

STATE OF MINNESOTA  
COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL  
QUALITY BOARD

In the Matter of Proposed  
Amendments to the High Voltage  
Transmission Line Routing and Power  
Plant Siting Rules

STATEMENT OF NEED  
AND REASONABLENESS

## I. INTRODUCTION

The Power Plant Siting Act (PPSA) gives the Minnesota Environmental Quality Board (hereinafter "board" or "EQB") authority and jurisdiction for siting large electric power generating plants and routing high voltage transmission lines.

It is necessary to amend the existing rules to reflect a 1989 amendment in the Power Plant Siting Act. That amendment (Minnesota Statutes, section 116C.57, subd. 5a) provides for an exemption from the provisions of the power plant siting act for large electric power generating plants with a capacity of between 50 and 80 megawatts. It is necessary to amend the rules to reflect this statutory requirement, and provides an opportunity to clarify and improve the procedural effectiveness of the rules.

Rulemaking began September 11, 1989 with publication of Notice of Intent to Solicit Outside Opinion in the State Register. During the drafting process numerous changes were made to the existing rules based upon internal staff review. No written responses were received as a result of the notice of intent to solicit outside information or opinions.

The 1973 Minnesota Power Plant Siting Act gave the EQB authority and jurisdiction for routing transmission lines of 200 kilovolts or more and siting power plants of 50 megawatts or more in size. The Board adopted rules to administer the law in August, 1974, and has since issued permits for several high voltage transmission lines and power plants.

As a result of controversy surrounding some of these projects and the issues associated with high demand for increased electrical energy supply, the 1977 Minnesota legislature made several major modifications to the Power Plant Siting Act. The changes in law then, in turn, made it necessary to modify the transmission line routing and power plant siting rules. Again, new rules were adopted in 1978, with most of the rule changes taking place in the transmission line routing process.

## II. STATEMENT OF BOARD'S AUTHORITY

The EQB's statutory authority to adopt or amend rules relating to routing of high voltage transmission lines and siting of electric power generating plants is set forth in Minnesota Statutes, section 116C.66.

## III. STATEMENT OF NEED AND REASONABLENESS

Minnesota Statutes, chapter 14 requires the Board to make an affirmative presentation of fact establishing the need for and reasonableness of the rules as proposed for adoption. In general terms, this means that the Board must set forth the reasons for its proposal, and that the reasons must not be arbitrary or capricious. To the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the proposed solution is appropriate. The need for and reasonableness of each proposed amendment or rule are presented in sequential order.

The statement of need and reasonableness and the proposed rule changes are two separate documents, which must be read together. The part and subpart identification numbers in the statement of need and reasonableness correspond to part and subpart identification numbers in the proposed rule modifications.

The proposed rule changes reflect significant reorganization of several parts to provide consistency in the routing and siting sections. The method chosen to accomplish the reorganization involved repealing some parts and reconstituting existing language without substantive changes. Though there appears to be substantial new language shown as underlined text, there is very little new text in the revised edition.

### 4400.0200 DEFINITIONS

#### Subp. 1. Scope.

The change in this subpart was made by the office of the Revisor of Statutes as a matter of form.

#### Subp. 2. Act.

The change in this subpart was made by the office of the Revisor of Statutes as a matter of form.

#### Subp. 5. Construction.

The proposed modification of this definition provides for increased consistency with statutory requirements and clarifies what is included in the definition of "construction".

Subp. 5. A. changes "action" to "improvement" to provide consistency with the language of Minnesota Statutes, 116C.62.

Subp. 5. B. is all new language and it is proposed to clarify that "construction" includes modification of an existing transmission line to operate at over 200kV or modification of an existing HVTL to operate at a higher voltage. This language merely clarifies the fact these modifications have always been subject to the definition. Inclusion of the proposed language will eliminate any type of misinterpretation.

Subp. 6a. Environmental Impact Assessment; EIA.

This new defined term is proposed to be added to the rules to identify a document that will be part of the alternative form of environmental review. The board may by rule identify alternative forms of environmental review which will address substantially the same issues and utilize similar procedures as an environmental impact statement in a more timely or efficient manner than an environmental impact statement. The term "Environmental Impact Assessment; EIA" was chosen to eliminate confusion with the environmental impact statement (EIS) review procedures.

Subp. 7. File.

The change in this subpart was made by the office of the Revisor of Statutes as a matter of form.

Subp. 8. High voltage transmission line; HVTL.

This amendment is intended to more clearly define "High voltage transmission line; HVTL." It clarifies that lower voltage lines are not included if they cannot operate at 200kV or greater without significant modification in design. Transmission lines proposed to operate at less than 200kV but which are designed and constructed to operate at 200kV or greater without significant modification would be considered a HVTL.

"Switching yards" is eliminated as an outdated term.

Subp. 15. Right-of-way.

The proposed modification is for the purpose of clarification. Inclusion of the word "operation" gives effect to the rules and construction permit conditions.

Subp. 16. Route.

This amendment is for the purpose of clarification. The language proposed for deletion is unnecessary as the permit will define the end points of the route designated by the board.

Subp. 18. Site.

This amendment is for the purpose of clarification. The permit issued by the board will define the site boundaries. Again, inclusion of the word "operation" more clearly gives effect to the rules and permit conditions for facility operation.

Subp. 20. Utility.

This amendment corrects a typographical error.

4400.0300 PURPOSE AND AUTHORITY.

The change in this part was made by the office of the Revisor of Statutes as a matter of form.

#### CONSTRUCTION PERMIT AND ROUTE DESIGNATION

4400.0600 APPLICATION FOR ROUTE DESIGNATION AND CONSTRUCTION PERMIT.

The amendments proposed are necessary to provide for consistency with the application requirements for certificates of site compatibility. The organization of the routing and siting application parts (4400.0600 and 4400.2600) had become inconsistent in past rule revisions. The proposed language clarifies, but does not substantively change the existing rule. The reordering of items A. to J. also provide for greater consistency with the criteria in part 4400.1310. The reordering will not be discussed further for each of following items.

Item A.

This amendment uses existing language, formerly item J.

Item B.

This amendment is for the purpose of clarity.

Item C.

This amendment is for the purpose of clarity. See discussion of item G with reference to deletion of old item C.

Item D.

The deletion portion of this item is for the purpose of clarity. Addition of the new language is necessary as an information requirement because of public interest in the potential health effects of proposed HVTL's and the need for data to assess any potential health effects.

Item E.

Represents existing language, formerly item H.

Item F.

This amendment is for the purpose of clarity where strikeouts occur and inclusion of new language requests right-of-way restoration information. This information is necessary as the permit issued by the board may prescribe procedures to mitigate construction impacts.

Item G.

Replaces what was formerly item "C." in the rules. This item also incorporates new language which states "and measures to mitigate adverse effects presented in the order shown in part 4400.1310;". It is reasonable to have an applicant describe in the application the measures it considers reasonable to mitigate unavoidable adverse environmental impacts. The purpose of this new language is to bring in mitigation procedures which ties it into the EIA and the permit conditions which address mitigation.

Item H.

No new language, formerly item F.

Item I.

Besides requiring a listing of the permits required, this item also requests a brief description of the permits that may be required. This change is for the purposed of clarification and is necessary to explain to interested persons the purpose of the permit.

Item J.

This amendment is proposed for the purpose of consistency and clarification. The proposed change from acceptance to receipt is consistent with the language in the certificate of need rules. The other change recognizes the Public Utilities Commission (PUC) as having the statutory authority for the certificate of need when required.

#### 4400.0710 ACCEPTANCE OF APPLICATION FOR ROUTE DESIGNATION AND CONSTRUCTION PERMIT.

Part 4400.0700 of the rules are repealed and replaced by 4400.0710 which has been reordered into subparts for clarification and format to facilitate clearer understanding of the requirements. The reordering also provides consistency with its correlative part in the site designation section of this chapter (4400.2710). The language in this part describes the procedures an applicant must follow to begin the route designation and construction permit procedure. The following subparts also incorporate new language.

Subp. 1. Board action required.

The language in this subpart is similar to the repealed language except that the filing requirement is changed from a minimum of 30 to 21 days that an application must be filed for consideration of acceptance at a board meeting. Staff experience has indicated that application review can be completed in a minimum of 21 days. The board's operating rules require in 4405.0600 that notice of agenda items be received 14 days before the regularly scheduled board meeting. Applicants will be encouraged to make their application submittal even earlier for larger projects to ensure adequate review. This would reduce any likelihood that delays would result from a rejection of the application due to deficiencies. It is intended that board staff will review the application prior to board consideration and work with the applicant to correct deficiencies before formal presentation to the board at its next meeting.

Subp. 2. Rejection of application.

The proposed language is similar to that of the repealed language in 4400.0700 with one significant exception. The applicant must provide information necessary for acceptance of the application 14 days, rather than 10 days, in advance of a Board meeting if the application is to be reconsidered at that meeting. This is reasonable for consistency with the Board's operating rule. New language also clarifies that, upon rejection, the applicant has the option to reapply to the board either with or without modifications to the project.

Subp. 3. Additional information.

This proposed amendment also restates the original requirement for the purpose of clarity. It also indicates that the board shall proceed with the actions necessary to initiate review of the application.

4400.0720 BOARD ACTION UPON ACCEPTANCE

This new part is added to establish the independent relationship between the board and the board's staff responsible for managing the route designation process. This clarification of responsibilities is necessary to permit staff to manage the process and to intervene if necessary without compromising the board's decision-making authority. Appointment of a project leader assigns to that individual responsibilities to perform procedural acts as a representative of the board. When staff does intervene, ex parte communications will be restricted pursuant to the board's operating rules, part 4405.0400. It is appropriate and reasonable for the board to clearly assign procedural responsibility to staff in this manner.

It is anticipated that counsel to the board and counsel to intervening staff will also maintain an independent relationship pursuant to Minnesota Rules, part 4405.0400.

#### 4400.0800 ROUTE ADVISORY TASK FORCE.

The proposed amendments to this subpart reflects two specific statutory changes. First, the 1988 Minnesota legislature, so as to establish a common nomenclature scheme (Minn. Stat 15.014) established the term "Advisory Task Force", as the term to be used by all state agencies when soliciting advice from members of the public. The statute also made the appointment of advisory task forces permissive, hence the change from "shall" to "may". The board must comply with Minnesota Statute, sections 15.014 and 15.059 in appointing and administering any advisory task force.

This amendment also clarifies the duties of the advisory task force, specifically noting its assistance in identifying alternatives and the issues to be assessed in the EIA. This role was reflected in the existing rules requiring the preparation of an Environmental Impact Statement. Under these revised rules, which no longer require an EIS, that role is carried over into the process for preparation of an EIA. A discussion of the conversion from an EIS process to an EIA process is contained in 4400.1210, page 8 of this document.

#### 4400.0900 PUBLIC ADVISOR

This part is amended to clarify the role of the public advisor and to more closely reflect the intent of the act. The second sentence in the original language has been struck as unnecessary.

#### 4400.1000 INFORMATION MEETINGS.

The purpose of the information meetings is expanded to include scoping of the EIA at the first round of meetings and to provide opportunity for public comment on the EIA at the later round. This is necessary to provide reasonable opportunity for the public to participate in determining the scope of environmental review and, at later meetings, to comment on the content of the EIA.

#### 4400.1100 ROUTE PROPOSALS.

The proposed amendments provide the public with a clear description of the procedures necessary to propose a route or route segment for consideration at public hearing and clarifies board review of the proposals. No substantive changes have been made.

##### Subp. 1. Acceptance for consideration.

The amendments are proposed for consistency and clarification. The phrase "an affirmative" in line has been deleted, recognizing that a proposer of a route may not favor a proposed route throughout the full routing process.

Subp. 2. Repealed to permit reordering of subparts. Former subpart 2 now subpart 5.

Subp. 3. Agency and advisory task force route proposals.

The original subpart 3 has been subdivided into subpart 3 and 4 for clarification and consistency with its correlative subpart in the siting section of this chapter and with other minor changes in the rules.

Subp. 4. Other sources of route proposals.

The proposed amendment renumbers the subpart and incorporates the last three paragraphs of existing subpart 3 as a new subpart with no substantive changes. This amendmend provides clarification.

Subp. 5. Adequate preparation of proposals.

The proposed amendment incorporates the language of existing subpart 2 without substantive changes.

4400.1200 PUBLIC HEARINGS.

The proposed amendment provides a citation of the rules prescribing the conduct of the public hearings. This clarification is provided to assist the public in the regulatory process.

4400.1210 ENVIRONMENTAL IMPACT ASSESSMENT FOR HVTL.

The proposed amendment is new language. There is a similar new section for the power plant siting section. The following discussion applies to both the the routing and siting sections of the rules and will refer to transmission lines and power plants collectively as large electric power facilities.

At present, an environmental impact statement (EIS) is prepared in conjunction with the process for siting large electric power facilities, but under a different chapter (4410, Environmental Review rules). This dual review is duplicative and inefficient because the issues are the same and the time lines for the two processes are not fully compatible. The intent of the amendment is to merge the environmental review process with the process for siting large electric power facilities to achieve efficiencies in time and labor and to provide improved opportunities for public participation.

The blended environmental review procedure prescribed in this part is consistent with the intent of the Power Plant Siting Act and the Environmental Policy Act, perhaps more so than the current dual process. The PPS Act states in Minnesota Statutes, section 116C.53, subd. 1, that:

The legislature hereby declares it to be the policy of the state to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy the board shall choose locations that minimize adverse human and environmental impact while insuring continuing

electric power system reliability and integrity and insuring that electric energy needs are met and fulfilled in an orderly and timely fashion.

The Act further states that in locating large electric power facilities, the board shall decide in accordance with the considerations in Minnesota Statutes, section 116C.57, subd. 4 and the considerations in Minnesota Statutes, chapter 116D. These two mandated sources of considerations contain lists of 14 and 19 responsibilities, respectively, which embody a very wide range of both specific resource dictates and broad policy mandates, addressing natural and human environmental issues.

Though silent on specifically requiring that an EIS be prepared, it was clearly the intent of the legislature that a thorough environmental assessment was necessary to satisfy the wide ranging mandates relating to impacts and that the assessment was to be an integral part of the siting procedures. The Act does direct the board to develop rules to accomplish its mandated responsibilities.

The Environmental Policy Act (116D), containing provisions for developing a structured environmental review process (EIS's), was passed the same year as the PPS Act, 1973. Subsequent promulgation of rules placed rule language for environmental review of large electric power facilities in the board's environmental review rules (4410) and the rules for the siting processes required by the PPS Act in a separate set of rules (4400).

The mandated process for siting large energy facilities reflects the significant public interest in such facilities and the recognized potential for environmental impacts. The process is rigorous, requires a year to complete, requires a mandated contested case hearing, and involves broad spectrum public participation in the geographic areas affected. The evolution of the environmental review rules reflects the unique structure of this permitting process, resulting in current rules which have a special section of procedural rules applicable only to high voltage transmission lines and power plants (4410.7000 to 4410.7800; Special Rules For Certain Large Energy Facilities And High Voltage Transmission Lines). The special rules provide numerous exemptions from the regular EIS process when an EIS is being prepared for a large energy facility permit. Even with the exemptions, the special EIS process does not track well with the permitting process.

Under the two sets of current rules, the timing of the public hearings in the siting process and adequacy decision in the EIS process is an unnecessary dichotomy of procedural review. The information and issues in the hearing record and the final EIS are typically the same, the interested public citizens are the same in the two separate processes and the decision maker, the EQB, is the same.

The amended procedure deletes the special rules for EIS's for large electric power facilities from the Environmental Review rules (4100)

and blends much of the same language with the siting rules (4400). To avoid confusion with the existing process (EIS), the environmental document is proposed to be termed an "environmental impact assessment". The process for scoping and preparation of an EIA, public notice and distribution, and opportunity for public comment have been retained in conformance with the alternative review provisions of 4410.3600.

Subp. 1. Record of hearings.

The proposed amendment incorporates the intent of Minn. rules, chapter 4410.7600, subp.2.

Subp. 2. Contents.

The proposed amendment includes the content requirements of Minn. rule, chapter 4410.7600, subd. 3. The inclusion of content items A through H is necessary for consistency with EIS contents and to satisfy the intent of the Environmental Policy Act.

Subp. 3. Notice of availability.

The proposed amendment fulfills the intent of Minn. rule, chapter 4410.7600, subp. 3 as part of the review process, and satisfies the requirement of Minn. Statutes, section 116C.58.

Subp. 4. Distribution.

The proposed amendment provides for the distribution of the EIA in a manner consistent with Minn. rule, chapter 4410.7600, subp. 3. The EIA would be the primary information document available for public review before the public hearing begins. It would have same content, distribution and notice requirements, and function as a draft EIS under the existing process.

Subp. 5. Comments.

The proposed amendment provides for comments and response to comments in a manner similar to the requirements for comments on a draft and final EIS as provided in Minn. rule, chapter 4410.7600, subp. 3. It is reasonable and in the public interest that all comments received on the EIA become part of the hearing record. This meets the intent of 116D.04, subd. 6 that an environmental review document and comments received thereon accompany the proposal through an administrative review process. This is perhaps the most significant change in the proposed revision of the environmental review process. However, it is only a change in where and how comments on the environmental review document are received. There is no substantive change in the public's opportunity to participate. It incorporates comments on the EIA directly into the hearing forum and record, permitting information and issues to be addressed in the area directly affected by the proposed project. It also provides all parties to the proceedings the opportunity to respond to comments during the oral portion of the hearings. This should better serve the interest of the public by providing opportunity for comment while

the proposal is being discussed in the local area. The minimum 30-day comment period is the same as the current process.

The revised process does not require that the EIA and comments and responses on the EIA be packaged as a final EIA, which would be similar to a final EIS. The hearing record, and ultimately the Findings of Fact, Conclusion and Order, would become the final documentary basis for a board decision. Under the board's operating procedures (4405.0600; Board Meeting Procedures), provision is made for written and oral comments on the record on which the board will make its final decision. The public notice and information distribution requirements of the operating rules are similar in structure to the provisions of 4410.7200, subp. 8. Any interested person has the opportunity to comment on the adequacy of the hearing record, which includes the EIA, before the board makes a final decision on the proposal.

#### Subp. 6. Adequacy.

The amendment requires that the board find the EIA adequate prior to route designation and the issuance of a construction permit. The conditions that must be met to find the EIA adequate are similar to the conditions that must be met for the board to find an EIS adequate pursuant to 4410.2800, subp. 4. The requirement that an EIA adequacy finding be made before the final route designation provides consistency with the environmental review rules for EIS's, and insures due process for consideration of impacts prior to any final decision. The precise timing of an adequacy finding is not specified. It is anticipated that the board could make the adequacy finding at a separate meeting prior to the final routing decision meeting, or at the same meeting but prior to the final routing decision. The timing would be determined by the significance of impacts being evaluated and on any uncertainty associated with significance.

#### Subp. 7. Cooperative processes.

The proposed amendment requires cooperation in the preparation of the EIA and federal environmental review to reduce duplication. This provision is taken directly from the current environmental review rules, part 4410.7400.

#### Subp. 8. Costs.

The proposed amendment allows the board to assess the applicant to recover costs directly related to the preparation of the EIA in addition to the application fees assessed pursuant to Minnesota Statutes, section 116C.69, subd. 2a. It is reasonable to recover the additional costs of preparing the EIA as costs are now recovered for the preparation of an EIS. The total cost to the applicant should be reduced through a more efficient process.

#### 4400.1310 ROUTING CONSIDERATIONS.

New language is proposed to replace part 4410.1300 of the existing rules. The considerations have been reordered for consistency. Non-substantive changes have been made for the purpose of clarification.

##### Subp. 1. Considerations.

The proposed amendment combines subp. 2 and subp. 3 of the existing rules (4410.1300). The new language lists in a more understandable format the issues, both geographic and mitigative, that the Board must consider to meet the policy stated in Minn. stat. 116C.53, subd. 1.

##### Subp. 2. Resources designated for preservation.

The new language contains no substantive changes from the existing rules. Proposed changes are for consistency and clarification of criteria to be applied.

#### 4400.1400 ROUTE DESIGNATION AND ISSUANCE OF A CONSTRUCTION PERMIT.

The proposed amendmant adds right-of-way restoration to the list of conditions that may be specified in the construction permit. This is an issue of concern to landowners and one that has been addressed in previously issued construction permits. It is reasonable to make specific reference to restoration in rule so the landowner is aware that restoration may be a condition of the permit. The proposed amendment also includes minor changes for consistency and clarity.

#### 4400.1500 CONSTRUCTION PERMIT COMPLIANCE.

The proposed amendment changes the title of this part from review of construction plans to permit compliance and also includes minor changes in language for consistency. Permit compliance has been a component of the Board's activities since the late 1970s. It is reasonable that this function be addressed in rule for the purpose of informing the public.

#### SITE DESIGNATION AND A CERTIFICATE OF SITE COMPATIBILITY

#### 4400.2600 APPLICATIONS FOR SITE DESIGNATION AND A CERTIFICATE OF SITE COMPATIBILITY.

The amendments proposed are necessary to provide for consistency with the application requirements for transmission line construction permits. The organization of the routing and siting application parts (4400.0600 and 4400.2600) had become inconsistent in past rule revisions. The proposed language clairifies, but does not substantively change the existing rule. The reordering of items A. to J. also provide for greater consistency with the criteria in part 4400.1310. The discussion for part 4400.0600 generally applies to this part.

4400.2710 ACCEPTANCE OF AN APPLICATION FOR SITE DESIGNATION AND  
CERTIFICATE OF SITE COMPATIBILITY

Part 4400.2700 of these rules are repealed and replaced by 4400.2710. The proposed new part has been reordered into subparts for ease of understanding. Part 4400.2710 describes the procedures that must be followed by the applicant and by the board to begin the regulatory process leading to site designation and issuance of a certificate of site compatibility.

Subp. 1. Board action required.

The proposed language is similar to the repealed language. The minor changes which have been made are the same as those made in 4410.0710 and are discussed in that section of this SONAR, page 6.

Subp. 2. Rejection.

The proposed language is similar to that of the repealed language in 4400.2700 with one significant exception. The applicant must provide information necessary for acceptance of the application 14 days, rather than 10 days, in advance of a Board meeting if the application is to be reconsidered at that meeting. This is reasonable for consistency with the Board's operating rule.

Subp. 3. Additional information.

The proposed language is substantially the same as the repealed language with minor clarifications.

4400.2720 BOARD ACTION UPON ACCEPTANCE

This new part is added to establish the independent relationship between the board and the board's staff responsible for managing the site designation process. This clarification of responsibilities is necessary to permit staff to manage the process and to intervene if necessary without compromising the board's decision-making authority. Appointment of a project leader assigns to that individual responsibilities to perform procedural acts as a representative of the board. When staff does intervene, ex parte communications will be restricted pursuant to the board's operating rules, part 4405.0400. It is appropriate and reasonable for the board to clearly assign procedural responsibility to staff in this manner.

It is anticipated that counsel to the board and counsel to intervening staff will also maintain an independent relationship pursuant to Minnesota Rules, part 4405.0400.

4400.2800 SITE ADVISORY TASK FORCE.

The proposed amendment incorporates the term "Advisory Task Force" rather than "Evaluation Committee" in response to 1988 legislation to establish common nomenclature. (Minnesota Statutes, section 15.014)

The amendment also clarifies the responsibilities of the task force and adds scoping of the issues to be considered in the EIA to the task force's duties. It is necessary to add scoping responsibility if the EIA is to satisfy the requirements for alternative environmental review.

#### 4400.2900 PUBLIC ADVISOR

This part is amended to clarify the role of the public advisor and to more closely reflect the intent of the act. The second sentence in the original language has been struck as unnecessary.

#### 4400.3000 INFORMATION MEETINGS.

The purpose of the information meetings is expanded to include scoping of the EIA at the first round of meetings and to provide opportunity for public comment on the EIA at the second round of meetings. This is necessary to provide reasonable opportunity for the public to participate in determining the scope of environmental review and, at later meetings, to comment on the content of the EIA.

#### 4400.3100 SITE PROPOSALS.

The proposed amendments provide the public with a clear description of the procedures necessary to propose sites for consideration at public hearing and clarifies Board review of the proposals. The amendments reorder the existing rule and add subparts for clarity and consistency with the correlative routing part, but do not substantively change the procedures.

##### Subp. 1. Acceptance for consideration.

The amendments are proposed for consistency and clarification. The phrase "an affirmative" in line has been deleted, recognizing that a proposer of a route may not favor a proposed route throughout the full routing process.

##### Subp. 2. Agency and advisory task force proposals.

The proposed amendment allows member agencies, the power plant siting staff, and the advisory task force to propose sites directly to the Board. This is reasonable and consistent with 4400.1100, Subp. 2.

##### Subp. 3. Other sources of site proposals.

The proposed amendment incorporates existing language with nonsubstantive changes for the purpose of clarification. It is reasonable to allow the proposer to identify the proposed site location on a county highway map. This base map may be more readily obtainable than a U.S. Geological Survey topographical map and is sufficient for initial review.

##### Subp. 4. Adequate preparation of proposal.

The proposed amendment is for consistency and clarity.

4400.3200 PUBLIC HEARINGS.

The proposed amendment provides a citation of the rules prescribing the conduct of the public hearings. This clarification is necessary to assist public participation in the regulatory process.

4400.3210 ENVIRONMENTAL IMPACT ASSESSMENT FOR LEPGP.

The discussion of need and reasonableness for an EIA in the routing section is fully applicable for siting and is not duplicated here. See part 4400.1210, page 8.

4400.3310 SITING CONSIDERATIONS.

New language is proposed to replace part 4400.3300 of the existing rules. The amendments are necessary for consistency with part 4400.1310 of these rules and to improve public understanding of the issues considered by the Board in designating a site and issuing a Certificate of Site Compatibility.

Subp. 1. Considerations.

The proposed amendment replaces "site selection criteria" with "considerations" and deletes the phrase "preferred sites..." which now precedes each criterion. Experience has shown that members of the public participating in the siting process find the terminology confusing. The subpart would now be consistent in format with the routing considerations in part 4400.1310. While there has been no substantive change in the issues considered by the Board, items have been reordered, combined, and edited for consistency and clarity.

Subp. 2. Site exclusions.

The proposed amendment clarifies existing language without substantive changes. The designated areas that may not be certified as a site are broken out as specific items for clarity.

Subp. 3. Site exclusions when alternative sites exist.

The proposed amendment clarifies existing language without substantive change. Designated areas that may not be designated as sites when feasible and prudent alternatives exist are listed as specific items for clarity.

Subp. 4. Prime farmland exclusion.

This exclusion is broken out as a separate subpart for consistency and clarity. The term "selected" has been replaced with "designated" to be consistent with terminology of the act.

Subp. 5. Sufficient water supply required.

Language from existing rules has been consolidated in this new subpart for consistency and clarity, without substantive change.

4400.3400 SITE DESIGNATION AND ISSUANCE OF A CERTIFICATE OF SITE COMPATIBILITY.

The proposed amendment is necessary to reflect the renumbering of 4400.3300 to become 4400.3310 and to reference procedural requirements.

4400.3500 CERTIFICATE COMPLIANCE.

The proposed amendment is for clarity and does not contain substantive changes.

4400.3600 PROGRAM ADVISORY TASK FORCE.

Subp. 1. This subpart is proposed to be eliminated as redundant and unnecessary. Its content replicates the intent and language of proposed amendments to 4400.0800 and 4400.2800.

Subp. 2. Program Advisory Task Force.

The proposed change incorporates the term "task force" rather than "committee" in response to 1988 legislation to establish common nomenclature. The word "shall" in the first sentence is changed to "may" to reflect a statutory change

The role of the committee is clarified but not changed. The amendment proposes that the Board appoint the task force chair. This has been the Boards practice and it is reasonable that it be incorporated into rule. Reference to the fiscal year in the one-year term of appointment has been omitted as unnecessary.

4400.3710 NOTICES.

The proposed amendment repeals 4400.3700 and replaces it with 4400.3710. The proposed new language restructures and reorders the requirements of the existing rule. Subpart 1 identifies the specific events in the siting and routing process for which notice must be provided. Subpart 2 defines the content of the required notices. The timing and distribution of notice is defined in the Act and not repeated in rule. These changes are necessary to clarify the notice requirements. There are no substantive changes from the existing rules.

4400.3800 EMERGENCY CERTIFICATIONS AND PERMITS

The proposed amendment corrects statute and rule citations in subparts 2 and 3. Subpart 2, Item A is deleted as it suggests special consideration of evidence presented by the Department of Trade and Economic Development. It is unnecessary to make reference to the Department in rule. The Board must consider all evidence in determining whether or not an emergency exists.

4400.3900 EXEMPTION OF CERTAIN TRANSMISSION LINE ROUTES

Subp. 1. Application for exemption.

The proposed amendment incorporates minor changes for consistency and breaks out application content requirements as a new subpart.

Subp. 1a. Application contents.

This new subpart incorporates and expands on the application requirements of the existing rules. It specifically requires the information to make an evaluation of the routing considerations of 4400.1300 and measures proposed by the applicant to mitigate adverse effects. It is appropriate to require similar information in an transmission line exemption application as in a full process application, with the single exception of alternative routes. The proposed content requirements are necessary for the board to make the determination of no significant environmental impact required in subp. 7.

Subp. 2. Notice of exemption application.

The proposed amendment incorporates minor changes for consistency and clarity. It also clarifies notice requirements in item C. by substituting the phrase "within the route" for "property the line may run" to assure that if the utility applies for exemption of an area of land wider than the right-of-way, all potentially affected landowners would have been notified.

Subp. 3. Objection.

The proposed amendment clarifies who may file an objection, how the objection must be submitted, and the information that must be provided. This is reasonable and necessary to avoid superfluous objections that, by rule, require the Board to hold a hearing.

Subp. 4. This subpart is repealed and the requirements incorporated in proposed subparts 5 and 7.

Subp. 5. Public hearing.

This new subpart clarifies existing language and is reordered for consistency.

Subp. 6. Public comments.

This new subpart clarifies existing language and is reordered for consistency.

Subp. 7. Determination.

The proposed amendment clarifies the evidence that the Board must consider in determining whether to grant or deny the exemption and reorders the existing rule. This is reasonable to give the applicant

and the public better understanding of the process. Language has been added to specify that the board must give reasons for denial of an exemption and to clarify that the applicant may reapply upon denial, or, based on the record resulting in denial, may apply to board for a construction permit requiring the year-long procedural review.

#### 4400.3910 EXEMPTION OF CERTAIN LEPPG SITES

The proposed section is necessary to implement an amendment to 116C (See Laws of Minnesota, 1989, Chapter 346). The amendment allows the Board to exempt certain LEPPGs on a finding that the proposed plant at the proposed site will not cause significant environmental impact. It is reasonable that the proposed rule be similar to 4400.3900, which provides for the exemption of certain transmission lines.

##### Subp. 1. Application for exemption.

The proposed amendment defines the capacity of plants that the Board may consider for exemption. This is reasonable for ease of reference and for clarity.

##### Subp. 2. Contents of application.

The proposed subpart parallels the transmission line exemption application requirements. It specifically requires the information required to make an evaluation of the considerations of 4400.3310 and of the inventory criteria of 4400.4500. It is reasonable and necessary to require the applicant to provide the information necessary for the Board to determine whether or not the proposed plant has the potential for significant environmental impact.

##### Subp. 3. Notice of exemption application.

The notice requirements of this subpart are consistent with the Act and the transmission line exemption part (4400.3900), and are included in rule for the convenience of the public.

##### Subp. 4. Objection to exemption.

The proposed amendment is consistent with the requirements of the act and with the procedures proposed in 4400.3900, subp.3. It is reasonable to clarify who may file an objection, how that objection must be submitted, and the information that must be provided. This is necessary to avoid superfluous objections that would, by rule, require the Board to hold a hearing.

##### Subp. 5. Public hearing.

This subpart is necessary for consistency with 4400.3900, Subp. 5 and for clarity.

Subp. 6. Public comments.

This subpart is necessary for consistency with 4400.3900, Subd. 6 and for clarity.

Subp. 7. Determination of exemption.

The proposed amendment is consistent with the act and with 4400.3900, subp. 7. It is reasonable and necessary for public understanding to describe the evidence that the Board must consider in determining whether to grant or deny the exemption. Language has been added to specify that the board must give reasons for denial of an exemption and to clarify that the applicant may reapply upon denial, or, based of the record resulting in denial, may apply to board for a certificate of site compatibility requiring the year-long procedural review.

4400.4000 DELAY IN ROUTE OR SITE CONSTRUCTION

The deleted language is inappropriate and unnecessary in this subpart. Other minor changes are for clarification.

4400.4100 MINOR ALTERATIONS IN CONSTRUCTION PERMIT OR CERTIFICATE OF SITE COMPATIBILITY

The proposed amendment provides for a process to allow the Board to consider minor alterations to a Certificate of Site Compatibility. This is reasonable as a similar process to allow minor alterations of Construction Permits has been in rule since 1974. The Board has provided a process to consider alterations of the conditions of Certificates of Site Compatibility as a specific condition of the Certificate. It is also reasonable that this process be incorporated into rule.

4400.4200 REVOCATION OR SUSPENSION OF CERTIFICATE OR PERMIT

Subp. 1 and 3. Minor word changes are proposed for consistency.

4400.4500 IDENTIFICATION OF LARGE ELECTRIC POWER GENERATING PLANT STUDY AREAS

Subp. 2. Exclusion areas.

Amendment corrects rule citation.

4400.4900 APPLICATION FEES

The proposed amendment requires that 50% of the approved cost of processing an application for exemption of for a HVTL or a LEPGP be paid within 14 days of the receipt of the application. These provisions are from the 1989 statutory amendment creating an exemption process for LEPGP sites. They have been applied to HVTL's also, pursuant to Minnesota Statutes, section 645.26, which provides that a statutory clause last in order of date shall prevail when

there is a conflict with an earlier clause. This is reasonable as funds are available to cover costs as they occur.

#### IV. OTHER CONSIDERATIONS

The proposed rules will not require the expenditure of public money by local public bodies, therefore the requirements of Minnesota Statutes, section 14.11, subd. 1, do not apply.

The proposed rules are exempt from the requirements of Minnesota Statutes, sections 14.11, subd. 2, and 17.82 to 17.84, relating to agricultural land use, because power plant and transmission lines projects are reviewed in a manner that complies with the requirements of Minnesota Statutes, section 116D and the environmental review rules adopted under that chapter. The proposed rule revisions adequately reflect the intent of the State Agricultural Land Preservation and Conservation Policy stated in Minnesota Statutes, section 17.80.

Pursuant to Minnesota Statutes, section 14.115, subp. 3, compliance with provisions of that section, relating to small businesses, will be contrary to the statutory objectives of Minnesota Statutes, sections 116C.51 to 116C.69, therefore the requirements of Minnesota Statutes, section 14.115 do not apply. This is based on an interpretation of statutory intent that all persons, including both electric energy facility proposers and those affected by projects, must comply with the Minnesota Environmental Policy Act (116D).

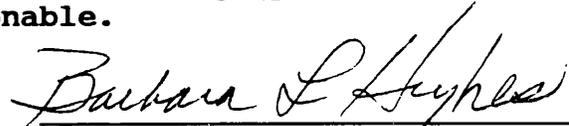
The fee proposed in the amended rules, parts 4400.1210, subp. 8, 4400.3210, subp. 8, and 4400.4900, were not specified by statute and are one-time fees based on actual direct cost. Thus no rulemaking is required pursuant to Minnesota Statutes, section 16A.128, subd. 2.

The Board has complied with all of the rule requirements set forth in Minnesota Statutes, sections 116C.51 through 116C.69, and Laws of Minnesota 1989, chapter 346, section 1.

#### V. CONCLUSION

Based on the foregoing, the proposed permanent rules relating to power plant siting and transmission line routing (parts 4400.0200 to 4400.4900) are both needed and reasonable.

Dated: June 15, 1990

  
Barbara L. Hughes, Acting Chair  
Environmental Quality Board