STATE OF MINNESOTA
MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption of Rules Governing the Siting of Large Wind Energy Conversion Systems

STATEMENT OF NEED AND REASONABLENESS

Minnesota Rules chapter 4401

I. BACKGROUND AND INTRODUCTION

In 1995 the Minnesota Legislature passed a law regulating large wind energy conversion systems. Minnesota Session Laws 1995, chapter 203, codified at Minnesota Statutes sections 116C.691 to 116C.697. The law required that any person seeking to construct a Large Wind Energy Conversion System (LWECS) in Minnesota was required to obtain a Site Permit from the Minnesota Environmental Quality Board.

A wind energy conversion system is a wind turbine or windmill or other device and associated facilities that converts wind energy to electrical energy. A Large Wind Energy Conversion System is a combination of these devices that generates 5,000 kilowatts or more. Minnesota Statutes section 116C.691

The law went into effect on August 1, 1995. At that time the EQB already had an application pending for a large wind energy conversion system, commonly referred to as the Northern States Power Company Phase II Project, a 107.5 megawatt project near Lake Benton, Minnesota. The EQB has successfully applied the new statutory requirements to the project and issued a Site Permit to NSP on October 31, 1995.

In December 1995, the EQB adopted Interim Site Permit Procedures for Large Wind Energy Conversion Systems. These Interim Procedures identified information to be included in a permit application and established procedures for providing the public with opportunities to participate in the permit consideration. The EQB successfully applied the Interim Site Permit Procedures to seven large wind projects since the adoption of the Interim Procedures in 1995.

The Minnesota Environmental Quality Board is proposing to adopt these rules under the statutory provisions relating to adoption of rules without a public hearing. Minnesota Statutes sections 14.22 to 14.28. These statutes allow an agency to adopt rules by giving notice to the public and allowing a period of time for the public to enter comments into the record, but do not require the agency to hold a public hearing. Because the EQB has had extensive experience applying the Interim Site Permit Procedures and issued seven site permits under those Procedures, and because the Procedures form the basis of these

proposed rules, the EQB has been able to bring these rules forward in a proven and polished form. Permit applicants and the public have had opportunities to participate in the issuance of site permits under essentially the same requirements and procedures proposed in these rules. Neither permit applicants nor the general public have complained about the manner in which the EQB has administered the site permit program under the Interim Procedures. This should allow these rules to go forward in an expeditious and noncontroversial manner.

Alternative Format

Upon request, this Statement of Need and Reasonableness can be made available in a different format, such as large print, Braille, or cassette tape. To make a request, contact Larry Hartman at the Minnesota Environmental Quality Board, 658 Cedar Street, St. Paul, Minnesota 55155, phone (651) 296-5089, fax (651) 296-3698, or e-mail, larry.hartman@state.mn.us For TTY, contact Minnesota Relay Service at 800-627-3529 and ask for EQB.

II. STATUTORY AUTHORITY

Minnesota Statutes section 116C.695 provides:

> The board shall adopt rules governing the consideration of an application for a site permit for an LWECS that address the following:
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> (1) criteria that the board shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment;
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> (2) procedures that the board will follow in acting on an application for an LWECS;
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> (3) procedures for notification to the public of the application and for the conduct of a public information meeting and a public hearing on the proposed LWECS;
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> (4) requirements for environmental review of the LWECS;
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> (5) conditions in the site permit for turbine type and designs; site layout and construction; and operation and maintenance of the LWECS, including the requirement to restore, to the extent possible, the area affected by construction of the LWECS to the natural conditions that existed immediately before construction of the LWECS;
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> (6) revocation or suspension of a site permit when violations of the permit or other requirements occur; and

(7) payment of fees for the necessary and reasonable costs of the board in acting on a permit application and carrying out the requirements of sections 116C.691 to 116C.696.

As is more specifically explained below in the discussion for each individual section of the proposed rules, each of these areas described above is addressed in the rules.

Under this grant of authority, the EQB has the necessary statutory authority to adopt rules for the administration of permit applications for Large Wind Energy Conversion Systems.

Minnesota Statutes section 14.125 – a part of the Administrative Procedure Act that applies to rulemaking – provides that an agency shall publish notice of intent to adopt rules or a notice of hearing within 18 months of the effective date of the authorizing statutes or the rule authority expires. However, this provision does not apply to laws authorizing or requiring rulemaking that were enacted before January 1, 1996, and the statutes at issue here were adopted in 1995.

Because the Interim Site Permit Procedures worked well in issuing LWECS Site Permits, the EQB elected to focus its efforts on the existing and proposed wind projects rather than on the development of a comprehensive set of rules. Thus, it has taken several years to bring this set of permanent rules to rulemaking. However, the experience the EQB has had in issuing these other site permits over the past five years has assisted the EQB greatly in addressing all the matters that are included in the proposed rules.

II. NEED FOR THE RULES

Rules for the administration of site permits for Large Wind Energy Conversion Systems are needed because the EQB is likely to receive a number of permit applications over the next few years and into the future for large wind projects. Wind energy continues to be developed along Buffalo Ridge in southwestern Minnesota, and other areas of the state are likely to see development as well. It is preferable to have in place a comprehensive set of procedures and requirements that have the force and effect of law that can be applied in permitting proceedings for large wind projects. The Legislature declared in 1995 that the policy of the State is to site LWECS in an orderly manner that is compatible with environmental preservation, sustainable development, and the efficient use of resources. These rules are intended to further those legislative goals and policies.

III. COMPLIANCE WITH VARIOUS STATUTORY REQUIREMENTS.

A. SOLICITATION OF OUTSIDE OPINION

Minnesota Statutes section 14.101 requires an agency to solicit public comments on the subject of the proposed rulemaking. On February 12, 2001, the EQB published notice in the *State Register* of its intent to promulgate rules regarding the processing of permit

applications for Large Wind Energy Conversion Systems. 25 State Register 1382 (Feb. 12, 2001). The EQB also published notice in the *EQB Monitor* on February 19, 2001.

The public was given until April 6, 2001, to submit comments in response. The EQB did not receive a single written comment in response to the notice of intent to solicit outside opinion. The EQB also solicited public comments in March 1996 with a notice to that effect in the *State Register*. 20 State Register 2256 (March 11, 1996). No comments on the subject of the rules were submitted at that time either.

B. DISCUSSION OF TOPICS IDENTIFIED IN SECTION 14.131

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

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

The persons who will be primarily affected by these rules are the wind developers. Local governmental officials and the general public and organizations involved in environmental protection are also affected by these rules but not in the same way as the developers. Utilities that purchase electricity generated by wind power can be affected by these rules.

The wind developers will bear the costs of the proposed rules because they are the persons who apply for the permits to construct the Large Wind Energy Conversion Systems. These persons will have to pay fees for the processing of their permit applications. Also, the permit conditions that are imposed in a site permit, such as environmental mitigation and construction limitations and avian mortality and other studies, will also result in costs to the permittee to perform these tasks.

Permittees will also receive a benefit from these rules, however. The rules will inform wind developers what is expected of them in constructing large wind projects. The permit will authorize the permittee to proceed with construction of a wind project in a specific area, effectively precluding other developers from building in that area. The permit may be an effective tool in finalizing financing of a proposed project. The state permit will pre-empt local review of the project and eliminate the need to seek separate permits from a number of local governmental bodies.

Local government will be affected by these rules in the sense that a permit for a LWECS project will determine the location of the facility and the conditions under which the project is to be constructed and operated. Local government will be pre-empted from enforcing its own zoning and other regulations. Minnesota Statutes section 116C.697. Local residents may be impacted by the location of wind turbines near their property. Environmental organizations will be affected because the rules will determine how the

wind resources are developed in an orderly fashion that is protective of the resource and the environment. Utilities that will purchase the electricity generated by wind turbines will be affected through the availability and cost of such power.

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

The Environmental Quality Board is authorized by statute to charge permit applicants with the necessary and reasonable costs incurred by the EQB in processing the permit application. Minnesota Statutes section 116C.695(7). In addition, the EQB is authorized to make a general assessment against utilities in the state to fund the EQB's work with energy facilities. Minnesota Statutes section 116C.69, subd. 3. None of the expenses incurred by the EQB in either promulgating these rules or in administering permit applications will be paid for out of the general fund. Thus, implementation and enforcement of these rules should have no effect on state revenues.

The EQB estimates that in the next few years one or two permit applications for LWECS projects will be submitted each year. In the past six years since the law went into effect, the EQB has issued seven site permits for LWECS projects. The processing of these applications has cost about $10,000 per application, although the first permit for the Northern States Power Company's Lake Benton I project was significantly higher, in excess of $100,000, because it was a highly contested permit with a contested case hearing and an appeal to the Minnesota Court of Appeals by Kenetech Windpower, Inc.

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

The EQB has operated under Interim Site Permit Procedures for the past five years. These rules are based on those Interim Procedures. Given the fact that neither the wind developers nor the general public have complained about any portions of the Interim Procedures for the past several years, it does not seem that the rules are unreasonably costly or intrusive. The EQB issued two Site Permits for LWECS in the year 2001 – one to Navitas Energy LLC and one to Chanarambie Power Partners LLC. It took about sixty days from acceptance of the application to complete the process and issue the permit, and it cost the applicants approximately $10,000 each in fees charged by the EQB. The EQB believes that the proposed rules will provide for an expeditious consideration of a permit application with minimal cost to the applicant and ample opportunity for the public to be informed and to participate.

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

In 1995 when the EQB first began implementing the statutory requirement to obtain a site permit for a LWECS, there were several wind developers who were competing for the

best lands along Buffalo Ridge for wind projects. In order to ensure that the best lands were available to the serious wind developers who were likely to proceed expeditiously with their projects, the EQB included in the Interim Site Permit Procedures a mechanism whereby a utility company that had applied to the Public Utilities Commission for a certificate of need for a wind project in a specific area and was directed by law to provide wind power, was entitled to have that area reserved for its development for a period of two years from the time the application was accepted by the PUC. Such a reservation is not included in the proposed rules.

The reason for eliminating this mechanism is because it is no longer necessary. Instead, the proposed rules allow a person to apply for a permit for a specific area, but the authorization to proceed is contingent on the permittee obtaining the wind rights in the area defined in the permit and obtaining a power purchase agreement with somebody who is going to buy the electricity generated. In the last few years it has been private companies, not public utilities, that have been applying for the wind permits. Developers with the wind rights and a commitment to buy the power, along with the financing to fund the project, are going to be able to proceed with their projects without any need to reserve an area in advance.

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

The most readily identifiable costs of the proposed rules are the fees to be charged for processing the permit application. These fees for the seven site permits issued to date have been approximately $10,000 per permit proceeding, except for the first permit the EQB issued to Northern States Power Company in 1995. Unless a project is controversial for some reason, and a contested case hearing is required on the application, costs for processing a permit application should continue to be in the $10,000 range.

Permittees, of course, will also incur costs in complying with the conditions imposed in the permit. Wind turbines can cost more than a million dollars apiece, so the costs of complying with permit conditions has not been a major factor for wind developers as far as the EQB knows. The avian mortality study that Northern States Power Company was ordered to perform in 1995 cost about $500,000 to complete. That cost, however, is being shared proportionately by all wind developers who obtain permits from the EQB through 2002, depending on the megawatts of installed capacity permitted.

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

This statutory requirement is primarily designed to address the situation where a proposed state rule is more stringent than a corresponding federal requirement. In this case, there is no corresponding federal regulation. Chapter 4401 applies to state permitting requirements for Large Wind Energy Conversion Systems. The federal government does not require such a permit for wind projects. The federal government could require approval for a wind project in certain circumstances, such as the case where

the wind turbines are near an airport or located on federal lands. However, the federal government does not require a permit for a wind project per se.

C. Performance-Based Analysis-Minnesota Statutes Section 14.002.

Minnesota Statutes section 14.002 requires an agency that is developing rules to describe in the Statement of Need and Reasonableness how it considered ways it might afford flexibility in complying with the regulatory requirements being proposed while still meeting the agency's objectives. Here, what the EQB tried to do was to minimize the burden on what must be submitted as part of a permit application, yet ensure that environmental and energy considerations are addressed, and to expedite the process, yet provide ample opportunity for public input.

An example of how the EQB provided flexibility is in part 4401.0450, subpart 2, where the proposed language gives a permit applicant the right to go ahead with the permit application even if the applicant does not have a power purchase agreement for the power that will be generated. Another example is in subpart 5 of the same part, where an applicant's lack of wind rights will not hold up processing a permit application, even though without the wind rights the proposer will not be able to build the project.

In order to provide information to the public, and yet keep the process moving, the proposed rules provide that upon acceptance of an application, the chair of the board will make a preliminary decision on whether a permit may be issued and prepare a draft site permit if the decision is to approve a permit. This draft site permit will quickly identify for the public and the applicant any areas of contention. In the end, the existence of a draft site permit should provide for an expeditious final decision.

Throughout development of the proposed rules, the EQB was cognizant of the desire by applicants to minimize the burden of applying for a permit and to provide for an expeditious final decision. The EQB also considered that the public wants to be informed about proposed projects and to have an opportunity to participate in the decisionmaking process. The EQB believes that these rules will result in an open, informed, expeditious permitting process. The statute gives the EQB 180 days from the time an application is accepted to reach a final decision. Minnesota Statutes section 116C.694(c).

All interested persons are encouraged to submit comments on any parts of the rules. If there are other instances where additional flexibility is possible, the EQB will certainly consider such suggestions.

D. NOTICE TO COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE

Minnesota Statutes section 14.111 provides that before an agency may adopt rules that affect farming operations, the agency must provide a copy of the proposed rules to the Commissioner of the Department of Agriculture at least 30 days before publishing notice in the *State Register*. In this case, these proposed rules will not directly regulate farming operations, and this notice is probably not required. However, because the wind projects

to be permitted under these rules will likely be located on farm land, farming operations can be impacted when the wind turbines are constructed, and it is appropriate to notify the Commissioner.

Presently, the Commissioner of the Department of Agriculture, Gene Hugoson, is the chair of the Environmental Quality Board. Commissioner Hugoson has, of course, been advised of the possible adoption of these rules. This statutory requirement has been complied with.

E. ADDITIONAL NOTICE GIVEN TO THE PUBLIC

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

The EQB will publish notice in the *EQB Monitor* of the proposed rulemaking. Each issue of the *EQB Monitor* is distributed to a lengthy list of persons and published on the EQB webpage. Many groups and individuals in Minnesota and elsewhere who are active and interested in environmental matters in the state are aware of the *EQB Monitor* and read it regularly.

In addition, the EQB will post a copy of the notice, the proposed rules, and this Statement of Need and Reasonableness directly on the internet. The EQB homepage contains an entry identifying the new items that have been recently posted by the EQB. When this material is first posted, the public will also see an entry highlighting the fact that this material is now available on the web.

The EQB has also over the past six years or so compiled a list of several hundred names of people who are known to the agency to be interested in wind development and new wind projects. The list includes names of wind developers, utility companies, local government officials, and the general public. The EQB will mail notice directly to the persons on this list, either by postal mail or by electronic mail.

Finally, the EQB will publish notice of the proposed rulemaking in local newspapers in southwestern Minnesota, where most of the wind development has occurred in the state. These will be the same newspapers that have been used in the past to provide notice about permit applications for specific projects.

V. RULE-BY-RULE ANALYSIS

This part of the SONAR is a rule-by-rule discussion of the reasons why the rule is being proposed. In a number of places, the EQB identifies documents that provide information that supports the proposed language

4401.0100 PURPOSE.

This part is simply a recitation of what chapter 4401 is intended to do and repeats the statutory policy regarding the orderly development of the wind resource in Minnesota. Minnesota Statutes section 116C.693. There are no substantive requirements in this part.

4401.0200 Definitions.

Subpart 1. Scope. This provision simply states that the terms defined in the rule are for purposes of chapter 4401.

Subpart 2. Associated Facilities. The term associated facilities is used in the statutory definition of "wind energy conversion system" but the Legislature did not define the term. It is helpful to provide a definition because an LWECS consists of not only the wind turbines, but also other associated facilities. Under the law even the associated facilities require a permit before construction is authorized.

The EQB proposes to define "associated facilities" as those "facilities, equipment, machinery, and other devices necessary to the proper operation and maintenance of a large wind energy conversion system, including access roads, collector and feeder lines, and substations." This is simply a common sense definition. When permitting a LWECS, the EQB must not only identify the wind turbines to be included in the project, but also the other facilities and equipment that are necessary to make the wind turbines functional.

While it is not possible to identify specifically what facilities and equipment are included within the definition of "associated facilities" for every LWECS that might be proposed, there are some facilities that are certainly within the definition. The proposed definition lists access roads, collector and feeder lines, and substations as examples of "associated facilities." These are the kind of facilities that have been included in other permitted projects as associated facilities. Surely, the electrical connections required to convey the electricity from the wind turbine to the transmission grid are associated facilities. Also, facilities necessary to transport the turbines and towers and other equipment to the site, like access roads, are the kind of activities that impact the environment and should be evaluated as part of the permit process. These roads are also necessary to maintain the turbines after they are up and running.

Other kinds of facilities and equipment and machinery that are necessary to the project will be determined during the permit process. The permittee can identify these facilities that are necessary to operation and maintenance of the LWECS. The reference to "necessary" facilities is specific enough to allow the applicant and the EQB to determine what is included within the definition.

Subpart 3. Board. The Minnesota Environmental Quality Board is sometimes simply referred to as the "board" in the rules for clarity and simplicity. The board is

comprised of the commissioners and directors of the state agencies that are members of the MEQB and the private citizens appointed by the Governor. Minnesota Statutes section 116C.03, subdivision 2. The board is the entity that makes the final decisions on permits and other matters.

Subpart 4. Chair. The "chair" is the person appointed by the Governor to serve as the chair of the board. There are several tasks identified in the rules for the chair of the Board to perform. As is explained below for specific rule language, it is reasonable to assign certain duties to the chair to ensure that the process moves expeditiously to a decision by the board. Since the board meets only once a month, it would slow down the process if every matter had to be brought to the board.

Subpart 5. Construction. The EQB does not want project proposers to begin construction of their proposed projects until after a permit has been issued. Part 4401.0300 provides that it is against the law to commence construction of an LWECS until the board has issued a site permit. The reason for prohibiting construction until the permit is issued is so that the applicant will not engage in conduct that irreversibly impairs the environment or make financial commitments that will make it difficult for the EQB to openly evaluate the project. It is common practice for permitting agencies to insist that projects not begin until a decision on the permit has been made. See, for example, the Minnesota Pollution Control Agency's rules for water permits. Minnesota Rules part 7001.1020, subpart 8.

The question, of course, is what does it mean to commence construction. The kinds of commitments and activities described in the proposed rule – starting a continuous program of construction or site preparation - are the kinds of commitments and activities that would make it difficult for the EQB to deliberate to the extent it must on a permit request and to decide on the permit in accordance with the requirements of the law. These kind of efforts not only put pressure on the EQB to allow the conduct to go forward, but they can result in damage to the environment that could have and should have been avoided.

The proposed definition does not prohibit entering into power purchase agreements and obtaining wind rights from property owners and gathering wind data prior to obtaining a permit. Obviously, these kinds of tasks can be completed without impacting the permit process or the environment. Indeed, the EQB wants developers to negotiate and enter into power purchase agreements with utilities and negotiate and obtain wind rights from property owners. Certainly there is no objection to gathering wind data without applying for and obtaining a permit.

Nor does the rule make any mention of restricting the right to enter into contractual commitments related to the wind project. The EQB considered limiting the ability of a permit applicant to make binding contractual agreements to purchase facilities or equipment in advance of receiving a permit, but wind developers must be able to arrange for delivery of the turbines well in advance of applying for and receiving a permit from the EQB.

Subpart 6. Draft site permit. The draft site permit is a document that represents a preliminary decision by the chair that a site permit can be issued for the project. The draft site permit contains terms and conditions that the chair has determined might be appropriate to include in the final site permit. The draft site permit will assist the applicant and the public in understanding the issues associated with the proposed project

Subpart 7. EQB. This is the definition of the agency itself, including both the Board and the staff. Whenever it is the chair or the board that is responsible for performing a task or making a decision, the rules specify that. But in many instances it is the staff that will actually carry out certain tasks, and it is necessary to recognize that distinction. For example, it is the staff that will arrange for the publication of certain notices and maintain the accounting of the costs. In those instances in the rules where agency staff may perform the task, the rules spell out EQB, rather than the Board or the Chair.

Subpart 8. EQB Monitor. The *EQB Monitor* is a bulletin published by the EQB every other Monday. The *EQB Monitor* has been published by the EQB since 1977. The *EQB Monitor* is distributed widely to interested persons, and it is published on the web.

http://www.mnplan.state.mn.us/eqb/monitor.html

The public has come to expect notices of EQB matters to be published in the *EQB Monitor*, and there are several references in the rules to publication in the *EQB Monitor*.

Subpart 9. Large wind energy conversion system or LWECS. This definition is the statutory definition in Minnesota Statutes section 116C.691, subdivision 2.

Subpart 10. Person. Person needs to be defined broadly to include more than just individual human beings. The definition here is the same definition used in the Power Plant Siting Rules. Minnesota Rules part 4400.0200, subp. 12.

Subpart 11. Power Purchase Agreement. Individuals and corporations and other organizations that are not in the utility business are often the persons who propose large wind energy projects. These wind developers intend to sell the power generated to utilities like Xcel Energy and Great River Energy, who will then deliver the electricity to the ultimate consumers. Since the developers do not have their own transmission facilities, they need an agreement with the utilities to purchase the power to be generated. This definition defines power purchase agreement to be any kind of enforceable agreement between the developer and the utility for purchase of the wind power.

Subpart 12. Site Permit. The Site Permit is the document that the board issues at the completion of the process that authorizes the applicant to proceed with construction of the project under the terms and conditions contained in the permit.

Subpart 13. Small Wind Energy Conversion System or SWECS. This definition is identical to the statutory definition. Minnesota Statutes section 116C.691, subdivision 3. Every wind energy conversion system is either a SWECS or a LWECS but the EQB has jurisdiction only over the LWECS.

Subpart 14. Wind Energy Conversion System or WECS. This definition is identical to the statutory definition as well. Minnesota Statutes section 116C.691, subdivision 4. The Legislature intended in the statute and the EQB intends in the rule to promulgate a broad definition that will encompass any kind of device that captures the wind to use for the generation of electric energy.

4401.0300 PERMIT REQUIREMENT

Subpart 1. LWECS. This rule is simply a reiteration of the statutory mandate that a permit is required to construct a Large Wind Energy Conversion System. The rule also requires that the permit must be obtained before construction of the system can commence. Since the term "construction" is defined in part 4401.0200, subpart 5, there should be no confusion on the part of developers what is allowed to happen before the permit is issued. The explanation for the definition is included in the discussion for that subpart.

Subpart 2. SWECS. The Legislature provided that a Site Permit from the EQB is not required to construct a wind project of less than 5 megawatts and this rule recognizes that limitation. The EQB has no jurisdiction over SWECS, and the second sentence of this rule recognizes that local units of government are responsible for regulating the small wind projects. No state environmental review is required of an electric generating facility of less than five megawatts. Minnesota Rules part 4410.4600, subpart 3.

Subpart 3. Expansion of Existing System. The purpose of this provision is to require EQB review and approval before an existing LWECS is expanded by any amount or before an existing SWECS is expanded by an amount that allows the SWECS to generate more than 5 megawatts of electricity. Since the Legislature required any project over 5 megawatts to undergo state review, it makes sense to give the EQB an opportunity to analyze any expansion of an existing project when more than 5 megawatts of power are involved. The EQB wants to avoid the situation where several small projects are constructed without state review when in reality the projects are essentially one large project that requires an EQB permit.

The test proposed in the EQB rule for determining whether several small projects are really a large project is taken from the statutory language passed by the Legislature in the Energy Security and Reliability Act of 2001. Minnesota Session Laws 2001, chapter 212, article 5, section 2. In the 2001 legislative session, the Minnesota Legislature addressed this issue in terms of the incentive payment that is available to developers of small wind energy projects under two megawatts. Minnesota Statutes section 216C.41. The incentive payment is 1.5 cents per kilowatt-hour for qualifying facilities. The

Legislature was concerned that developers might attempt to skirt the limitations of the incentive payment provision by proposing several small wind projects, none of which exceeds two megawatts alone but which in total exceed that number, by proposing each project under a different name. In that way a developer might seek an incentive payment for several small projects that in reality are one large project in excess of the qualifying amount.

The language passed by the Legislature reads as follows:

> (b) Beginning January 1, 2002, the total size of a wind energy conversion system under this section [216C.41] must be determined according to this paragraph. Unless the systems are interconnected with different distribution systems, the nameplate capacity of one wind energy conversion system must be combined with the nameplate capacity of any other wind energy conversion system that is:
>
> (1) located within five miles of the wind energy conversion system;
> (2) constructed within the same calendar year as the wind energy conversion system; and
> (3) under common ownership.
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> In the case of a dispute, the commissioner of commerce shall determine the total size of the system, and shall draw all reasonable inferences in favor of combining the system.
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> (c) In making a determination under paragraph (b), the commissioner of commerce may determine that two wind energy conversion systems are under common ownership when the underlying ownership structure contains similar persons or entities, even if the ownership shares differ between the two systems. Wind energy conversion systems are not under common ownership solely because the same person or entity provided equity financing for the systems.

Minnesota Statutes section 216C.41, subd. 5, as amended by Minnesota Laws 2001, ch. 212, art. 5, section 2.

The language in the proposed rule is essentially the same as the statutory language. The test applied by the Commissioner of the Department of Commerce for incentive payment purposes will be the same test applied by the EQB for permitting purposes. The Commissioner of Commerce is a member of the EQB Board and there will be cooperation between Commerce and the EQB in resolving whether two or more small projects are really one larger project.

4001.0400. FILING OF APPLICATION FOR SITE PERMIT.

Subpart 1. Number of Copies. The rule requires an applicant to file three copies of the application with the EQB. The reason three copies are required is so that the Chair can have a copy and the staff can have two. It is reasonable to require the applicant to provide enough copies to allow the staff and the Chair to conduct their review of the adequacy of the application. As is explained later, once the application is accepted the applicant will have to submit additional copies so the EQB can provide copies to all those persons who normally receive such documents.

Subpart 2. Electronic Copy. The EQB has been putting more and more information on its web page. The public has come to expect to find information about matters pending before all state agencies on the web. It is a convenient and inexpensive way to provide information to the public. In order to put the application on the web, the applicant must provide an electronic version of the document. The rule recognizes that an applicant can ask for a waiver of the requirement to provide an electronic copy, but it is hard to imagine in today's computer world that an electronic version is not available. Perhaps certain maps or photographs may not be available but even that situation should not arise often.

Subpart 3. Proprietary information. The purpose of this subpart is simply to recognize that on occasion an applicant may provide information as part of an application that is protected from public disclosure by Minnesota law. The most likely statute providing such protection is the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13, and the most likely classification is trade secret information. Minnesota Statutes section 13.37(b). However, an applicant may have other reasons to protect certain information and may certainly rely on those.

The issue over public inspection of information in wind project applications has not been a problem in the past, but the rule nonetheless creates a mechanism for handling a request by an applicant to protect certain information from public disclosure. The request will be brought to the full Board for a determination of whether the information actually qualifies for the classification. If the Board disagrees with the applicant, and is of the view that the information is public information, the applicant can either allow the public to inspect the information, withdraw the application, or challenge the Board's decision in court. In any event, information that an applicant believes is not open for public review will not be made available to the public without affording the applicant an opportunity to establish that the information is protected.

4401.0450 CONTENTS OF SITE PERMIT APPLICATION.

Subpart 1. Applicant. This subpart requires the applicant to provide basic background information about the person or persons applying for the LWECS Site Permit. This same kind of information is required from applicants for other kinds of energy facilities permitted by the MEQB. See Minnesota Rules parts 4400.0600 (transmission lines), 4400.2600 (power plants), and 4415.0115 (pipelines). This kind of

information is necessary to ascertain who the permittee or permittees should be and also to provide contact persons for purposes of mailing notices and asking questions.

Item A. A letter of transmittal from an authorized representative or agent of the applicant is simply a means of submitting the application.

Item B. Providing the complete name, address, and telephone number of the applicant and authorized representatives ensures that the EQB staff can contact the right people if questions should arise. This is especially important when the application is first filed with the EQB if the staff has not had much prior contact with the applicant and learned the names of the appropriate people with knowledge about the project.

Item C. Asking for the signature of the preparer of the application is certainly a reasonable request. The preparer of the application is usually the person who is most knowledgeable about the project, or at least knows who to talk to about a particular matter. Applicants often use consultants to prepare and submit their applications. It is helpful to know who the consultant is so that questions may be directed to the consultant to clarify data or information in the application and to arrange for the transfer of an electronic version of the application.

Item D. The EQB wants to know whether the applicant is actually the person who will construct and operate the LWECS. It is important to determine the appropriate persons to name as permittees on the permit and to ensure that any conditions included in the permit will be complied with. The public usually wants to know the names of all persons involved with a proposed project. For example, in one application proceeding Northern States Power Company was the applicant, Zond, Inc. was the builder, and the permittee was Lake Benton Power Partners, LLC.

Item E. Asking the applicant to identify any other wind projects in which the applicant has an ownership or other financial interest will allow the EQB to determine whether a particular project is part of any other wind projects. It will also allow the EQB to consider the applicant's performance regarding these other projects and evaluate the applicant's ability to comply with permit conditions.

Item F. As with item D, the EQB wants to ensure that the proper persons are named as permittees. If the operator of the LWECS is required to ensure compliance with certain operating conditions, the EQB wants to know who that person is who will be performing certain operational tasks.

Item G. This last item simply asks the applicant to identify who should be named as permittees on the permit. It has been the EQB's experience that oftentimes a wind developer will incorporate a new organization for purposes of a particular project. The EQB needs to know the precise name of the applicants, and whether they are individuals, corporations, limited liability partnerships, or other organization. Asking the applicant to identify the precise names and structure of the permittees is the best way to ensure that the correct names are used.

Subpart 2. Certificate of need or other commitment.

Item A. A certificate of need is a document issued by the Minnesota Public Utilities Commission. Minnesota Statutes section 216B.243, as amended by Minnesota Laws 2001, chapter 212, art. 7, sec. 33. A certificate of need is required for any power plant over 50 megawatts. Minnesota Statutes section 216B.2421, subd. 2(a), as amended by chapter 212, art. 7, sec. 29.

If a certificate of need is required, the applicant should file that application with the PUC prior to filing a site permit application with the MEQB. See Minnesota Statutes section 216B.243, subd. 4, as amended by chapter 212, art. 7, sec. 32. The applicant can file a permit application with the EQB before the PUC makes a decision on the certificate of need, but the EQB cannot issue a permit until a certificate of need is issued. Minnesota Statutes section 216B.243, subd. 2. Because the siting process will take less time to complete than the certificate of need process, the board can process the site permit but not make a final decision on the site permit until a certificate of need has been granted. The need and siting decisions for other energy facilities are made in the same sequence.

Item B. This provision recognizes that the Board may ask the PUC to determine if a certificate of need is required for a particular project. Because wind turbines are modular in nature, additional turbines may be added to a project at almost anytime. If, for example, a 45 MW project is built (for which a certificate of need is not required because it is under 50 MW), and the developer later proposes to add another 10 MW, it may be appropriate for the PUC to determine if a certificate of need is required.

Item C. This provision addresses those wind projects for which a certificate of need is not required because the LWECS is under 50 megawatts. In the absence of a need decision, the board wants to know what the applicant intends to do with the power that is generated. The board does not want to issue a site permit for a project that may not be built.

The board explained the reasons for requiring a power purchase agreement in two recent wind permit proceedings. The EQB in May 2001 issued permits to two developers for projects for which they did not have a power purchase agreement. One permit was for Navitas Energy, LLC, and the other was for Chanarambie Power Partners, LLC. for projects in Murray and Pipestone Counties. In both cases, the permittee had not finalized a power purchase agreement, at least not for all the power it intended to generate. The EQB issued both permits but conditioned them on the requirement that the permittee obtain a power purchase agreement within a specified time. The EQB made a specific finding regarding this issue in those permit proceedings, which reads as follows: "The purpose of the requirement for a power purchase agreement was to ensure that a developer did not tie up a large area of land for wind generation when the project was not likely to go forward in a timely fashion." Finding No. 44, Navitas Energy, LLC.

The rule provides that the chair may request the applicant to submit a copy of the power purchase agreement or other document confirming the sale of the power. It is reasonable to recognize that the EQB can insist on confirmation that a power purchase agreement or other enforceable arrangement exists for sale of the power. However, the power purchase agreement is sometimes a confidential document, and the EQB has not in the past required the entire document to be submitted. The EQB may not need to know the terms of the sale, or the price, or other matters, for example, but only that an enforceable agreement exists. In such event, the EQB can request that only certain parts of the agreement be submitted.

While it is reasonable to expect a wind developer to tell the EQB what it intends to do with the power it plans to generate, the lack of a power purchase agreement does not necessarily mean that the permit will be delayed or denied. Both the Navitas permit and the Chanarambie permit were conditioned on the permittee obtaining a power purchase agreement within a relatively short period of time, and the permittees were not allowed to proceed with construction until they obtained a power purchase agreement. This is a reasonable solution to the situation where a developer wants to get a project approved but has not finalized the purchase arrangement yet, and this approach is continued in the rules.

Subpart 3. State policy. This part requires the applicant to describe in the application how the LWECS project will comport with a state policy that provides for environmental preservation, sustainable development and efficient use of resources. Minnesota Statutes section 116C.693. This part is significant in that it expresses the state policy and provides the applicant an opportunity to demonstrate how the LWECS project addresses these general policy areas. The applicant's discussion of this may also provide the Board with additional knowledge about development of the wind resource that may be helpful in the review and permitting of the LWECS project.

Subpart 4. Proposed site. This provision requires the applicant to submit basic information about the proposed site.

Item A. The boundaries of the project must be identified with some specificity so the EQB can determine whether the project interferes with any other existing or proposed wind projects. Applicants for existing projects have not had difficulty in the past in providing the EQB with United States Geological Survey (USGS) maps or other maps showing the boundaries of the project. The EQB will specifically identify the boundaries of the project in any permit that is issued, so the applicant must specify the area for which approval is being sought.

Item B. The EQB wants to know the characteristics of the wind within the proposed project boundaries. In order to ensure the orderly and efficient use of the wind resource, as directed to do by the Legislature, it is important to know the quality of the wind in the area to be developed.

The information required under this item is the kind of information developers have to gather to determine whether a proposed location has the kind of winds that are required for a successful wind project. The ten characteristics identified in this rule provide information on the speed of the wind, the seasonal variation in the wind, the frequency of the wind, wind direction, height of the wind above grade, and other criteria that are important in siting the location of wind turbines. Developers are not going to propose a project unless they have gathered this kind of information about the wind. It has not been a problem with past permits for applicants to provide the information requested here.

Item C. Since other meteorological conditions like rainfall and snowfall and temperature can affect the amount of electricity generated by wind turbines, it is reasonable to request an applicant to supply this kind of information. Again, any applicant for a wind project costing millions of dollars is going to have this kind of information available.

Item D. The reason for identifying the location of other wind turbines in the general area of the proposed LWECS is to ensure that one project does not interfere with another. If turbines are sited too close together, a downwind turbine can experience what's called wake loss. Wake loss results when the wind is sent into a turbulent state after encountering a turbine. If a turbine is located too close downwind, usually within ten rotor diameters of the upwind turbine, the wind will not have had a chance to recover to its normal state, and the turbulence will result in less efficient generation of electricity at the second turbine. Because the EQB wants to ensure efficient use of the wind resource, it is preferable to avoid wake loss to the extent possible. By taking into account existing turbines, the EQB can evaluate the potential for wake loss with a proposed project.

Subpart 5. Wind rights. In order to construct wind turbines in a particular location, the permittee must have the right to place the turbines on the land in the desired location. Wind developers have negotiated easements and other agreements with many landowners along Buffalo Ridge in southwest Minnesota and in other areas of the state with potential wind resources. It is reasonable and appropriate to expect a permit applicant to describe what wind rights the applicant holds within the proposed boundary of the project. The manner in which the EQB will address the issue of wind rights with particular projects is discussed under part 4401.0610, subpart 1.

Subpart 6. Design of project. This rule requires an applicant to provide some detail about the project being proposed. This information is required so the EQB can know specifically what is being proposed, evaluate the project and identify any problem areas, and determine necessary conditions for any permit that is issued.

Item A. The applicant must identify how many turbines the project will include and where the applicant intends to install those turbines. Identification of turbine location is necessary for all kinds of reasons, everything from environmental impacts to wake loss. The EQB understands, however, that at the time the application is submitted, the applicant can only estimate where the turbines will be located, because micrositing

occurs after the permit is issued and construction is about to begin. The permit does not preclude the permittee from moving the location of particular turbines from what was anticipated, as long as other various restrictions of the permit are complied with, such as setback requirements and restrictions on placing turbines in areas like wetlands. Typically, a site permit for a wind project contains a condition requiring the permittee to inform the EQB of the precise locations of the turbines when the micrositing is complete.

Item B. The EQB needs to know the specifics of the turbines that will be installed – the height, the structure, the blade diameter, and other data. This information is necessary to evaluate the possible impacts of the project on the environment and to consider the energy production expected.

Items C and D. The wind turbines are only a part of any LWECS. A wind project also involves all kinds of electrical equipment, like transformers and collection and feeder lines, and other equipment like maintenance and operational equipment. In order to evaluate the complete impact of a proposed project, these associated facilities must also be identified. It is appropriate to require the applicant to identify what additional facilities are associated with the particular project being proposed. In addition, this will ensure that any permit that is issued will be written to cover everything that is associated with the project.

Subpart 7. Environmental impacts. Of course, the EQB must investigate and review the environmental impacts associated with any proposed wind project. The applicant is the one that must provide the information about the potential impacts of the project. What this rule requires is the inclusion in the application of information on the potential impacts of the project, the mitigative measures that are possible, and adverse environmental effects that cannot be avoided. This is the typical analysis with any project undergoing environmental review by the EQB or other agencies.

The effects identified in items A – R in the rule should cover every potential impact of a LWECS. It is not necessary to discuss every single one of these in this Statement of Need and Reasonableness. Suffice it to say that an applicant must identify any and all potentially adverse impacts that may be caused by a proposed project and mitigative measures that might be implemented with regard to those impacts.

Wind projects have not been found to have significant environmental and human impacts. Wind projects along Buffalo Ridge have been generally well accepted by residents and others concerned about the environment. Permit conditions have been satisfactory to address specific concerns like wetlands and wildlife management areas with past permits. One area of concern that was raised initially was the possibility of avian fatalities caused by the turbines.

As part of the first wind permit issued by the EQB, the Board required Northern States Power Company to conduct an avian mortality study along Buffalo Ridge. This study was conducted between 1995 and 2000, and a report on the study was completed in 2000. The researchers found that the number of avian fatalities from the wind turbines at

Buffalo Ridge is essentially inconsequential, although there was some bat mortality found. The wind developers are presently conducting additional studies on bat mortality.

Because the environmental and human consequences of wind turbines are relatively minor and can be minimized by appropriate permit conditions, the EQB is not requiring in these rules that an Environmental Assessment Worksheet or an Environmental Impact Statement be prepared on a proposed LWECS. It is sufficient that the environmental impacts and mitigative measures be discussed in the application itself. If an issue of concern were to be raised specific to a particular wind project, the EQB could ask for additional examination of those impacts and could address the concern through permit conditions or by moving some of the turbines

Subpart 8. Construction of project. Construction itself can cause environmental impacts, so it is necessary for the applicant to address the manner in which the project will be constructed. It may be necessary to include conditions in the permit requiring mitigative measures during construction of the turbines.

Subpart 9. Operation of project. Once the wind turbines are up and running, they must be operated and maintained. The applicant must describe its operation and maintenance procedures so any impacts associated with those tasks can be identified and addressed.

Subpart 10. Costs. The EQB uses the cost information to evaluate whether the project is making efficient use of the wind resource. Also, cost information is important to place in perspective the costs of mitigating any environmental impacts that are identified.

Subpart 11. Schedule. The EQB wants to know at the time the application is submitted what the developer's proposed schedule is. The EQB understands that sometimes schedules slip, but at least the applicant can provide an anticipated schedule. The rule requires the applicant to describe the anticipated schedule for a number of tasks, including obtaining the permit, acquiring land, obtaining financing, procuring equipment, and completing construction. This information will give the EQB a good overall view of the tasks required to be completed to actually bring the project online, and help identify any constraints in the schedule. The expected date of commercial operation is helpful to the EQB and to other state agencies as well. The public, also, is interested in the anticipated schedule for construction of the project.

Subpart 12. Energy projections. The EQB has been collecting data on how well the wind turbines in the state have been performing. At the time the application is submitted, the applicant can only make projections on the energy to be generated, but it is helpful to know what the developer expects to receive from the turbines planned for installation.

Subpart 13. Decommissioning and restoration. Just like any other project, a LWECS will not last forever. At some point the wind turbines and other associated

facilities will have to be decommissioned. The EQB wants to know upfront how the developer plans to pay for removal of the turbines at the end of their useful life. Since the wind turbines may last for thirty years or more, and the ownership of the project may change over the years, some arrangements must be made from the start to provide funding for the ultimate decommissioning. In other cases wind developers have created funds specially set aside for this purpose, and the funding comes from payments made periodically from sale of the electricity. The EQB is not promulgating one specific requirement for ensuring funds are available for decommissioning, and the EQB will allow applicants to be creative provided the EQB can be assured the money will be there when needed.

Subpart 14. Identification of other permits. It is not unusual with any project requiring a permit that the applicant identify what other permits are required before the project can go ahead. These permits are normally such permits as a Department of Natural Resources water crossing permit or a wetland survey and a Pollution Control Agency surface water discharge permit. Sometimes federal approval may be required, depending on the location of the project. For example, approval from the Federal Aviation Administration (FAA) may be required if an airport is nearby, or approval from the Bureau of Land Management could be necessary if the project were to be located on federal lands. Local government is pre-empted from enforcing its zoning and land use ordinances when the EQB has jurisdiction over a project. Minnesota Statutes section 116C.697.

4401.0460 ACCEPTANCE OF APPLICATION.

Sections 4401.0460 through 4401.0550 establish the procedures the EQB will follow in acting on an application for a site permit for a LWECS. The Legislature specifically directed the EQB to adopt rules establishing such procedures. Minnesota Statutes section 116C.695(2).

Subpart 1. Action by chair. The chair has thirty days under this requirement to accept or reject an application once it is submitted to the EQB. The statute specifically provides that it is the chair who decides on the completeness of the application. Minnesota Statutes section 116C.694(c). Allowing the chair to make this decision, rather than the board, will help to speed the process along. Ultimately, of course, it is the full board that will decide whether to issue a permit and what conditions to include.

The chair has thirty days from the day the application is submitted to make a decision on the completeness of the application. Acceptance of the application also triggers the start of the 180 days the EQB has to act on the application. Minnesota Statutes section 116C.694(c). Normally, wind developers have been in contact with the staff prior to submission of an application and have allowed the staff to comment on draft applications. Thus, when the application is submitted in final form, it contains the information the staff believes is necessary and is quickly accepted. If the chair should reject an application, the rule requires the chair to identify in writing the deficiencies that exist and how the application can be corrected.

Subpart 2. Notice of application acceptance. It is important that notice be provided quickly to persons who are likely to be interested in the fact that a wind permit has been applied for. This subpart requires the applicant to notify local officials and to publish notice in a newspaper of general circulation in each county in which the project is proposed to be located within fifteen days after acceptance of the application. Fifteen days is a reasonable period of time. There is no reason notice can't be published in the newspaper within a few days or a week after acceptance of the application.

This subpart provides that failure to give this notice or a delay in giving the notice could result in the permit being denied or a decision being delayed. It is appropriate to provide that these kind of sanctions could be imposed because the EQB has only 180 days to act on a permit application once the application is accepted, and it is important to give the public ample opportunity to respond to the proposal.

However, it is unlikely that such sanctions would be imposed. In most instances, the public will have already been informed about the possibility of a wind project in their vicinity by the time the application is submitted to the EQB, since usually the word about a proposed project is in the news locally before a permit is even applied for. Also, the subpart provides that the chair may elect to relieve the applicant of giving this notice. The reason for this is oftentimes the EQB is prepared to give the notice specified in part 4401.0550, subpart 1, at the same time the applicant is required to give notice under this subpart. In such situations, it makes sense to combine the notice to provide all the information specified in 4401.0550. Further, the EQB will post the application on its web page as soon as possible after the application is accepted, and the use of the internet helps provide notice very quickly.

Subpart 3. Additional copies. The purpose of this subpart is to ensure that a hard copy of the application is available in the area where the project is proposed to be located. The rule requires the applicant to provide a copy to the cities, townships, and counties where the project is located. These local governmental offices are a convenient place for residents in the area to come to review a hard copy. The rule directs local officials to make the application available for public inspection. The EQB has found local officials more than willing to perform this task in the past.

The applicant also must provide a hard copy to the Minnesota Public Utilities Commission and the Minnesota Historical Society. The PUC is interested in all wind projects because the PUC may have evaluated the project as part of a certificate of need proceeding or may have to consider the project in a subsequent rate hearing. The Department of Commerce will also be interested in all wind projects, but since the Commissioner of the Department of Commerce is a member of the EQB board, that agency will always be provided with such applications.

The rule requires the applicant to provide a hard copy of the application to each landowner within the boundaries of the proposed LWECS site. These are the people who are most directly affected by the project and who are most likely to review the

application. The EQB experience with all kinds of energy facilities is that the landowners whose property is most directly affected want to be provided with a hard copy of the application.

Once an application has been accepted, the applicant must submit a number of additional copies to the EQB. The rule does not specify how many copies of the application the applicant must submit. The chair will inform the applicant of the number. The EQB would like to minimize the number of hard copies that are required, but the EQB has a fairly extensive mailing list of agencies and citizens who require a copy of such documents. It is likely that the EQB will require 40 or more copies.

4401.0470 PUBLIC ADVISOR The Power Plant Siting Act, Minnesota Statutes sections 116C.51 to 116C.69, which was passed in 1973, gives the EQB jurisdiction over power plants other than wind projects and over high voltage transmission lines. One of the requirements of the Power Plant Siting Act is that the EQB appoint a staff person to act as a public advisor when a permit application for a power plant or transmission line is submitted. Minnesota Statutes section 116C.59, subd. 3. There is no corresponding requirement in the wind power statutes, but the EQB believes that continuation of this practice is desirable. Therefore, the EQB is proposing to adopt this section to provide for the appointment of a staff person to assist the public in participating in LWECS permit proceedings. The EQB has appointed a public advisor in the other wind project permit proceedings and the public has appreciated having such a person to consult about the process.

The language in this section is based on the language in the existing power plant siting rules. Minnesota Rules part 4400.0900. It is important to emphasize in the rule that while this staff person can assist the public in understanding the process, the staff cannot act as a legal adviser or advocate for any member of the public.

4401.0500 PRELIMINARY DETERMINATON AND DRAFT SITE PERMIT.

Subpart 1. Preliminary determination. This rule provides that within 45 days after acceptance of an application, the Chair must make a preliminary determination whether a permit may be issued and prepare a draft site permit with proposed conditions if a permit may be issued. This is the process followed by other agencies in administering permit programs. See the Pollution Control Agency rules on permits. Minnesota Rules parts 7001.0100 and 7001.1080.

The existence of a draft site permit will help the public and the applicant focus on any issues that are associated with the project. It will convey a preliminary decision by the chair that a site permit may be issued, and the proposed conditions will identify any potential issues of concern. The EQB has issued seven site permits for LWECS over the last six years and these permits have been quite similar in content. The EQB believes that it can quickly make a preliminary decision on whether a permit is appropriate and can draft the document with conditions based on the other permits that have been issued.

Subpart 2. Effect of draft site permit. This provision is necessary to clarify that issuance of a draft site permit does not mean that a permit is guaranteed. The EQB could still deny the permit based on information that is collected during the permit process. The permit conditions can certainly be changed in any manner that is supported by the record. Also, this rule emphasizes that a draft site permit does not authorize anything. A permit applicant is not authorized to begin construction of a wind project simply because the chair has sent a draft site permit out for public comment.

4401.0550 PUBLIC PARTICIPATION. This rule is intended to ensure that the public has an opportunity to participate in the processing of a permit application for a proposed wind project. The statute requires the EQB to include in its rules procedures for notifying the public of an application and affording opportunities for a public information meeting and a public hearing on a proposed LWECS. Minnesota Statutes section 116C.695(3). Some of the provisions in these proposed rules intended to provide public notice, part 4401.0460, and to assist the public, part 4401.0470, have already been discussed. This rule addresses additional notice and opportunities for public participation in the process.

Subpart 1. Public notice. Part 4401.0460 specifies requirements for notifying the public that a permit application for a wind project has been accepted by the EQB. This rule, part 44001.0550, specifies the notice that must be given by the EQB, not the applicant, about how the EQB will actually process the application and how the public may participate.

The rule does not specify when the notice must be given, but since it is not given until after a draft site permit is prepared, it could be as long as 45 days after acceptance of the application. However, with the Navitas and Chanarambie permits issued in May 2001, the staff had a draft site permit prepared within days after the application was accepted, so this notice was provided shortly after the application was accepted. That is the reason part 4401.0460, subpart 2, recognizes that these two notices may be combined.

Items A, B, and C. Some of the information – the name of the applicant and the description of the project and the location of a hard copy of the application– are repetitious from information the applicant must provide under 4401.0460. But it is helpful for the EQB to include that information in its notice as well.

Item D. This item requires a statement in the notice that a draft site permit is available. The draft permit will focus the issues for the public so it is important that the public knows that such a document is available.

Item E. This provision requires the EQB to identify the name of the public advisor appointed by the Chair. The public needs the identity of this person so the public knows who to contact at the EQB staff with its questions.

Item F. The notice must contain the time and place of a public information meeting that the EQB will hold on every site permit application. As discussed below, the

public must be given notice that a public meeting will be held in the area of the proposed project before the EQB will make a decision on a permit.

Item G. The notice must notify the public that comments may be submitted on the draft permit within a specified time period. The time period is discussed under subpart 4 of this rule. Also, the notice must inform the public that any person can request a contested case hearing on the matter. This hearing option is discussed under subpart 5.

Item H. Item H. requires the EQB to explain the anticipated procedures for reaching a final decision on the permit application. This requirement is another example of how the EQB wants to ensure that the public is fully aware of its opportunities to participate in the permitting process.

A related issue that should be discussed here under this proposed rule is the authority of the EQB to appoint a citizen advisory task force. The Power Plant Siting Act, which applies to large electric power generating plants and high voltage transmission lines, provides that the EQB can create a citizen advisory task force to assist the agency in siting and routing these kind of projects. Minnesota Statutes section 116C.59, subd. 1, as amended by Minnesota Laws 2001, chapter 212, article 7, section 18. These wind rules on LWECS do not contain a specific provision for creating such a task force. The reason for that is unlike the traditional coal-fired and natural gas-fired power plants, where several sites can be considered for the location of the plant, the wind developer has one particular area in mind for the project. There is not a great deal a citizen advisory task force can do with regard to selecting a site for a wind project.

In 1995, with the Lake Benton I project, the EQB actually did appoint a citizen advisory task force. That project, however, was proposed under the old power plant siting provisions that required an applicant to propose at least two sites. The task force did have two sites to review and did make a recommendation on a preferred site. Today, however, under these newer wind siting statutes, there are not two sites to review, and there is no role for a citizen advisory task force to play in reviewing potential sites.

Subpart 2. Distribution of public notice. While subpart 1 specifies what has to be in the notice the EQB will give the public, this rule addresses how to give that notice. Newspaper ads have historically been an effective means of alerting the public to matters pending before the EQB, and this rule continues that practice. Also, the EQB usually compiles a list of names and addresses of people who are known to the EQB to be interested in certain matters or certain kinds of matters, and the EQB will assuredly contact directly any person who asks to be notified about wind permits generally or a certain project specifically. Finally, the EQB Monitor has been published by the EQB for about 25 years, and the public has come to expect information like notice of permit applications in the Monitor. The Monitor is also available electronically on the EQB webpage, and thousands of people often check the Monitor on their computers for information.

Subpart 3. Public comments on draft permit. The public must be given an opportunity to submit comments on a proposed project. This rule gives the public a minimum of 30 days after publication of the draft site permit in the EQB Monitor to submit comments. The EQB can allow more than 30 days if the Chair believes that more time is appropriate in the circumstances. Also, the rule allows the Chair to extend the comment period if necessary to accommodate members of the public who have a good reason for needing more time. Further, the public will actually have more than 30 days from the time the notice of the acceptance of the permit application was first given and the application made available in local governmental offices.

Subpart 4. Public information meeting. The rule requires that the EQB hold a public informational meeting on each permit application. The EQB has held public informational meetings on all previous wind projects that have been permitted, and the EQB, and the public presumably, has found these meetings to be helpful in gathering information on a particular project. It is worthwhile to continue this practice.

The rule specifies how the meeting should be noticed and scheduled. The time frames provided are designed to afford the public an opportunity to meet with the EQB staff and the applicant at the meeting, ask their questions and gather information, and then have time to submit written comments if desired. The rule provides that the Chair can extend the comment period upon request.

Subpart 5. Contested case hearing. The statute requires that the EQB rules must provide for the conduct of a public hearing. Minnesota Statutes section 116C.695(3). The EQB does not read the statute to require a contested case hearing presided over by an administrative law judge in every case, as is specified in the Power Plant Siting Act for large electric generating power plants and high voltage transmission lines. Minnesota Statutes section 116C.57, subd. 2d., as amended by chapter 212, article 7, sec. 10. Instead, the EQB believes it is in compliance with the statute to provide for public meetings and an opportunity to request a contested case hearing in an appropriate situation. With only 180 days to complete the permitting process, it is unlikely the Legislature intended the EQB to hold a contested case hearing on every permit application.

During the public comment period, any person may request a contested case hearing. The person requesting the hearing must put the request in writing and specify the issues to be addressed in the hearing and the reasons why a hearing is necessary. The request will be presented to the full board. There must be a good reason to go through the time and expense of a contested case hearing. Item B. provides that the board will hold a hearing if it finds that a material issue of fact is in dispute and the holding of a hearing would aid the EQB in making a final determination on the permit application. These are reasonable criteria to apply in determining whether a contested case hearing is appropriate.

It is reasonable to impose a time limit on when a person may ask for a contested case hearing. The proposed rule allows the public to ask for a hearing any time up to the day

the comment period on the draft site permit ends. This is a minimum of 30 days after the draft site permit becomes available.

If a hearing is ordered, it will be a contested case hearing, presided over by an administrative law judge from the Office of Administrative Hearings who will conduct the hearing and write a report making recommendations on the site permit. Item C of the subpart specifically recognizes the role of the Office of Administrative Hearings. It is likely that the board will have to extend the time to act on the permit if such a hearing is held.

The only contested case hearing the EQB has held on a LWECS project involved the Lake Benton I project in 1995, in which two developers were competing for the same project. The other six LWECS that have been built along Buffalo Ridge were permitted without any controversy. No members of the public requested hearings on any of those projects. The EQB expects that future projects will also be able to be permitted without a contested case hearing, but this rule will be available if the situation should arise where there is public objection.

4401.0600 FINAL PERMIT DECISION.

Subpart 1. Board action. This subpart recognizes that it is the full Board that will make the ultimate permit decision. The rule provides that the Board must follow the applicable contested case procedures in those situations where a hearing was held. Those requirements can be found in the EQB's own procedural rules, Minnesota Rules chapter 4405, and in the rules of the Office of Administrative Hearings, Minnesota Rules chapter 1405, and in the Administrative Procedure Act, Minnesota Statutes sections 14.57 to 14.62.

When a hearing has not been held, the Board must still act on the basis of the record that has been created and follow its own procedural requirements in Minnesota Rules chapter 4405, for bringing matters to the Board at a regular monthly meeting for action.

Subpart 2. Time limit for decision. This provision is merely a repeat of the statutory requirement that the EQB has 180 days after acceptance of the application to act on the request. Minnesota Statutes section 116C.694(3). However, the statute allows the EQB to extend this deadline for cause, and the rule recognizes that possibility. It is impossible to identify in the rule all the reasons for extending a deadline, and the EQB has not even attempted to list any acceptable reasons. It is reasonable to address this question on an ad hoc basis as the situation arises. Of course, if the applicant agrees to the extension, it is reasonable to extend the time. In all cases, the EQB will not unreasonably delay reaching a decision on a permit.

In the past, for projects that were not contested, the EQB has been able to issue a site permit within just a month or two from the date the application was submitted. Under these rules, requiring certain notices to be given and affording time for public comment,

the EQB should be able to make a final decision on an uncontested permit request within three or four months from the day the application is accepted.

Subpart 3. Determination by board. This rule sets forth the standard for issuance of a permit. The requirements are taken from the statute setting forth state policy to site LWECS in an orderly manner that is compatible with environmental preservation, sustainable development, and the efficient use of resources. Minnesota Statutes section 116C.693. These criteria are admittedly subjective, but they are the standards established by the Legislature, and in the seven wind permits the EQB has issued to date, application of these criteria has not been a problem. It is reasonable for the EQB to attempt to minimize the environmental impacts of the project, ensure the continued development of the wind resource, and utilize the wind resource in an efficient manner that keeps the costs of wind power as low as possible.

Subpart 4. Conditions. The EQB is authorized by statute to include conditions in any wind permit it issues. Minnesota Statutes section 116C.694(d). The EQB has not attempted to establish by rule any conditions that go into all wind permits. Appropriate conditions are determined during the permitting process. The information required to be included with the permit application is intended to allow the EQB to establish appropriate conditions reflecting the specifics of the project.

The seven wind permits that the EQB has issued generally contain the same permit conditions, and it is likely that permits issued in the future will contain identical or similar conditions. The last two wind permits issued by the Board - the Navitas permit and the Chanarambie Power Partners permit – are essentially identical. Nonetheless, the EQB is not attempting in this rulemaking to establish any conditions by rule.

There are a couple of rule requirements in part 4401.0610 that will be included in the permits that are issued, so in a sense these rule requirements are permit conditions. These requirements are discussed below.

Subpart 5. Term. The statute does not establish any definitive term for a wind permit. The EQB proposes to adopt by rule a term of 30 years for an LWECS permit. The EQB has included this 30-year term in its existing permits without objection. The 30 years is based on the generally accepted fact that 30 years is about how long a wind turbine is expected to last. However, the rule does provide that the permit can be extended so the EQB has no intention of requiring the removal of turbines that have a useful life. Requiring a renewal after 30 years, however, will afford the EQB an opportunity to take a fresh look at an old project and determine whether there is useful life left.

4401.0610 EFFECT OF PERMIT.

Subpart 1. Wind rights. This rule provides that even if a person obtains a wind permit from the EQB, the permit itself does not convey the right to install any wind turbines if the permittee does not hold the wind rights in the area where the permittee

wants to construct the turbine. Many wind developers are private organizations without the authority of eminent domain that would allow the permittee to condemn land. A wind developer cannot simply march onto private property and begin installing wind turbines.

This issue came to light in May 2001 when both Navitas Energy and Chanarambie Power Partners wanted a wind permit to construct turbines in the same area. Neither one held the wind rights in the area contested. In order to proceed with issuance of a permit to both developers, the EQB included language in their permits that provided that they could not go ahead in the contested area until the wind rights were obtained, and then the developer that failed to get the wind rights was precluded from building in that area. See the Navitas and Chanarambie permits. This seemed like a reasonable solution to the issue, one that allowed the developers to proceed with their projects in other areas, and the EQB has determined to incorporate this approach into the rule.

Several years ago, when the first wind projects were being developed along Buffalo Ridge by Northern States Power Company, NSP solicited bids from wind developers with the condition that NSP would provide the wind rights. Now, the developers are responsible for obtaining their own wind rights

While wind rights are required in order to construct a wind project, the EQB has not necessarily held up the issuance of a permit when a developer is still negotiating for certain wind rights. With the two permits issued in May 2001 to Navitas Energy and Chanarambie Power Partners, the Board included in both permits a particular area for which neither permittee held the wind rights, but provided that only that developer that obtained the wind rights could develop in the area. This was a reasonable solution in May 2001 and may continue to be a reasonable method to deal with situations where a wind developer has not obtained the wind rights. However, a developer with wind rights in a particular area may also apply for a permit and pre-empt another developer with a permit from developing in a particular area.

Subpart 2. Other LWECS construction. This subpart is a corollary to subpart 1. While Navitas and Chanarambie sought their permits simultaneously, in the future two wind developers may seek a permit to place turbines in same area at different times. This rule recognizes that just because the first developer obtains a permit for a certain area, that a second developer cannot seek a permit for the same area if the first developer does not hold the wind rights in the area permitted. The EQB believes that this kind of rule will allow developers to continue with their development plans and result in expeditious development of the wind resource in Minnesota.

Subpart 3. Power purchase contract. This is another related issue. A wind developer is not going to be able to obtain financing of a proposed project if the developer has nobody to buy the wind power that is to be generated. However, a developer may seek a permit from the EQB while it is negotiating a power purchase agreement or other enforceable mechanism for sale of the power. This provision will allow the EQB to proceed with issuance of the permit even though the details on a power purchase agreement have not been worked out. This was the situation with the Navitas

and Chanarambie permits. In that case, the EQB gave both developers a permit but conditioned the permits on the obtaining of a power purchase agreement or other mechanism for selling the power. If the permittee was not able to finalize a power purchase agreement within a finite time, less than one year in Chanarambie's case and about a year with Navitas, the permit was null and void. Again, this kind of approach allows the EQB to issue the permit and keep the developer moving with its plans, and yet not jeopardize the use of the wind resource by another developer with wind rights or a power purchase agreement.

It was discussed above in section 4401.0600, subpart 4 (Conditions) that the EQB had not attempted to establish conditions in the rule. In effect, however, the requirements in this part 4401.0610 do establish conditions that will be placed in wind permits.

4401.0620 DELAY IN COSTRUCTION. Because the Legislature wants to see an efficient and orderly development of the wind resources in this state, the EQB has proposed this condition to require a permittee to begin construction of the project within two years, and if construction has not begun within that timeframe, the permittee must advise the Board of the reason for the delay. The Board may then consider whether to revoke the permit. No permit would be revoked without notice and opportunity to be heard and compliance with all of the permittee's rights.

The EQB has required in its Power Plant Siting rules for years, Minnesota Rules part 4400.4000, that if a large power plant or high voltage transmission line permitted by the Board is not placed under construction within four years, the Board shall suspend the permit and the permittee cannot proceed without a reinstatement of the permit by the Board. This same concept is continued in this rule, although the timeframe is shorter and the suspension or revocation of the permit is not automatic. The reason for the rule is that at least for the larger projects (over 50 megawatts), the Public Utilities Commission will have determined that the project is needed. If the project is needed, the EQB, and perhaps the PUC and other agencies as well, want to know what is holding up construction, and whether another developer or another project should be permitted.

4401.0700 PERMIT AMENDMENT OR REVOCATION.

Subpart 1. New boundary. When a wind permit is issued for a proposed project, the boundaries of the project are specifically defined in the permit. Once the permittee completes its micrositing process and determines the specific locations for the turbines, however, the size of the project may shrink in size. The EQB then redefines the boundaries of the project to be the minimum area required so that the areas not used are available for other projects.

In the past this amendment of the permit to redefine the boundaries has been done by the board. But because it is a rather routine matter, the proposed rule would delegate that authority to the chair. This delegation allows this task to be completed with a minimum of administrative delay. However, the rule does provide that if there is a dispute over the precise boundaries of the project, any person can bring the matter to the full board. This

could be the permittee, who thinks the project area has shrunk too much, or another developer who wants the boundaries even smaller. The EQB has not experienced any complaints over the redefining of the boundaries, but the rule provides a process in case an objection is raised.

Subpart 2. Permit amendment. The statute recognizes that the Board may "deny, modify, suspend, or revoke a permit." Minnesota Statutes section 116C.694(d). This subpart simply repeats that authority.

Subpart 3. Permit revocation. This subpart recognizes that the Board may revoke a permit in certain situations and the rule specifies the situations under which the permit may be revoked. The first condition in Item A is when the applicant has knowingly made a false statement as part of the application. Obviously, a permitting agency has the authority to revoke a permit that was obtained falsely, and that is what this provision says.

Item B allows the Board to revoke a permit if the permittee has failed to comply with the terms and conditions of the permit. Again, this is a situation where any permitting agency could chose to revoke a permit. However, violation of a permit condition is not an automatic revocation. The Board has discretion in how to respond to a permit violation. Not every permit violation is of such consequence that revocation or other sanction is appropriate. This will be a case-by-case decision.

Item C allows the Board to revoke a permit if human health or the environment is endangered. Here, too, the Board has discretion and it will be an ad hoc decision.

Item D covers the situation where the permittee has violated other laws that reflect on the ability of the permittee to comply with the permit.

The EQB has never revoked a wind permit, or any other permit, that it has issued. It is unlikely that a permittee will ever engage in the kind of conduct specified here. Nonetheless, it is reasonable to provide in the rules for revocation of a permit if the situation should arise.

Subpart 4. Procedure. Because the EQB has discretion whether to revoke a permit even if certain conduct has been engaged in, and because a permittee is entitled to certain due process rights before a permit can be taken away, this subpart establishes that the EQB must afford the permittee the right to notice and opportunity to be heard before a permit can be amended or revoked. The rule also recognizes that the Board may act on its own volition, or any person may bring an alleged misconduct situation to the Board's attention.

4401.0800 FEES.

Minnesota Statutes section 116C.695(7) provides that the board shall adopt rules governing "payment of fees for the necessary and reasonable costs of the board in acting

on a permit application and carrying out the requirements of sections 116C.691 to 116C.697. The EQB is not establishing in this rule that applicants must pay fees; that was established by the Legislature in the statute. Instead, this rule only addresses the manner in which the fees are paid.

Minnesota Statutes section 16A.1283 is a new statute that was passed in 1999 that provides that a state agency may not impose a new fee or increase an existing fee without the approval of the Legislature. In this case, the EQB is not imposing a new fee or increasing an existing fee. The fee remains exactly as the Legislature created it in 1995. Therefore, it is not necessary to obtain legislative approval to adopt this subpart of the rules.

Subpart 1. Fee requirement. The first sentence of this rule merely recognizes the requirement that a permit applicant must pay a fee. The second sentence attempts to identify some of the necessary and reasonable costs that must be paid in processing a permit application. Obviously, staff time is a significant part of the necessary expenses. In addition, there are costs the EQB must pay to other persons, such as newspapers and postage and travel expenses, that must be covered. Often the EQB must seek legal advice in processing a particular application, and this is certainly true if any litigation should result. There are times when the EQB's permit decisions are challenged in court. In fact, the first LWECS permit the EQB issued, to Northern States Power Company for the Lake Benton Phase I project, was challenged in court.

Subpart 2. Determination of board budget. The applicant must pay the necessary and reasonable expenses of the EQB in processing the application. When the permit is applied for, nobody knows exactly how much it will cost to process, so the chair, working with the EQB staff, will prepare an estimate of the expected costs. The estimate will be based on past experiences in processing LWECS applications and on the staff's expectations of what will be involved in processing the pending application. The expenses incurred by the EQB in issuing the last two wind permits issued by the Board – the Navitas and Chanarambie Power Partners permits issued in May 2001 and referenced throughout this document – were approximately $10,000. This is a reasonable fee and the applicants have not complained about the amount.

If an applicant should disagree with the chair's estimate, the rule allows the applicant to bring the complaint to the attention of the board. The EQB does not expect this to happen, because the staff will be able to make a fairly accurate estimate, and because in the end, the applicant will not be required to pay more than the actual costs. In any event, the rule recognizes that an applicant could ask the board to review the estimated budget.

Subpart 3. Initial payment. The EQB will begin incurring costs from the time the application is submitted so it is necessary for the applicant to make a payment to the agency essentially at the same time the application is submitted. The rule recognizes that the EQB will not begin to process the application until the first payment is made. If the applicant is late in making the payment, the EQB's timeframe for completing the permit process will not commence. The EQB's experience has been that applicants will discuss

the budget with the staff before the application is even submitted, so that when the applicant does submit the application, a check for the initial amount can be included.

The rule requires that the first payment be at least 50% of the total estimated budget. Because the staff must complete a great deal of work in a relatively short time after the application is accepted, it is reasonable to require one-half of the total payment be made upfront. Also, since the timeframe allowed for the entire process is only 180 days, it is preferable to not spend a lot of time sending invoices out to the applicant for additional payments. Some applicants might simply choose to submit the entire estimated fee upfront with the application and wait until the final accounting to determine the actual expenses.

Minnesota Statutes section 116C.69, subd. 2 and 3, which apply to permitting of power plants and transmission lines, requires that permit fees be deposited in a separate account for the specific project. Section 116C.695 does not include that requirement, but the EQB has always in the past maintained separate accounts for LWECS applications, and it makes sense to continue that practice. Maintaining a separate account helps ensure that only the necessary and reasonable costs attributable to the project are charged to the applicant.

Subpart 4. Periodic payments. If the applicant only pays one-half of the estimated budget, or if the estimated budget turns out to be insufficient, the EQB will send an invoice to the applicant and request additional payments. The EQB expects the applicant to make the payments before the EQB incurs expenditures beyond what is available in the account, and the EQB usually requests payment within 30 days of receipt of the invoice. It is reasonable to require that the applicant maintain a positive balance in the account to pay EQB expenses as they are incurred.

The rule provides that if the applicant has an outstanding balance due at the time the EQB is prepared to make a final decision on the permit, the applicant must pay that amount before a final decision is made. It makes good sense to ensure that the applicant pays what is owed for processing the permit before the final decision is made

Subpart 5. Final accounting. Since the applicant pays only what is necessary and reasonable, a final accounting is required once all the expenses have been incurred. The final accounting will indicate exactly what costs and expenses were paid as part of the application. The EQB's accounting people will prepare the final accounting. If the applicant believes that the figures are unnecessary or unreasonable, the applicant can request that the board review the numbers and make a final decision on the amount due.

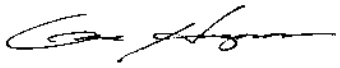
The final accounting cannot occur until the EQB has determined all its expenses in processing the permit application. It is possible that an aggrieved person may challenge the Board’s final decision by bringing a lawsuit, so the final accounting cannot occur until the time for judicial review has expired.

It is reasonable to provide only a short period of time for either the applicant to make an additional payment, or the EQB to refund an overpayment, once the final accounting is determined. The rule provides for a thirty-day period for the final payment. Both the applicant and the EQB should be able to make the requisite payment within thirty days of the determination of the amount.

VI. Conclusion

As explained in this document, the proposed rules will help ensure that the EQB can carry out its legislative mandate to ensure the orderly development of the wind resources in this state while protecting the environment. The permit program established by these rules for Large Wind Energy Conversion Systems should operate in an effective and expeditious fashion to accommodate applicants who seek a prompt resolution of their permit application and the public who seek an opportunity to be informed and to be heard.

DATED: September 20, 2001



GENE HUGOSON
Chair
Minnesota Environmental Quality Board

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EXHIBIT LIST

1. 25 State Register 1382 (February 12, 2001) (Notice of Intent to Solicit Outside Opinion)

2. EQB Monitor (March 5, 2001)

3. List of Persons Interested in Rules on Wind Projects

4. List of Wind Permits Issued by the EQB

5. Interim Site Permit Procedures

6. Lake Benton I Permit

7. Navitas Energy, LLC
    a. Application
    b. Permit
    c. Findings of Fact

8. Chanarambie Power Partners, LLC
    a. Application
    b. Permit
    c. Findings of Fact

9. Avian Study

10. Energy Security and Reliability Act of 2001

ADDENDUM TO
STATEMENT OF NEED AND REASONABLENESS

At the Environmental Quality Board meeting on September 20, 2001, when the Board approved the Statement of Need and Reasonableness and authorized the Chair to go forward with formal rulemaking on the proposed rules, the Board made one change in the proposed rules as they were presented to the Board. The Board in its authorizing resolution directed the staff to add a short Addendum to the SONAR explaining this one change, and that is the purpose of this Addendum.

The one change the Board made in the proposed rules was to change the word "electricity" in part 4401.0610, subpart 3 to the word "power." The changed language now reads as follows:

> Subp. 3. Power purchase agreement. A site permit does not authorize construction of the project until the permittee has obtained a power purchase agreement or some other enforceable mechanism for sale of the power to be generated by the project. If the permittee does not have a power purchase agreement or other enforceable mechanism at the time the permit is issued, the board shall provide in the permit that the permittee shall advise the board when it obtains a commitment for purchase of the power. The board may establish as a condition in the permit a date by which the permittee must obtain a power purchase agreement or other enforceable mechanism or the site permit is null and void.

The reason for the change is to recognize that the energy generated by wind turbines could be in a form other than electricity. For example, the electricity generated by the turbines could be used to produce hydrogen, which could then be stored and sold to a purchaser for use in generating electricity at a later time, or even sold for other purposes. By using a broader term in this subpart, the EQB is recognizing that it may be possible to utilize wind turbines for purposes other than the immediate sale of electricity.

On September 24, 2001, amendments to the rules of the Office of Administrative Hearings regarding rulemaking became effective. The amendments were published in the State Register on September 17, 2001 (26 State Register 391).

One of the changes made to the rules relates to information in the Statement of Need and Reasonableness. The new rule now requires the SONAR to include the date the statement is made available for public review. Minnesota Rules part 1400.2070, subpart 1.E. This rule change became effective after the EQB Board approved the Statement of Need and Reasonableness in this case but this Addendum is added to provide this information.

The Statement of Need and Reasonableness first became available to the public on September 13, 2001, the day the information for the EQB's September 20 monthly Board

meeting was mailed to Board members and to persons on the agency's mailing list. The SONAR has been available for the asking since that date. The SONAR was discussed at the Board meeting on September 20, 2001.