apply to projects being  
3 considered under the alternative permitting process.

4 Subp. 2. Environmental assessment. At the public meeting, the public shall be provided  
5 an opportunity to comment on the scope of the environmental assessment in accordance with  
6 part 4400.2750.

7 **4400.2650 CITIZEN ADVISORY TASK FORCE.**

8 Part 4400.1600, regarding the appointment of a citizen advisory task force, applies to  
9 projects being considered under the alternative permitting process.

10 **4400.2750 PREPARATION OF ENVIRONMENTAL ASSESSMENT.**

11 Subpart 1. Environmental assessment required. The EQB shall prepare an  
12 environmental assessment on each proposed large electric power generating plant and each  
13 proposed high voltage transmission line being reviewed under the alternative permitting  
14 process in parts 4400.2000 to 4400.2950. The environmental assessment must contain  
15 information on the human and environmental impacts of the proposed project and of  
16 alternative sites or routes identified by the chair and shall address mitigating measures for all  
17 sites or routes considered.

18 **Subp. 2. Scoping Process.**

19 A. The EQB shall provide the public with an opportunity to participate in the  
20 development of the scope of the environmental assessment by holding a public meeting and  
21 by soliciting public comments. The public meeting required under part 4400.2500 satisfies  
22 the requirement to hold a scoping meeting. The EQB shall mail notice of the meeting to  
23 those persons on either the general list or the project contact list at least ten days before the  
24 meeting. The EQB shall provide at least seven days from the day of the public meeting for  
25 the public to submit comments regarding the scope of the environmental assessment.

26 B. The chair shall include in the scope of the environmental assessment any  
27 alternative sites or routes proposed by the citizen advisory task force or by any member

1 agency of the EQB prior to the close of the scoping period. During the scoping process, any  
2 person may suggest an alternative site or route to evaluate in the environmental assessment.  
3 A person desiring that a particular site or route be evaluated shall submit to the chair, during  
4 the scoping process, an explanation of why the site or route should be included in the  
5 environmental assessment and all supporting information the person wants the chair to  
6 consider. The chair shall provide the applicant with an opportunity to respond to each  
7 request that an alternative be included in the environmental assessment. The chair shall  
8 include the suggested site or route in the scope of the environmental assessment only if the  
9 person has established that evaluation of the proposed site or route will assist in the board's  
10 ultimate decision on the permit application. Any person may also suggest specific human or  
11 environmental impacts that should be included in the environmental assessment.

12 Subp. 3. **Scoping decision.** The chair shall determine the scope of the environmental  
13 assessment within ten days after close of the public comment period and shall mail notice of  
14 the scoping decision to those persons on the project contact list within five days after the  
15 decision. The chair may elect to bring the matter of the scope of the environmental  
16 assessment to the board for resolution. Once the chair has determined the scope of the  
17 environmental assessment, the scope shall not be changed except upon a decision by the  
18 chair or the board that substantial changes have been made in the project or substantial new  
19 information has arisen significantly affecting the potential environmental effects of the  
20 project or the availability of reasonable alternatives. The chair shall also determine as part of  
21 the scoping process a reasonable schedule for completion of the environmental assessment.  
22 The scoping decision by the chair must identify:

- 23 A. the alternatives to be addressed in the environmental assessment;
- 24 B. any specific potential impacts to be addressed;
- 25 C. the schedule for completion of the environmental assessment; and
- 26 D. other matters to be included in the environmental assessment.

1     **Subp. 4. Content of environmental assessment.**   The environmental assessment must  
2     include:

3         A. a general description of the proposed facility;

4         B. a list of alternatives to the proposed project to be addressed;

5         C. a discussion of the potential impacts of the proposed project and each alternative on  
6         the human and natural environment;

7         D. a discussion of mitigative measures that could reasonably be implemented to eliminate  
8         or minimize any adverse impacts identified for the proposed project and each alternative  
9         analyzed;

10        E. an analysis of the feasibility of each alternative considered;

11        F. a list of permits required for the project; and

12        G. a discussion of other matters identified in the scoping process.

13     **Subp. 5. Time frame for completion of environmental assessment.**   The EQB shall  
14     complete the environmental assessment in accordance with the schedule established during  
15     the scoping process. In establishing the schedule for completion of the environmental  
16     assessment, the chair shall take into account any applicable statutory deadlines, the number  
17     and complexity of the alternatives and impacts to be addressed, the status of other  
18     proceedings affecting the project, and the interests of the public, the applicant, and the EQB.

19     **Subp. 6. Notification of availability environmental assessment.**   Upon completion of the  
20     environmental assessment, the EQB shall publish notice in the EQB Monitor of the  
21     availability of the environmental assessment and mail notice of the availability of the  
22     document to those persons on the project contact list. The EQB shall provide a copy of the  
23     environmental assessment to any public agency with authority to permit or approve the  
24     proposed project. The EQB shall post the environmental assessment on the agency's Web  
25     page, if possible.

26     **Subp. 7. Matters excluded.**   When the Public Utilities Commission has issued a  
27     Certificate of Need for a large electric power generating plant or high voltage transmission

1 line or placed a high voltage transmission line on the certified HVTL list maintained by the  
2 commission, the environmental assessment shall not address questions of need, including  
3 size, type, and timing; questions of alternative system configurations; or questions of voltage.

4 Subp. 8. **No additional environmental review.** An environmental assessment must be the  
5 only state environmental review document required to be prepared by the EQB on a project  
6 qualifying for review under the alternative review process. No environmental assessment  
7 worksheet or environmental impact statement shall be required. Environmental review at the  
8 certificate of need stage before the Public Utilities Commission must be performed in  
9 accordance with parts 4410.7000 to 4410.7700.

10 Subp. 9. **Cost.** The cost of the preparation of an environmental assessment must be  
11 assessed to the applicant as part of the application fee pursuant to part 4400.1050.

12 **4400.2850 PUBLIC HEARING.**

13 Subpart 1. **Public hearing.** The EQB shall hold a public hearing once the environmental  
14 assessment has been completed. Notice of the hearing shall be given in accordance with  
15 Minnesota Statutes, section 116C.57, subdivision 2d. At least a portion of the hearing shall  
16 be held in a county where the proposed large electric power generating plant or high voltage  
17 transmission line would be located.

18 Subp. 2. **Hearing examiner.** The chair shall appoint a person to act as the hearing  
19 examiner at the public hearing. The hearing examiner may be an employee of the EQB. The  
20 hearing examiner shall set the date and place for the hearing and provide notice to the public.  
21 The hearing examiner may make such rulings as are required to conduct the hearing in a fair,  
22 impartial, and expeditious manner, including the authority to maintain decorum at the  
23 hearing, to exclude repetitious or irrelevant testimony, to limit the amount of time for oral  
24 testimony, and to continue the hearing from time to time as needed. Persons may testify at  
25 the hearing without being first sworn under oath. The hearing examiner shall ensure that the  
26 record created at the hearing is preserved and transmitted to the board. An audio recording  
27 of the hearing must be made, unless the chair determines that a court reporter is appropriate.

1 The hearing examiner shall not prepare a report or make any recommendation to the board  
2 unless the chair or the board requests the hearing examiner to do so.

3 Subp. 3. **Hearing procedure.** The hearing must be conducted in the following manner,  
4 although the hearing examiner may vary the order in which the hearing proceeds:

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

8 B. the applicant shall introduce its evidence by way of testimony and exhibits;

9 C. the public shall be afforded an opportunity to make oral presentations, present  
10 documentary evidence, and ask questions of the applicant and staff;

11 D. the hearing examiner shall provide a period of not less than ten days for the  
12 submission of written comments into the record after the close of the hearing; and

13 E. the hearing examiner shall transmit the complete record created at the hearing,  
14 including all written comments, to the chair within five days of the close of the record, unless  
15 the hearing examiner has been requested by the chair or the board to prepare a report.

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

19 Subp. 5. **Environmental assessment.** Interested persons may comment upon the  
20 environmental assessment at the public hearing. Comments on the environmental assessment  
21 shall become part of the record in the proceeding but the board shall not be required to revise  
22 or supplement the environmental assessment document.

23 **4400.2950 FINAL DECISION.**

24 Subpart 1. **Timing.** The board shall make a final decision on a site permit or a route  
25 permit application within 60 days after receipt of the record from the hearing examiner. A  
26 final decision must be made within six months after the chair's determination that an

1 application is complete. The board may extend this time limit for up to three months for just  
2 cause or upon agreement of the applicant.

3 Subp. 2. Completeness of environmental assessment. At the time the board makes a  
4 final decision on the permit application, the board shall determine whether the environmental  
5 assessment and the record created at the public hearing address the issues identified in the  
6 scoping decision.

7 Subp. 3. Certificate of need decision. The EQB shall not make a final decision on a  
8 permit for a project that requires a certificate of need from the Public Utilities Commission  
9 until the applicant shall have obtained the necessary approval from the PUC.

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

## 15 **GENERAL PERMIT REQUIREMENTS**

### 16 **4400.3050 STANDARDS AND CRITERIA.**

17 No site permit or route permit shall be issued in violation of the site selection standards and  
18 criteria established in Minnesota Statutes, sections 116C.57 and 116C.575, and in rules  
19 adopted by the board. The board shall issue a permit for a proposed facility when the board  
20 finds that the facility is consistent with state goals to conserve resources, minimize  
21 environmental impacts, and minimize human settlement and other land use conflicts and  
22 ensures the state's electric energy security through efficient, cost-effective power supply and  
23 electric transmission infrastructure.

### 24 **4400.3150 FACTORS CONSIDERED.**

25 In determining whether to issue a permit for a large electric power generating plant or a  
26 high voltage transmission line, the board shall consider the following:

1     A. effects on human settlement, including, but not limited to, displacement, noise,  
2     aesthetics, cultural values, recreation, and public services;

3     B. effects on public health and safety;

4     C. effects on land-based economies, including, but not limited to, agriculture, forestry,  
5     tourism, and mining;

6     D. effects on archaeological and historic resources;

7     E. effects on the natural environment, including effects on air and water quality resources  
8     and flora and fauna;

9     F. effects on rare and unique natural resources;

10    G. application of design options that maximize energy efficiencies, mitigate adverse  
11    environmental effects, and could accommodate expansion of transmission or generating  
12    capacity;

13    H. use or paralleling of existing rights-of-way, survey lines, natural division lines, and  
14    agricultural field boundaries;

15    I. use of existing large electric power generating plant sites;

16    J. use of existing transportation, pipeline, and electrical transmission systems or  
17    rights-of-way;

18    K. electrical system reliability;

19    L. costs of constructing, operating, and maintaining the facility which are dependent on  
20    design and route;

21    M. adverse human and natural environmental effects which cannot be avoided; and

22    N. irreversible and irretrievable commitments of resources.

23    **4400.3250 FACTORS EXCLUDED.**

24    When the Public Utilities Commission has issued a Certificate of Need for a large electric  
25    power generating plant or a high voltage transmission line or placed a high voltage  
26    transmission line on the certified HVTL list maintained by the commission, questions of  
27    need, including size, type, and timing, questions of alternative system configurations, and

1 questions of voltage shall not be factors considered by the board in deciding whether to issue  
2 a permit for a proposed facility.

3 **4400.3350 PROHIBITED ROUTES.**

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

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

11 **4400.3450 PROHIBITED SITES.**

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

14 A. national parks;

15 B. national historic sites and landmarks;

16 C. national historic districts;

17 D. national wildlife refuges;

18 E. national monuments;

19 F. national wild, scenic, and recreational riverways;

20 G. state wild, scenic, and recreational rivers and their land use districts;

21 H. state parks;

22 I. nature conservancy preserves;

23 J. state scientific and natural areas; and

24 K. state and national wilderness areas.

25 Subp. 2. Water use. The areas identified in subpart 1 must not be permitted as a site for a  
26 large electric power generating plant except for use for water intake or discharge facilities. If  
27 the board includes any of these areas within a site for use for water intake or discharge

1 facilities, it may impose appropriate conditions in the permit to protect these areas for the  
2 purposes for which they were designated. The board shall also consider the adverse effects  
3 of proposed sites on these areas which are located wholly outside of the boundaries of these  
4 areas.

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

9 A. state registered historic sites;

10 B. state historic districts;

11 C. state wildlife management areas, except in cases where the plant cooling water is to be  
12 used for wildlife management purposes;

13 D. county parks;

14 E. metropolitan parks;

15 F. designated state and federal recreational trails;

16 G. designated trout streams; and

17 H. the rivers identified in Minnesota Statutes, section 85.32, subdivision 1.

18 Subp. 4. **Prime farmland exclusion.** No large electric power generating plant site may be  
19 permitted where the developed portion of the plan site, excluding water storage reservoirs  
20 and cooling ponds, includes more than 0.5 acres of prime farmland per megawatt of net  
21 generating capacity, or where makeup water storage reservoir or cooling pond facilities  
22 include more than 0.5 acres of prime farmland per megawatt of net generating capacity,  
23 unless there is no feasible and prudent alternative. Economic considerations alone do not  
24 justify the use of more prime farmland. "Prime farmland" means those soils that meet the  
25 specifications of Code of Federal Regulations 1980, title 7, section 657.5(a). These  
26 provisions do not apply to areas located within home rule charter or statutory cities; areas

1 located within two miles of home rule charter or statutory cities of the first, second, and third  
2 class; or areas designated for orderly annexation under Minnesota Statutes, section 414.0325.

3 Subp. 5. **Sufficient water supply required.** No site may be designated that does not have  
4 reasonable access to a proven water supply sufficient for plant operation. No use of  
5 groundwater may be permitted where removal of groundwater results in material adverse  
6 effects on groundwater in and adjacent to the area, as determined in each case. The use of  
7 groundwater for high consumption purposes, such as cooling, must be avoided if a feasible  
8 and prudent alternative exists.

9 **4400.3550 PERMIT APPLICATION REJECTION.**

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

14 **4400.3650 PERMIT CONDITIONS.**

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

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

23 **4400.3750 DELAY IN ROUTE OR SITE CONSTRUCTION.**

24 If construction and improvement of a route or site have not commenced four years after the  
25 permit has been issued by the board, the board shall suspend the permit. If at that time, or at  
26 a time subsequent, the permittee decides to construct the proposed large electric power  
27 generating facility or high voltage transmission line, the permittee shall certify to the board

1 that there have been no significant changes in any material aspects of the conditions or  
2 circumstances existing when the permit was issued. The chair shall mail notice of receipt of  
3 the certification request to those persons on the general list at least seven days before the  
4 board's consideration of the matter, and the same notice to those persons on the project  
5 contact list if such a list exists. If the board determines that there are no significant changes,  
6 it shall reinstate the permit. If the board determines that there is a significant change, it may  
7 order a new hearing and consider the matter further, or it may require the permittee to file a  
8 new application.

9 **4400.3820 MINOR ALTERATION IN LARGE ELECTRIC POWER GENERATING**  
10 **PLANT OR HIGH VOLTAGE TRANSMISSION LINE.**

11 Subpart 1. **Applicability.** No person may make a minor alteration in a large electric power  
12 generating plant or high voltage transmission line without approval from the chair, unless the  
13 action is exempt from review under part 4400.0650. A minor alteration is a change in a large  
14 electric power generating plant or high voltage transmission line that does not result in  
15 significant changes in the human or environmental impact of the facility. The requirements  
16 of this part apply to those facilities that have been permitted by the EQB and to those  
17 facilities that were not permitted by the EQB but meet the definition of a large electric power  
18 generating plant or high voltage transmission line under applicable law. For those large  
19 electric power generating plants or high voltage transmission lines for which no permit has  
20 been issued by the EQB, this part applies to minor alterations in the facility as it exists on the  
21 effective date of parts 4400.0200 to 4400.8000.

22 Subp. 2. **Application.** A person seeking authorization to make a minor alteration in a  
23 large electric power generating plant or high voltage transmission line shall apply to the  
24 chair. The application shall be in writing and shall describe the alteration in the large electric  
25 power generating plant or high voltage transmission line to be made and the explanation why  
26 the alteration is minor. The chair shall mail notice of receipt of the application to those  
27 persons on the general list and to those persons on the project contact list if such a list exists.

1 The chair shall provide at least a ten-day period for interested persons to submit comments  
2 on the application or to request that the matter be brought to the board for consideration.

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

10 Subp. 4. **Local review.** For those large electric power generating plants or high voltage  
11 transmission lines for which no permit has been issued by the EQB, the owner or operator of  
12 such unpermitted facilities may elect to seek approval of a minor alteration from the local  
13 unit of government if the facility qualifies for local review under Minnesota Statutes, section  
14 116C.476.

15 **4400.3840 AMENDMENT OF PERMIT CONDITIONS.**

16 Subpart 1. **Authority.** The chair may amend any of the conditions in a site permit for a  
17 large electric power generating plant or in a route permit for a high voltage transmission line  
18 issued by the EQB upon request of any person.

19 Subp 2. **Process.** The person requesting an amendment of a condition in a site permit or a  
20 route permit shall submit an application to the chair in writing describing the amendment  
21 sought and the reasons for the amendment. The chair shall mail notice of receipt of the  
22 application to those persons on the general list and to those persons on the project contact list  
23 if such a list exists. The chair shall provide at least a ten-day period for interested persons to  
24 submit comments on the application or to request that the matter be brought to the board for  
25 consideration.

26 Subp. 3. **Decision.** The chair shall decide within ten days after close of the public  
27 comment period whether to approve the amendment request or to bring the matter to the

1 board for consideration. The chair shall notify the applicant in writing of the chair's decision  
2 and send a copy of the decision to any person who requested notification or filed comments  
3 on the application.

#### 4 **4400.3850 TRANSFER OF PERMIT.**

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

16 **Subp. 2. Approval of transfer.** The board shall approve the transfer if the board  
17 determines that the new permittee will comply with the conditions of the permit. The board,  
18 in approving the transfer of a permit, may impose reasonable additional conditions in the  
19 permit as part of the approval. The board may decide to hold a public meeting to provide the  
20 public with an opportunity to comment on the request for the transfer prior to making a  
21 decision.

#### 22 **4400.3950 REVOCATION OR SUSPENSION OF PERMIT.**

23 **Subpart 1. Initiation of action to revoke or suspend.** The board may initiate action to  
24 consider revocation or suspension of a permit on its own motion or upon the request of any  
25 person who has made a prima facie showing by affidavit and documentation that a violation  
26 of the act, this chapter, or the permit has occurred.

1     Subp. 2. **Hearing.** If the board initiates action to consider revocation or suspension of a  
2     permit, the board shall provide the permittee with an opportunity for a contested case hearing  
3     conducted by an administrative law judge from the Office of Administrative Hearings.

4     Subp. 3. **Finding of violation.** If the board finds that a violation of the act, this chapter,  
5     or the permit has occurred, it may revoke or suspend the permit, require the utility to  
6     undertake corrective or ameliorative measures as a condition to avoid revocation or  
7     suspension, or require corrective measures and suspend the permit. In determining the  
8     appropriate sanction, the board shall consider the following:

9         A. whether the violation will result in any significant additional adverse environmental  
10        effects;

11        B. whether the results of the violation can be corrected or ameliorated; and

12        C. whether a suspension or revocation of a permit or certificate will impair the utility's  
13        electrical power system reliability.

#### 14                    **EMERGENCY PERMIT**

#### 15     **4400.4050 EMERGENCY PERMIT.**

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

20        A. a description of the proposed large electric power generating plant or high voltage  
21        transmission line;

22        B. an explanation of the major unforeseen event causing the emergency situation;

23        C. a discussion of the anticipated impacts on the electric system if the proposed facility is  
24        not approved within 195 days;

25        D. a copy of the written notification to the Public Utilities Commission of the major  
26        unforeseen event and the need for immediate construction; and

27        E. as much of the information required under part 4400.1150 as the utility has available.

1     Subp. 2. Public hearing. The EQB shall hold a public hearing on the application for an  
2 emergency permit. The hearing must be held within 90 days after the application is  
3 submitted. The hearing must be held in accordance with part 4400.2850.

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

7         A. a demonstrable emergency exists;

8         B. the emergency requires immediate construction;

9         C. adherence to the procedures and time schedules specified in Minnesota Statutes,  
10 section 116C.57, would jeopardize the utility's electric power system or the utility's ability to  
11 meet the electric needs of its customers in an orderly and timely manner;

12         D. the utility will implement mitigating measures to minimize the human and  
13 environmental impacts of the facility;

14     and

15         E. the utility will carry out the project in an expeditious manner consistent with the  
16 emergency.

17     Subp. 4. Permit conditions. The board may impose reasonable conditions in an  
18 emergency permit.

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

## 21                     LOCAL REVIEW

22     4400.5000 LOCAL REVIEW OF PROPOSED FACILITIES.

23     Subpart 1. Local review. An applicant who seeks a site or route permit for one of the  
24 projects identified in subpart 2 has the option of applying to those local units of government  
25 that have jurisdiction over the site or route for approval to build the project. If local approval  
26 is granted, a site or route permit is not required from the board. If the applicant files an

1 application with the EQB, the applicant shall be deemed to have waived its right to seek local  
2 approval of the project.

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

5 A. a large electric power generating plant with a capacity of less than 80 megawatts;

6 B. a large electric power generating plant of any size that burn natural gas and are  
7 intended to be a peaking plant;

8 C. a high voltage transmission line of between 100 and 200 kilovolts;

9 D. a substation with a voltage designed for and capable of operation at a nominal voltage  
10 of 100 kilovolts or more;

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

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

16 Subp. 3. **Notice to EQB.** Within ten days of submission of an application to a local unit of  
17 government for approval of an eligible project, the applicant shall notify the chair in writing  
18 that the applicant has elected to seek local approval of the proposed project.

19 Subp. 4. **Referral to EQB.** A local unit of government with jurisdiction over a project  
20 identified in this section to whom an applicant has applied for approval to build the project  
21 may request the EQB to assume jurisdiction and make a decision on a site or route permit. A  
22 local unit of government shall file the request with the board within 60 days after an  
23 application for the project has been filed with any one local unit of government. If one of the  
24 local units of government with jurisdiction over the project requests the board to assume  
25 jurisdiction, jurisdiction over the project transfers to the board and the applicant shall file  
26 under the applicable provisions of this chapter for a permit from the board.

1     Subp. 5. **Environmental review.** A local unit of government that maintains jurisdiction  
2     over a qualifying project shall prepare an environmental assessment on the project in  
3     accordance with the requirements of part 4400.2750. If more than one local unit of  
4     government has jurisdiction over a project, and the local units of government cannot agree on  
5     which unit will prepare the environmental assessment, any local unit of government or the  
6     applicant may request the board to select the appropriate local unit of government to be the  
7     responsible governmental unit to conduct an environmental review of the project.

8     Subp. 6. **No local authority.** In the event a local unit of government that might otherwise  
9     have jurisdiction over a proposed large electric power generating plant or high voltage  
10    transmission line has no ordinances or other provisions for reviewing and authorizing the  
11    construction of such project or has no capability of preparing an environmental assessment  
12    on the project, the matter must be brought to the EQB for review.

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

#### 18                    **ANNUAL PUBLIC HEARING**

#### 19    **4400.6050 ANNUAL PUBLIC HEARING.**

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

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

5     Subp. 3. Report. The staff shall prepare a report of the annual hearing within 60 days  
6     after the hearing and submit it to the board. No action on the report is required.

7             **ANNUAL ASSESSMENT ON UTILITIES**

8     **4400.7050 ANNUAL ASSESSMENT ON UTILITIES.**

9     For purposes of determining the annual assessment on a utility pursuant to the act, each  
10    utility shall, on or before July 1 of each year, submit to the board a report of its retail  
11    kilowatt-hour sales in the state and its gross revenue from kilowatt-hour sales in the state for  
12    the preceding calendar or utility reporting year. Upon receipt of these reports, the board shall  
13    bill each utility as specified in the act.

14    **4400.8000 PROGRAM ADVISORY TASK FORCE.**

15    The board may appoint a program advisory task force to provide advice and  
16    recommendations concerning development, revision, and enforcement of any rule or program  
17    initiated under the act or this chapter. The board shall provide guidance to the program  
18    advisory task force in the form of a charge and through specific requests. The program  
19    advisory task force must be composed of as many members as may be designated by the  
20    board and its membership must be solicited on a statewide basis. The program advisory task  
21    force and its chair must be appointed for a one-year term.

22    **REPEALER. Minnesota Rules, parts 4400.0200, subparts 4, 5, 6, 7, 11, 13, 14, and 19;**  
23    4400.0600; 4400.0700; 4400.0710; 4400.0720; 4400.0800; 4400.0900; 4400.1000;  
24    4400.1100; 4400.1200; 4400.1210; 4400.1310; 4400.1400; 4400.1500; 4400.2600;  
25    4400.2710; 4400.2720; 4400.2800; 4400.2900; 4400.3000; 4400.3100; 4400.3200;  
26    4400.3210; 4400.3310; 4400.3400; 4400.3500; 4400.3600; 4400.3710; 4400.3800;

1 4400.3900; 4400.3910; 4400.4000; 4400.4100; 4400.4200; 4400.4300; 4400.4400;  
2 4400.4500; and 4400.4900, are repealed.  
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