October 15, 2002

Honorable Kathleen A. Sheehy
Office of Administrative Hearings
100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, MN 55401-2138

Re: In the Matter of the Proposed Adoption of Amendments to the EQB Power Plant Siting Rules. Minnesota Rules chapter 4400.

Dear Judge Sheehy:

Minnesota Center for Environmental Advocacy ("MCEA") hereby submits comments on the proposed Amendments to the EQB Power Plant Siting Rules, Minn. Rules 4400.0200 through 4400.5000, and the attendant Statement of Need and Reasonableness ("SONAR"). These comments supplement oral testimony provided at the Rule Hearing in Saint Paul on September 18, 2002. The Izaak Walton League of Minnesota joins in these comments.

MCEA is a private, nonprofit organization founded in 1974 with the mission to use law, science, and research to protect Minnesota's natural resources and the health of its people.

These comments address four major concerns MCEA has regarding the proposed rules: (1) the absence of a substantive standard for acceptance or denial of a permit; (2) certain exemptions for the permit requirements created in the rules; (3) assurance that impacts and alternatives are adequately considered; and (4) protection of public participation in the process. The final section of these

comments includes proposed changes to the language of the rules and explanations for these recommendations.

SUMMARY OF PROCESS FOR CONSTRUCTING LARGE ELECTRIC POWER FACILITIES IN MINNESOTA.

The Power Plant Siting Act governs the siting of large electric power facilities in Minnesota. Minn. Stat. §116C.51 to 69. The Power Plant Siting Act provides that subject to certain exceptions, no one may construct a Large Electric Power Generating Plant (LEPGP) or a High Voltage Transmission Line (HVTL) without a site or route permit from the Environmental Quality Board (EQB). Minn. Stat. § 116C.57 subd. 1 and 2.

The large electric power facilities governed by this act are substantial projects with significant environmental impacts. For example, a LEPGP is defined in the statute as a power plant designed for or capable of operating at a capacity of 50 megawatts (MW). Minn. Stat. §116C.52 subd. 5. A plant with 50MW of capacity is capable of meeting the energy demands of approximately 37,000 homes. Minnesota's largest LEPGP, located in Sherburne County, has a capacity of 1,949 MW, enough power for nearly one and a half million homes. Similarly, the HVTLs regulated under the act create large magnetic fields and dramatically impact aesthetic quality while transmitting large amounts of electric power.

Environmental review during the site or route permitting process is intended to determine whether the proposed project is environmentally compatible with the proposed site or route. To make this determination the EQB considers effects on land, water, and air resources, public health and welfare, vegetation, animals, materials, and aesthetic values, and direct as well as indirect economic and environmental impacts among other factors. Minn. Stat. §116C.57 subd. 4.

Before an applicant may apply for a site or route permit, however, it must first apply for a Certificate of Need (CON) from the Public Utilities Commission (PUC). The applicant is not required to have received the CON before applying for a site or route permit. The PUC bases its decision to grant a CON upon whether denial of the application will have an adverse effect on

the state's future energy supply, whether a more reasonable and prudent alternative has been demonstrated, and whether the proposed facility will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments. Minn. Rules 7849.0120. It must be noted that site-specific environmental impacts generally are not considered during the CON process.

The PUC rules require that certain environmental information be provided by the applicant for a CON for a generating facility including the typical fuel source and requirement, land requirements, estimated pollutant emissions, and water use. Minn. Rules 7849.0320. The current PUC rules, however, require that the application for a CON include only the nominal generating capacity, operating cycle, and the type of fuel used in the description of the proposed facility. Minn. Rules 7849.0250. Given the sparse information about the project that the applicant is required to provide, the environmental review at the CON stage is likely to be general and cursory, failing to capture the true impacts of the proposed facility.

The draft rules recently proposed by the EQB for environmental review during the CON process add little to the analysis. In fact, EQB staff acknowledged that because the environmental review document for any given CON will be general in nature, it will likely rely extensively on prior CONs, becoming standardized over time. The limited detail and scope of environmental review during the CON process provides the background upon which the rules for environmental review for site and route permit applications must be developed.

Throughout the development of these site and route permitting rules, the interactions between the CON and the site or route permit have created serious concerns. These two regulatory processes, which are both part of the administrative review of new energy projects, are united in legislative structure and should not be separated in application. Nonetheless, the rulemaking to implement changes to these requirements contained in the Minnesota Energy Security and Reliability Act are following different tracks. The rules for environmental review during site or route permitting must reflect the relationship between these two requirements and account for the uncertainty in the form and scope of the rules regulating environmental review during the CON process.

I. THE RULES MUST CONTAIN A SUBSTANTIVE STANDARD BY WHICH THE EQB MAY ACCEPT OR DENY PERMIT APPLICATIONS.

Including a substantive standard by which the EQB can accept or deny a permit application would provide clarity for the applicant and the public as well as regulatory certainty. Such a standard already exists in Minnesota law and has been applied in a powerline routing case by the Minnesota Supreme Court. *People for Environmental Enlightenment and Responsibility (PEER) v. Minnesota Environmental Quality Council*, 266 N.W.2d 858, 864 (Minn. 1978). It should now be formally integrated into the site and route permitting process. The Minnesota Environmental Policy Act provides:

> No state action significantly affecting the quality of the environmental shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution impairment, or destruction. Economic considerations alone shall not justify such conduct. Minn. Stat. §116D.04 subd. 6.

In *PEER* the Supreme Court held that "administrative decisions on the routing of HVTLs are subject to MERA as well as to other applicable environmental legislation [including MEPA]." *PEER*, 266 N.W.2d at 864. The court then stated that "an HVTL routing that impairs, pollutes, or destroys protected natural resources cannot be approved if there is a prudent and feasible alternative route available." *Id.*

This standard prevents a state agency from issuing a permit for a project where a less environmentally damaging feasible and prudent alternative exists. The MEPA standard has been extensively litigated and interpreted by the courts and its meaning is becoming increasingly certain. Regulators, industry, and citizens have all become familiar with this standard and its application. Expressly adopting this standard in the EQB's site and route permitting rules provides clarity and regulatory certainty without the likely litigation that follows adoption of a new standard.

The proposed rules do include a standard, but it fails to provide the clarity and regulatory certainty included in the MEPA standard. The proposed standard states "The board shall issue a permit for a proposed facility when the board finds that the facility is consistent with state goals to conserve resources, minimize environmental impacts, and minimize human settlement and other land use conflicts and ensures the state's electric energy security through efficient, cost-effective power supply and electric transmission infrastructure." Exhibit 3, Proposed Rule 4400.0350. This standard is open to subjective interpretation and provides no concrete basis by which the EQB may deny a permit application.

Given the broad and often conflicting goals in the proposed standard, it is unlikely to produce the regulatory certainty the the legislature desired in passing the Energy Security and Reliability Act. Furthermore, the standard fails to promote the use of the least environmentally damaging alternative and therefore provides no incentive to abandon outmoded technologies in favor of innovative and efficient methods of transmission and generation. So long as the EQB can make a reasonable determination that the proposed project is consistent with the goals in the standard, the permit may be granted regardless of whether the transmission or generating needs may be meet with lower environmental costs.

In contrast, the MEPA standard, if applied to site and route permits, would provide a bright line rule that no permit may be issued where a feasible and prudent alternative exists. As mentioned above, all stakeholders in the permitting process have become familiar with the application of this standard and it is not open to subjective interpretation. This standard would also promote a transition toward less polluting technologies by allowing the proposed project to proceed only when a less environmentally damaging alternative does not exist. Each of these goals is consistent with the Act.

The MEPA standard should be incorporated into these rules because it provides clarity for the applicant and public as well as regulatory certainty. This standard has been thoroughly examined by Minnesota courts and consistently applied by state agencies. Furthermore, it is the best method for ensuring that Minnesota's energy development is consistent with the state's goal of conserving resources and protecting the environment.

II. CERTAIN EXEMPTIONS TO THE PERMIT REQUIREMENTS CREATED BY THE EQB SHOULD BE LIMITED.

The proposed rules create two exemptions from the site permitting process that have no statutory support: (1) for increases in efficiency at a power plant that also increase generating capacity by 100MW or ten percent, whichever is greater, and (2) for the start up of an existing LEPGP that has been closed for any period of time. Exhibit 3, Proposed Rules 4400.0650 subpart (1)(C)(2) and (5). The operation of these exceptions creates significant siting concerns and undermines state policy goals.

A. Increases in Efficiency

In the Minnesota Energy Security and Reliability Act, the Legislature created an exception to the CON process for modification of an existing electric generating plant to increase efficiency, as long as the capacity of the plant is not increased more than ten percent or more than 100 megawatts, whichever is greater. Minn. Stat. §216B.243 subd. 8(6). The Legislature thus had this considered this exemption but chose not to apply it to the site permit requirements. Nonetheless, the EQB has done so in its proposed rules.

This exception allows tremendous increases in capacity. According to the Minnesota Utility Data Book, published by the Minnesota Department of Commerce, there are eighteen non-nuclear LEPGPs in the state. Minnesota Department of Commerce, The Minnesota Utility Data Book: a reference guide to Minnesota electric and natural gas utilities 1965-2000 (2002). (See Attachment 1 for a list of LEPGPs in Minnesota). These plants have a total capacity of approximately 6,400MW. This exception to the site permitting requirements would allow the addition of 1,894MW of capacity without an opportunity to address siting concerns. This exemption allows increased capacity nearly equivalent to the addition of two Prairie Island Nuclear facilities with no environmental review.

MCEA agrees that it is generally beneficial to increase the efficiency of power plants. It must be recognized, however, that the increases in efficiency combined the increases in capacity contemplated in this subpart will not necessarily result in decreased environmental impacts. For example, if a 250 MW coal fired power plant increased its efficiency from 35% to 40% and

increased capacity by 100 MW, the plant would burn an additional 21.9 tons of coal per hour while operating at peak capacity. This increased consumption of coal may have significant air quality and human health impacts. (See Attachment 2 for calculations).

The site permitting process provides the only opportunity for regulatory and public review of these increases in efficiency which are associated with increases in capacity and therefore the only opportunity for consideration of impacts and alternatives. The Legislature struck a balance between streamlining the process and providing for adequate environmental analysis. It exempted increases in efficiency from the CON requirements, but left the site permitting requirements intact. The proposed exception undermines this balance.

The site permitting process remains necessary to answer the question of whether the increased efficiency combined with increased capacity will lead to an increase in adverse environmental effects. MCEA proposes that the site permitting process should be initiated on all projects unless the utility can demonstrate that increases in efficiency and capacity will not cause any increased environmental impact. Any increases in the emissions of any of the current criteria pollutants under the Clean Air Act (Ozone, Particulate Matter, Carbon Monoxide, Sulfur Dioxide, Lead, Nitrogen Dioxide), as well as Carbon Dioxide, Mercury, or any other environmental impact, such as noise, vibrations, and waste water discharge should be sufficient to initiate the site permit process.

Operation of the EQB's proposed exemption undermines two state policy goals. First, it may prevent the conversion to less polluting fuel sources. Technology is rapidly developing and this exemption from environmental review represents a lost opportunity to consider whether the state should meet its increased energy demand through the use of new and innovative technology or through expansion of outmoded methods of energy production. An inefficient power plant may have several alternative methods for increasing efficiency available. While the need for the new power is exempt from the CON requirements under the statute, the selection of the method for increasing efficiency should be subject to review under the site permitting process. Second, the

exception prevents advancement of the goal of distributed generation[1] as provided in statute. Minn. Stat. §§216B.169, 216B.2411, because the exemption allows increased output from large centralized plants that may be located in major population centers.

B. Start-up of an Existing Large Electric Power Generating Plant

The second exception created in the proposed rules allows the start-up of an existing LEPGP that has been closed for any period of time. The time that the plant has been closed before start-up must be limited so as to protect the property interests and health of those who have invested in the community. The rules need to reflect the reality that the character of a community can change dramatically over a ten or twenty year period of time. A plant that was once surrounded by open fields may now be adjacent to a housing development or an elementary school.

To protect the health and interests of surrounding communities, MCEA recommends that all LEPGPs seeking to reopen after being closed for more than 365 days must first obtain a site permit from the EQB. If the EQB should choose a longer period, it must demonstrate the start-up of a plant that has been closed for such period of time will not threaten either the health or interests of the community surrounding the plant.

The EQB has expressed that it does not believe that relevant siting questions are raised by the operation of either of these exceptions and that whatever environmental impacts do exist can be sufficiently addressed by permits issued by other agencies. Exhibit 4, Statement of Need and Reasonableness at 21-24. This simply is not the case.

The siting concerns raised by the operation of these exceptions are the same as when a new project is being proposed. The EQB must determine whether the proposed project is compatible with the proposed site. Wherever a proposed change at a facility will result in increased environmental impacts, a valid siting concern is raised. This is most vividly demonstrated with the start-up of a plant that has been closed. Prior to the start-up of the plant, there are no

[1] Distributed Generation is not defined in Minnesota Law but the term generally refers to small, modular electricity generators sited close to the customer load to provide customers with better quality, more reliable energy supplies. These smaller generators serve as an alternative to the construction of the LEPGPs regulated under the proposed rules.

environmental impacts resulting from the production of electric power. Once it is restarted, however, the plant is affecting the environmental quality of the community in exactly the same manner as all other LEPGPs that are regulated under these rules. To say that no valid siting concerns exist in these circumstances is to ignore the practical realities of the situation.

While it is possible that permits from the Pollution Control Agency may capture some environmental impacts from the operation of these exceptions, based upon the past and expected practices at the agency the scope of environmental review will rarely exceed what is mandated by statute. The Pollution Control Agency is also prohibited from denying a permit application due to generalized environmental concerns. *In the Matter of Application for Combined Air and Solid Waste Permit No. 2211-91-OT-1 for the Dakota County Mixed Municipal Solid Waste Incinerator*, 489 N.W.2d 811, 814 (Minn. App. 1992). The impacts that escape analysis during Pollution Control Agency permitting are precisely the form of environmental impacts that the environmental review during site or route permitting is designed to address. Unless the exceptions are limited and the site permitting procedures implicated, there is no assurance that these important impacts are studied before the proposed changes take effect.

III. THE RULES MUST PROVIDE ASSURANCE THAT IMPACTS AND ALTERNATIVES ARE ADEQUATELY ADDRESSED.

In an effort to eliminate duplicative procedures, the legislature excluded "questions of need including size, type, and timing, alternative system configurations, and voltage" from the EQB's siting and routing authority. Minn. Stat. §116C.53 subd. 2. At present, there are inadequate assurances that all issues related to size, type, timing and system configuration will be fully considered during the CON process. For this reason, the EQB rules for site and route permitting must be carefully drafted to ensure that alternatives are adequately addressed while respecting the legislatively created limits on the board's authority.

In determining whether a project is compatible with the proposed site or route, the EQB should only be precluded from considering issues that have been expressly considered during the CON process. As stated above, there is no requirement that the applicant propose a site or provide project specific details, such as emissions control technologies, during the CON process. It is

impossible to accurately compare environmental impacts of a roughed-in abstract project proposal with potentially feasible and prudent alternatives. During the site and route permitting process, on the other hand, all project details have been finalized and a concrete and detailed alternatives analysis may be undertaken. The proposed rules unnecessarily foreclose this opportunity.

The legislature only excluded "questions of need" from the EQB's siting and routing authority. Applying this restriction in a manner that prevents any consideration of alternatives in size, type, timing, system configuration, and voltage unnecessarily constricts EQB's authority and departs from sound public policy. Analysis of alternatives is useful in assessing many concerns other than need, such as comparative environmental effects, fulfillment of state goals, and site compatibility. By excluding all matters of size, type, timing, alternative system configuration, and voltage, the EQB is throwing out their most valuable tool in environmental review.

MCEA is not requesting "two bites at the apple" but rather is seeking assurance that alternatives to the proposed project have been fully considered. To the extent that an alternative has been fully considered during the CON process it does not necessitate further consideration during site or route permitting. In the interest of sound decision making, however, the rules must ensure that the questions about project alternatives have been asked and answered. The best method to do this is by construing the restriction on EQB's siting and routing authority as narrowly as possible by excluding consideration of alternatives to size, type, timing, system configuration, and voltage only to the extent that they have been addressed during the CON process and only as they relate to the need for the project.

The rules should also mandate that the EQB consider the no-build alternative during environmental review. When removing questions of need from the EQB's authority, the Legislature chose not to exclude consideration of the no-build alternative. The no-build alternative is the most important alternative considered during environmental review and should be a mandatory component of all site or route permitting environmental review. Analysis of this alternative allows the EQB to deny a permit application where the environmental impacts are such that choosing not to build the facility is a preferrable feasible and prudent alternative.

IV. PUBLIC PARTICIPATION IN THE PROCESS MUST BE PROTECTED.

Protection of public participation in the site and route permitting process represents one of the most critical issues in developing these rules. By protecting citizen involvement, the EQB can ensure that site and route permitting process can proceed efficiently and lead to the best possible result. Bringing the public into the process as early as possible tempers resistance to the final result and allows timely introduction of impacts and alternatives that otherwise might not have been analyzed.

The importance of public participation was vividly demonstrated in the Minnesota Powerline Wars. In the late 1970s, the breakdown of the public process approached violence in west-central Minnesota. When citizens were belatedly brought into the routing process for HVTLs shots were fired, bullet holes were found in utility trucks, towers were toppled, and people feared for their lives. (For a thorough discussion of the Powerline Wars, see Barry M. Casper & Paul D. Wellstone, Powerline: The First Battle of America's Energy War (University of Massachusetts Press 1981)). The lessons learned from this experience must be reflected in these rules and public participation should be zealously guarded.

Public participation can be preserved most easily by bringing the public into the process as early as possible. An unfortunate consequence of separating the CON and site and route permitting processes is that the people most affected by a project may not be motivated to participate in the process until after the most critical decisions have been made. This is precisely what occurred in the 1970s. It is possible that the CON may be granted and the type of power plant or transmission line to be built determined before neighboring landowners are informed of the proposal. Once they are provided notice of the proposal under the site or route permitting process, these affected parties are precluded from advocating alternative projects or designs and are limited to arguing that the proposed facility is incompatible with the proposed site. To prevent this result, notice to the public must be provided as soon as a potential site for the proposed project is identified.

Involving the public as early as possible allows the timely introduction of impacts and alternatives to be considered during environmental review. There have been numerous cases

where the final alternative selected was proposed by a citizen involved in the process. Since the proposed rules preclude the analysis of need during the site permitting process, citizens' ability to propose alternatives to the size, type, timing, system configuration, and voltage can be protected if they are brought into the CON process.

Ensuring that notice is provided to affected landowners during the CON process must happen during the CON rulemaking process. Nonetheless, providing this early notice has a critical impact on the efficiency of site and route permitting process and the public acceptance of the result and it is appropriate to raise this concern at this time. Failure to properly invite affected landowners into the process during consideration of a CON application will undermine the goals of the rules presently being considered.

Furthermore, in the interest of streamlining the process, protecting public involvement, and making sound decisions, environmental review during the CON and site or route permitting stages should be combined into a single process. This will streamline the process by allowing assessment of environmental impacts to be completed in a single document, completely avoiding duplicative procedures. This would also facilitate public involvement by allowing citizens to track a single process for environmental review. The rules as drafted allow for simultaneous consideration of CON and site or route permit applications. Finally, combination of the environmental review proceedings allows for sound decision making by allowing feasible alternatives, environmental impacts, and potential locations to be assessed in a single document that would inform decisions for both the CON and the site or route permit.

V. ADDITIONAL CONCERNS AND PROPOSED LANGUAGE CHANGES.

The following comments recommend changes to the language in the Proposed Rules. Some recommendations propose changes to effectuate MCEA's four major concerns discussed above other recommendations are largely intended to clarify the Proposed Rules and ease their application, and generally do not represent significant changes to the effect of the rules. Where MCEA has recommended specific changes to the language of the rules, the changed portions are underlined.

A. Comment to Proposed Rule 4400.0400 subparts 3(C) and (D)

A utility should be required to obtain a site permit from the EQB prior to expanding the generating capacity at a LEPGP. The proposed rules define a LEPGP as being either designed for or capable of operating at a capacity of 50 MW or higher. This change would maintain continuity through the rules by requiring approval prior to making a plant capable of increased output, even if output is not actually increased. MCEA recommends the following changes:

> C. Except as provided in part 4400.0650 or 4400.03820, no person shall increase the generating capacity or output of an existing LEPGP without a permit from the Board.
> D. No person shall increase the generating capacity or output of an electric power plant from under 50 megawatts to more than 50 megawatts without a site permit from the EQB.

B. Comment to Proposed Rule 4400.0400 subpart 5

The definition of the term "Commence Construction" contained in this subpart must be modified so as to preclude action that would impair the natural environment that may not otherwise fall within the prohibition of commencing construction without a permit. MCEA recommends the following change:

> Subp. 5. **Commence Construction.** No person may commence construction of a large electric power generating plant or a high voltage transmission line until a permit has been issued by the board or by the appropriate local units of government if local review is sought. "Commence Construction" means to begin or to cause to begin as a part of a continuous program of placement, assembly, or installation of facilities or equipment, or to conduct significant physical site preparation work for installation of facilities or equipment, or to begin or to cause to begin any other action that would impair the natural environment on or around the site or route. Conducting survey work or collecting geological data or contacting landowners to discuss possible construction of a power plant or transmission line is not commencement of construction.

C. Comment to Proposed Rule 4400.0650 subpart 1 C (a) and Analysis in the SONAR at page 21

Only maintenance and repair that does not increase the generating capacity at a LEPGP should be exempted from the permit requirements under this subpart. This recommended change seeks to clarify that any project that increases the generating capacity at a plant cannot be accurately described as maintenance or repair and should not qualify for an exemption. For this reason, MCEA requests the following change:

> (1) Maintenance or repair of a large electric power generating plant with no increase in generating capacity;

Also, the SONAR should not include an explanation of the reasoning behind the utilities' request that the phrase "routine or emergency" not be used to modify the terms maintenance or repair. Regardless of whether an amendment constitutes a concession to an interested party, it is improper for the SONAR to explicitly state that the changed language was based solely upon the concerns voiced by a discrete group. Such a statement may lead to a presumption that any future conflict regarding the meaning of the provision should be resolved in favor of the group whose concerns were alleviated by the amendment.

Furthermore, the definition of maintenance or repair in these rules should not be linked, even by reference, to the debate regarding new source review under the Clean Air Act. The meaning of maintenance or repair in the Clean Air Act is a highly contentious issue and is a matter of Federal law. This volatile national topic should not be included within the explanation of state rules regarding power plant siting. Mentioning the debate of the Clean Air Act's new source review provisions in the SONAR creates the possibility that a shift in Federal policy may effectively amend the power plant siting rules without any action being taken by the State. MCEA requests that all discussion of the utilities' reasoning and the debate regarding new source review be deleted from the analysis of rule 4400.0650 subpart 1 C (1) in the SONAR.

D. Comment to Proposed Rule 4400.0650 subpart 1(C)(4) and Analysis in the SONAR at page 23

The discussion of Xcel Energy's proposed emissions reduction project should not be included in the analysis of this subpart. While this subpart, as proposed, may apply to Xcel's proposal, discussion of the proposal in the SONAR is inappropriate. Inclusion of the proposal in the SONAR simply serves to strengthen Xcel's eventual argument that it qualifies for such an exemption. Xcel should be able to demonstrate that it qualifies for an exemption on the basis of the text of its rules and not by inclusion of its proposal in the SONAR. If the EQB wishes to include an illustrative example, it could include a discussion of how this exemption may have streamlined the process for the Black Dog repowering. MCEA requests that all discussion of the Xcel Energy emissions reduction proposal be eliminated from the analysis of this subpart in the SONAR.

E. Comment to Proposed Rule 4400.0650 subpart 1(C)(5)

A utility should be required to obtain a site permit when it intends to start-up a LEPGP that has been closed for more than 365 days. Because the public will be interested in the start-up of a facility that has been closed for more than 365 years, the EQB should provide this notice to persons on the General List and post such notice on the EQB's web page.

> (5) start-up of a existing large electric power generating plant that has been closed ~~any period of time~~ less than 365 days at no more than its previous generating capacity rating and in manner that does not involve a change in the fuel or an expansion of the developed portion of the site.

F. Comment to Proposed Rule 4400.0650 subpart 3

MCEA recognizes that the actions covered by this notice provision are expected to be relatively minor and perhaps numerous. Nonetheless, it is important for the public to have the opportunity to review how these exemptions are being administered by the EQB. For this reason, the EQB should post a summary on its web page describing the type and number of exemptions used by the utilities each month. This procedure will be less onerous to the EQB than posting all of the notices on the web and still provides the public with relevant and timely information.

> Subp. 3. Notice. Any person proposing to move transmission line structures under subpart 1, item A., or to reconductor or reconstruct a HVTL under Item B (2), or to implement changes to a large electric power generating plant under Item C (2), C (3), C (4), or C (5), must notify the chair in writing at least thirty days before commencing construction on the modification or change. At least once every month, the EQB shall publish a summary of all such notices on its web page.

G. Comment to Analysis of Proposed Rule 4400.1050 subpart 2 in the SONAR at page 27

When a large estimated fee is calculated, the utility should be required to make a correspondingly large upfront payment. This is a fiscally responsible requirement for the EQB to impose upon the utilities. Any reduction in the upfront payment should be based upon the utility's ability to pay rather than the size of the estimated fee.

> **Subpart 2. Initial Payment**. The existing rules require an applicant to submit 25% of the estimated fee with the application and the remaining portion within a certain number of days after submission. Minnesota Rules part 4400.4900. The new language requires an upfront payment of 50% of the estimated fee, unless the applicant requests the Chair to reduce the amount. The reason the EQB is proposing to require 50% of the fee upfront is because with the smaller projects in the alternative review process, events happen so quickly that the EQB could be asking for additional payments within a short period of

time if only 25% of the fee were paid with the application. The ability of the Chair to reduce the amount will be sufficient to address those situations where ~~a large amount of money would otherwise be required~~ upfront payment of 50% of the estimated fee would cause undue financial hardship.

H. Comment to Proposed Rule 4400.1150 subpart 1(C) and Analysis in the SONAR at page 29

It is not acceptable for a utility to propose alternative sites that are contiguous. Allowing this to occur undermines the purpose of requiring alternative site proposals. It is unlikely that two contiguous sites will differ so substantially that a meaningful distinction can be made between the environmental and social effects of permitting the construction of a LEPGP on either site. MCEA therefore requests the following changes be made to the proposed rule and that the SONAR be modified accordingly.

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

I. Comment to Analysis of Proposed Rule 4400.1150 subpart 2(I) in the SONAR at page 33

While the EQB should use information about other rights-of-way that the proposed HVTL route will follow, it should give preference to a route that follows existing power line rights-of-way. This approach follows the non-proliferation logic applied by the Supreme Court of Minnesota in *People for Environmental Enlightenment and Responsibility, Inc. v. Minnesota Environmental Quality Board*, 266 N.W.2d 858 (Minn. 1978). The significant differences between having right-of-way for a pipeline, highway, or transmission line crossing one's property must be given appropriate consideration in these decisions. MCEA requests that the following sentence be added to the analysis of proposed rule 4400.1150 subpart 2(I) in the SONAR at page 33:

Nonetheless, the EQB will give preference to a route that primarily utilizes existing power line rights-of-way over a route that utilizes other kinds of rights-of-way.

J. Analysis of Proposed Rule 4400.1250 subpart 3 in the SONAR at page 36

The SONAR states, "It should be emphasized that it is not in anybody's interest for the chair to reject an application." This statement is inaccurate and MCEA requests that it be deleted from the SONAR. If an application is incomplete, it is in the best interest of the state and public to reject such application until such time as it is made complete and prepared for submission.

K. Comment to Proposed Rule 4400.1350 subparts 2 and 5 and Analysis in the SONAR at page 38-39

Since persons on the general list and property owners may not be familiar with the procedure for having their name added to the project contact list, the notice provided to these persons should include a brief description of how this is done. This minor change in the notice will facilitate public involvement in the permitting process with minimal cost to the applicant.

> Subp. 2. **Notification to persons on general list.** Within 15 days after submission of an application, the applicant shall send written notice of the submission and a description of the proposed project to those persons whose names are on the general list maintained by the EQB for this purpose. The notice must also advise those persons where a copy of the application may be reviewed and how a copy may be obtained, and that persons who want to continue to receive future notices regarding the matter must notify the EQB of such intent and request that their names be placed on the project contact list. <u>The notice shall provide a clear explanation of the procedures for having one's name included on the project contact list.</u>
>
> Subp. 5. **Notification of property owners.** Within 15 days after submission of an application, the applicant shall send written notice of the submission and a description of the proposed project to each owner whose property is adjacent to any of the proposed sites for a large electric power generating plant or within any of the proposed routes for a high voltage transmission line. The notice must also advise the owners where a copy of the application may be reviewed and how a copy may be obtained. <u>The notice shall also describe the procedures and purpose for having one's name placed on the project contact list.</u> For purposes of giving notice under this subpart, owners are those persons shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer, or any other list of owners approved by the chair.

L. Proposed Rule 4400.1550 subpart 1 and Analysis in the SONAR at page 40

Public involvement in the permitting process is of critical importance. For this reason, the EQB must make every effort to ensure that interested persons are able to participate in public meetings. The EQB should not schedule the initial public meeting before the requisite notices have been made and interested persons have been able to have their names added to the project contact list. The scheduling of the meeting must also allow for the 10-day notice of the public meeting required under Proposed Rule 4400.1550 subpart 2. While MCEA understands that the EQB must maintain a rigorous schedule to complete review of applications within the statutory timeframe, streamlining of the process must not come at the expense of public involvement.

MCEA recommends that the public meeting be held no earlier than 30 days after the acceptance of the application. This recommended timeframe would ensure that interested members of the public are sufficiently informed of the public meeting and the contents of the application while also permitting the EQB to move expeditiously.

M. Comment to Proposed Rule 4400.1700 subpart 4

The purpose of the scoping process is not to reduce the scope and bulk of an environmental impact statement. Rather the scoping process is used to identify potentially significant issues and to establish the detail into which the issues will be analyzed. In fact, the scoping process may increase the scope and bulk of an environmental impact statement by introducing new alternatives that must be considered. MCEA acknowledges that Minn. Rule. 4410.2100 subpart 1 states that the purpose of the scoping process is to reduce the scope and bulk of the EIS. MCEA contends, however, that these statements misrepresent the nature of the scoping process as provided by statute.

The Minnesota Environmental Policy Act states, "An early and open process shall be utilized to limit the scope of the environmental impact statement to a discussion of those impacts, which, because of the nature or location of the project, have the potential for significant environmental effects. The same process shall be utilized to determine the form, content and level of detail of the statement as well as the alternatives which are appropriate for consideration in the statement." Minn. Stat. §116D.04 subd. (e). The scoping process contemplated in MEPA does not exist simply to reduce the scope and bulk of an environmental impact statement, but rather serves as a tool to focus discussion on significant issues and to discover those issues. MCEA is concerned that the language in the proposed rule may lead to an understanding that the scoping process is intended to constrict the environmental impact statement without due regard for necessary and beneficial content. For these reasons, MCEA recommends the following changes.

> Subp. 4. **Scope of EIS.** The scoping process must be used to ~~reduce the scope and bulk of an environmental impact statement by~~ identify~~ing~~ the potentially significant issues and alternatives requiring analysis and to establish~~ing~~ the detail into which the issues will be analyzed. The scoping decision by the chair shall at least address the following:
>
> A. the issues to be addressed in the environmental impact statement;
>
> B. the alternative sites and routes to be addresses in the environmental impact statement; and

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

N. Comment to Proposed Rule 4400.2500 and Analysis in the SONAR at page 50

Part 4400.1550 subpart 1 should not apply to projects being considered under the alternative permitting process because it refers to the scoping of an environmental impact statement, which does not occur under the alternative permitting process. The changes proposed by MCEA reflect this distinction between the two processes. MCEA's proposed change to subpart 2 changes the reference to the environmental impact statement to refer to an environmental assessment. The concern regarding the earliest possible date for the public meeting is the same as discussed in Specific Comment 18 and is incorporated into this comment.

> Subpart 1. **Public meeting.** Part 4400.1550, subparts ~~1~~2 to 4, apply to projects being considered under the alternative review process.
> Subpart 2. **Scheduling public meeting.** Upon acceptance of an application for a site or route permit, the chair shall schedule a public meeting to provide information to the public about the proposed project and to answer questions and to scope the environmental assessment. The public meeting must be held no sooner than 30 and no later than 60 days after acceptance of the application. The public meeting must be held in a location that is convenient for persons who live near the proposed project.

O. Comment to Proposed Rule 4400.3450 subpart 2

This proposed rule prohibits the construction of a LEPGP within certain protected areas. Nonetheless, the subpart grants the Board discretion to include these areas within a permitted site with a discretionary duty to impose appropriate conditions in the permit to protect these areas for the purposes for which they were designated. The imposition of conditions in the permit must be mandatory. For the prohibition in this subpart to have any effect, the Board must be required to take appropriate steps to ensure that the land is preserved for its dedicated uses. MCEA requests that the proposed rule be changed as follows:

> Subp. 2. **Water use.** The areas identified in subpart 1 must not be permitted as a site for a large electric power generating plant except for use for water intake or discharge facilities. If the board includes any of these areas within a site for use for water intake or discharge facilities, it ~~may~~ shall impose appropriate conditions in the permit to protect these areas for the purposes for which they were designated. The board shall also consider the adverse effects of proposed sites on these areas which are located wholly outside of the boundaries of these areas.

P. Comment to Proposed Rule 4400.4050

This rule states that the board must issue a permit if it finds that an emergency exists. The Proposed Rules do not contemplate any form of environmental review when an emergency permit is requested. Furthermore, the EQB has proposed an amendment to Minnesota Rules chapter 4410 that would preclude environmental review at the CON stage in emergency situations. The utility should be required to demonstrate that the emergency cannot be attributed to either the EQB or the applicant. This change would prevent an applicant from deliberately failing to construct new facilities so as to create an emergency and thereby assuring approval of a permit application. MCEA's concern regarding this Proposed Rule is not a result of the accelerated time frame, but rather of the mandatory duty the Board has to issue the permit and the lack of environmental review. MCEA requests that the following item be added to this subpart:

F. the emergency is in no way attributable to the utility.

Respectfully submitted,

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ATTACHMENT 1

Minnesota Power Plants Qualifying for Exception
Provided in Proposed Rule 4400.0650 subpart 1 C (1)

Company	Plant	County	Fuel Source	Capacity	Increase Allowed by Exception
Alliant Energy - Interstate Power	Fox Lake Steam	Martin	Coal/Gas/Oil #6	110	100
Great River Energy	St. Bonifacious Power Plant	Carver	Gas	50	100
Great River Energy	Hutchinson Municipal Plant No.2	McLeod	Gas/Oil #2	75	100
Minnesota Power Co.	Boswell EC	Itasca	Coal/Oil #2	926	100
Minnesota Power Co.	Laskin EC	St. Louis	Coal/Oil #2	110	100
Minnesota Power Co.	M.L. Hibbard Steam Station	St. Louis	Coal/Wood/Gas	57.4	100
Otter Tail Power Company	Hoot Lake Steam Plant	Otter Tail	Coal/Oil #2	157.255	100
Rochester Public Utilities	Silver Lake Steam Plant	Olmsted	Coal/Gas	104	100
Southern Minnesota Municipal Power Agency	Sherburne Steam Plant	Sherburne	Coal/Oil #2	364.6	100
Xcel Energy	Allan S. King	Washington	Coal/Wood/Gas	585	100
Xcel Energy	Black Dog Steam	Dakota	Coal/Gas	461.8	100
Xcel Energy	Blue Lake gas Turbine	Scott	Oil #2	231.5	100
Xcel Energy	Granite City Gas Turbine	Sherburne	Gas/Oil #2	72	100
Xcel Energy	High Bridge Steam	Ramsey	Coal/Gas	271	100
Xcel Energy	Inver Hills Gas Turbine	Dakota	Gas/Oil #2/Oil #1	426.5	100
Xcel Energy	Key City Gas Turbine	Blue Earth	Gas/Oil #2	78	100
Xcel Energy	Riverside Steam	Hennepin	Coal/Gas/Oil #2	389.89	100
Xcel Energy	Sherburne County Steam	Sherburne	Coal/Oil #2	1949.77	194.9
			TOTAL	**6419.715**	**1894.9**

NOTE: This information was taken from Minnesota Utility Data Book. Minnesota Department of Commerce, The Minnesota Utility Data Book: a reference guide to Minnesota electric and natural gas utilities 1965-2000 (2002). Since data was collected for this document the Black Dog power plant operated by Xcel Energy has been repowered as a natural gas facility. This change to the Black Dog facility is not reflected in this table.

ATTACHMENT 2

Power Plant Efficiency Calculations

Energy in one kilowatt hour (kWh) of electricity: 3,412 BTU

Energy in one ton of Coal: 25 Million BTU. United States Department of Energy, DOE/EIA-0348(2000)/1, Electric Power Annual 2000 Volume 1, 53 (2001).

One MWh = 1,000 kWh

BTUs of Coal Necessary to Produce one kWh of Electricity at 35% efficiency: 3412 BTU = .35 X BTU **X = 9,748 BTU**	*BTUs of Coal Necessary to Produce on kWh of Electricity at 40% efficiency:* 3412 BTU = .4 Y BTU **Y = 8,530 BTU**
BTUs of Coal Necessary to Produce 250 MWh of Electricity at 35% efficiency: 9,748 BTU x 250,000 = **2, 437,000,000 BTU**	*BTUs of Coal Necessary to Produce 350 MWh of Electricity at 40% efficiency:* 8,530 BTU x 250,000 = **2,985,500,000 BTU**
Minimum Tons of Coal Necessary to Produce 250 MWh of Electricity at 35% efficiency: 2,437,000,000 BTU = **97.5 Tons of Coal** 25,000,000 BTU/Ton of Coal	*Minimum Tons of Coal Necessary to Produce 350 MWh of Electricity at 40% efficiency:* 2,985,500,000 BTU = **119.4 Tons of Coal** 25,000,000 BTU/Ton of Coal
Tons of Coal per MWh at 35 efficiency: 97.5 Tons of Coal = **0.390 Tons per MWh** 250 MWh	*Tons of Coal per MWh at 40% efficiency:* 119.4 Tons of Coal = **0.341 Tons per MWh** 350 MWh