



## Procedures, Considerations and Rules For Siting A Dry Cask Storage Facility

Adopted by the Minnesota Environmental Quality Board, October 20, 1994

*The following sections of the Power Plant Siting Act, Minnesota Statutes 116C.51 to 116C.69, have been adopted by the Environmental Quality Board as necessary to designate the site for a dry cask storage facility and to issue a Certificate of Site Compatibility.*

### 116C.51 Citation.

Sections 116C.51 to 116C.69 shall be known as the Minnesota power plant siting act.

### 116C.52 Definitions.

Subdivision 1. Applicability. As used in sections 116C.51 to 116C.68, the terms defined in this section have the meanings given them, unless otherwise provided or indicated by the context.

Subd. 2. Board. "Board" shall mean the Minnesota environmental quality board.

Subd. 3. Construction. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

Subd. 5. Large electric power generating plant. "Large electric power generating plant" shall mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more. *(Note: A dry cask storage facility is an associated facility. "Dry cask storage facility" means a high-level radioactive waste facility that is located in Goodhue county but not on Prairie Island for storage of spent nuclear fuel produced by a nuclear reactor at Prairie Island nuclear power generating plant. Minn. Stat. §116C.80, Subdivision 1. 1994)*

Subd. 6. Large electric power facilities. "Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

Subd. 7. Person. "Person" shall mean an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Subd. 9. Site. "Site" means the location of a large electric power generating plant.

Subd. 10. Utility. "Utility" shall mean any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipally owned utility.

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### **116C.53 Siting authority.**

Subdivision 1. Policy. 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.

Subd. 2. Jurisdiction. The board is hereby given the authority to provide for site and route selection.

Subd. 3. Interstate routes. The board, in discharge of its duties pursuant to sections 116C.51 to 116C.69 may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States. The board may negotiate and enter into any agreements or compacts with agencies of other states, pursuant to any consent of congress, for cooperative efforts in certifying the construction, operation, and maintenance of large electric power facilities in accord with the purposes of sections 116C.51 to 116C.69 and for the enforcement of the respective state laws regarding such facilities.

### **116C.57 Designation of sites and routes; procedures; considerations.**

Subdivision 1. Designation of sites suitable for specific facilities; reports. A utility must apply to the board in a form and manner prescribed by the board for designation of a specific site for a specific size and type of facility. The application shall contain at least two proposed sites. Pursuant to sections 116C.57 to 116C.60, the board shall study and evaluate any site proposed by a utility and any other site the board deems necessary which was proposed in a manner consistent with rules adopted by the board concerning the form, content, and timeliness of proposals for alternate sites. The board shall indicate the reasons for any refusal and indicate changes in size or type of facility necessary to allow site designation. Within

a year after the board's acceptance of a utility's application, the board shall decide in accordance with the criteria specified in section 116C.55, subdivision 2, the responsibilities, procedures and considerations specified in section 116C.57, subdivision 4, and the considerations in chapter 116D which proposed site is to be designated. The board may extend for just cause the time limitation for its decision for a period not to exceed six months. When the board designates a site, it shall issue a certificate of site compatibility to the utility with any appropriate conditions. The board shall publish a notice of its decision in the state register within 30 days of site designation. No large electric power generating plant shall be constructed except on a site designated by the board.

Subd. 4. Considerations in designating sites and routes. To facilitate the study, research, evaluation and designation of sites and routes, the board shall be guided by, but not limited to, the following responsibilities, procedures, and considerations:

(1) Evaluation of research and investigations relating to the effects on land, water and air resources of large electric power generating plants and high voltage transmission line routes and the effects of water and air discharges and electric fields resulting from such facilities on public health and welfare, vegetation, animals, materials and aesthetic values, including base line studies, predictive modeling, and monitoring of the water and air mass at proposed and operating sites and routes, evaluation of new or improved methods for minimizing adverse impacts of water and air discharges and other matters pertaining to the effects of power plants on the water and air environment;

(2) Environmental evaluation of sites and routes proposed for future development and expansion and their relationship to the land, water, air and human resources of the state;

(3) Evaluation of the effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects;

(5) Analysis of the direct and indirect economic impact of proposed sites and routes including, but not limited to, productive agricultural land lost or impaired;

(6) Evaluation of adverse direct and indirect environmental effects which cannot be avoided should the proposed site and route be accepted;

(7) Evaluation of alternatives to the applicant's proposed site or route proposed pursuant to subdivisions 1 and 2;

(11) Evaluation of irreversible and irretrievable commitments of resources should the proposed site or route be approved; and

(12) Where appropriate, consideration of problems raised by other state and federal agencies and local entities.

(13) If the board's rules are substantially similar to existing rules and regulations of a federal agency to which the utility in the state is subject, the federal rules and regulations shall be applied by the board.

(14) No site or route shall be designated which violates state agency rules.

Subd. 6. Recording of survey points. The permanent location of monuments or markers found or placed by a utility in a survey of right-of-way for a route shall be placed on record in the office of the county recorder or registrar of titles. No fee shall be charged to the utility for recording this information.

### **116C.58 Public hearings; notice.**

The board shall hold at least one public hearing in each county where a site or route is being considered for designation pursuant to section 116C.57. Notice and agenda of public hearings and public meetings of the board held in each county shall be given by the board at least ten days in advance but no earlier than 45 days prior to such hearings or meetings. Notice shall be by publication in a legal newspaper of general circulation in the county in which the public hearing or public meeting is to be held and by certified mailed notice to chief executives of the regional development commissions, counties, organized towns and the incorporated municipalities in which a site or route is proposed. All hearings held for designating a site or route or for exempting a route shall be conducted by an administrative law judge from the office of administrative hearings pursuant to the contested case procedures of chapter 14. Any person may appear at the hearings and present testimony and exhibits and may question witnesses without the necessity of intervening as a formal party to the proceedings.

### **116C.59 Public participation.**

Subdivision 1. Advisory task force. The board may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the board, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. No officer, agent, or employee of a utility shall serve on an advisory task force. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The task forces expire as provided in section 15.059, subdivision 6.

Subd. 2. Other public participation. The board shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the board's rules and guidelines as provided for in section 116C.66.

Subd. 3. Public advisor. The board shall designate one staff person for the sole purpose of assisting and advising those affected and interested citizens on how to effectively participate in site or route proceedings.

Subd. 4. Scientific advisory task force. The board may appoint one or more advisory task forces composed of technical and scientific experts to conduct research and make recommendations concerning generic issues such as health and safety, underground routes, double circuiting and long-range route and site planning. Reimbursement for expenses incurred shall be made pursuant to the rules governing reimbursement of state employees. The task forces expire as provided in section 15.059, subdivision 6.

#### **116C.60 Public meetings; transcript of proceedings; written records.**

Meetings of the board, including hearings, shall be open to the public. Minutes shall be kept of board meetings and a complete record of public hearings shall be kept. All books, records, files, and correspondence of the board shall be available for public inspection at any reasonable time. The council shall also be subject to section 471.705.

#### **116C.61 Local regulation; state permits; state agency participation.**

Subdivision 1. Regional, county and local ordinances, rules, regulations; primary responsibility and regulation of site designation, improvement and use. To assure the paramount and controlling effect of the provisions herein over other state agencies, regional, county and local governments, and special purpose government districts, the issuance of a certificate of site compatibility or transmission line construction permit and subsequent purchase and use of such site or route locations for large electric power generating plant and high voltage transmission line purposes shall be the sole site approval required to be obtained by the utility. Such certificate or permit shall supersede and preempt all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government.

Subd. 2. Facility licensing. Notwithstanding anything herein to the contrary, utilities shall obtain state permits that may be required to construct and operate large electric power generating plants and high voltage transmission lines. A state agency in processing a utility's facility permit application shall be bound to the decisions of the board, with respect to the site or route designation, and with respect to other matters for which authority has been granted to the board by sections 116C.51 to 116C.69.

Subd. 3. State agency participation. State agencies authorized to issue permits required for construction or operation of large electric power generating plants or high voltage transmission lines shall participate in and present the position of the agency at public hearings and all other activities of the board on specific site or route designations of the board, which position shall clearly state whether the site or route being considered for designation or permit approval for a certain size and type of facility will be in compliance with state agency standards, rules or policies.

### **116C.62 Improvement of sites and routes.**

Utilities which have acquired a site or route in accordance with sections 116C.51 to 116C.69 may proceed to construct or improve the site or route for the intended purposes at any time, subject to section 116C.61, subdivision 2, provided that if the construction and improvement commences more than four years after a certificate or permit for the site or route has been issued then the utility must certify to the board that the site or route continues to meet the conditions upon which the certificate of site compatibility or transmission line construction permit was issued.

### **116C.63 Eminent domain powers; right of condemnation.**

Subdivision 1. Nothing in this section shall invalidate the right of eminent domain vested in utilities by statute or common law existing as of May 24, 1973, except to the extent modified herein. The right of eminent domain shall continue to exist for utilities and may be used according to law to accomplish any of the purposes and objectives of sections 116C.51 to 116C.69, including acquisition of the right to utilize existing high voltage transmission facilities which are capable of expansion or modification to accommodate both existing and proposed conductors. Notwithstanding any law to the contrary, all easement interests shall revert to the then fee owner if a route is not used for high voltage transmission line purposes for a period of five years.

Subd. 2. In eminent domain proceedings by a utility for the acquisition of real property proposed for construction of a route or a site, the proceedings shall be conducted in the manner prescribed in chapter 117, except as otherwise specifically provided in this section.

Subd. 3. When such property is acquired by eminent domain proceedings or voluntary purchase and the amount the owner shall receive for the property is finally determined, the owner who is entitled to payment may elect to have the amount paid in not more than ten annual installments, with interest on the deferred installments, at the rate of eight percent per annum on the unpaid balance, by submitting a written request to the utility before any payment has been made. After the first installment is paid the petitioner may make its final certificate, as provided by law, in the same manner as though the entire amount had been paid.

Subd. 4. When private real property that is an agricultural or nonagricultural homestead, nonhomestead agricultural land, rental residential property, and both commercial and noncommercial seasonal residential recreational property, as those terms are defined in section 273.13 is proposed to be acquired for the construction of a site or route by eminent domain proceedings, the fee owner, or when applicable, the fee owner with the written consent of the contract for deed vendee, or the contract for deed vendee with the written consent of the fee owner, shall have the option to require the utility to condemn a fee interest in any amount of contiguous, commercially viable land which the owner or vendee wholly owns or has contracted to own in undivided fee and elects in writing to transfer to the utility within 60 days after receipt of the notice of the objects of the petition filed pursuant to section 117.055. Commercial

viability shall be determined without regard to the presence of the utility route or site. The owner or, when applicable, the contract vendee shall have only one such option and may not expand or otherwise modify an election without the consent of the utility. The required acquisition of land pursuant to this subdivision shall be considered an acquisition for a public purpose and for use in the utility's business, for purposes of chapter 117 and section 500.24, respectively; provided that a utility shall divest itself completely of all such lands used for farming or capable of being used for farming not later than the time it can receive the market value paid at the time of acquisition of lands less any diminution in value by reason of the presence of the utility route or site. Upon the owner's election made under this subdivision, the easement interest over and adjacent to the lands designated by the owner to be acquired in fee, sought in the condemnation petition for a high voltage transmission line right-of-way shall automatically be converted into a fee taking.

Subd. 5. A utility shall notify by certified mail each person who has transferred any interest in real property to the utility after July 1, 1974, but prior to the effective date of Laws 1977, chapter 439, for the purpose of a site or route that the person may elect in writing within 90 days after receipt of notice to require the utility to acquire any remaining contiguous parcel of land pursuant to this section or to return any payment to the utility and require it to make installment payments pursuant to this section.

#### **116C.64 Failure to act.**

If the board fails to act within the times specified in section 116C.57, any affected utility may seek an order of the district court requiring the board to designate or refuse to designate a site or route.

#### **116C.645 Revocation or suspension.**

A site certificate or construction permit may be revoked or suspended by the board after adequate notice of the alleged grounds for revocation or suspension and a full and fair hearing in which the affected utility has an opportunity to confront any witness and respond to any evidence against it and to present rebuttal or mitigating evidence upon a finding by the board of:

(1) Any false statement knowingly made in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted a change in the board's findings;

(2) Failure to comply with material conditions of the site certificate or construction permit, or failure to maintain health and safety standards; or

(3) Any material violation of the provisions of sections 116C.51 to 116C.69, any rule promulgated pursuant thereto, or any order of the board.

### **116C.65 Judicial review.**

Any utility, party or person aggrieved by the issuance of a certificate or emergency certificate of site compatibility or transmission line construction permit from the board or a certification of continuing suitability filed by a utility with the board or by a final order in accordance with any rules promulgated by the board, may appeal to the court of appeals in accordance with chapter 14. The appeal shall be filed within 60 days after the publication in the State Register of notice of the issuance of the certificate or permit by the board or certification filed with the board or the filing of any final order by the board.

### **116C.66 Rules.**

The chief administrative law judge shall, prior to January 1, 1978, adopt procedural rules for public hearings relating to the site and route designation process and to the route exemption process. The rules shall attempt to maximize citizen participation in these processes.

### **116C.68 Enforcement, penalties.**

Subdivision 1. Any person who violates sections 116C.51 to 116C.69 or any rule promulgated hereunder, or knowingly submits false information in any report required by sections 116C.51 to 116C.69 is guilty of a misdemeanor for the first offense and a gross misdemeanor for the second and each subsequent offense. Each day of violation shall constitute a separate offense.

Subd. 2. The provisions of sections 116C.51 to 116C.69 or any rules promulgated hereunder may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county wherein the violation takes place. The attorney general shall bring any action under this subdivision upon the request of the board.

Subd. 3. When the court finds that any person has violated sections 116C.51 to 116C.69, any rule hereunder, knowingly submitted false information in any report required by sections 116C.51 to 116C.69 or has violated any court order issued under sections 116C.51 to 116C.69, the court may impose a civil penalty of not more than \$10,000 for each violation. These penalties shall be paid to the general fund in the state treasury.



*The following sections of Minnesota Rules, Chapter 4400, have been adopted by the Environmental Quality Board as necessary to designate the site for a dry cask storage facility and to issue a Certificate of Site Compatibility.*

#### **4400.0200 DEFINITIONS.**

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

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

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

Subp. 4. **Community benefits.** "Community benefits" means those benefits to the local community, other than economic development, that result from power plant design or location. Examples include use of community solid waste as a supplemental fuel, joint water supply, improving the economic viability of existing rail lines, and increased tax base.

Subp. 5. **Construction.** "Construction" means:

A. any clearing of land, excavation, or other improvement that would adversely affect the natural environment of a site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary boring, to ascertain foundation conditions; or

Subp. 6. **Developed portion of plant site.** "Developed portion of plant site" means the portion of the LEPGP site, exclusive of makeup water storage reservoirs or cooling ponds, where structures or other facilities or land uses necessary for plant operation preclude crop production.

Subp. 6a. **Environmental impact assessment; EIA.** "Environmental impact assessment" or "EIA" means a detailed written statement that describes proposed HVTLs and LEPGPs and satisfies the requirements of Minnesota Statutes, section 116D.04.

Subp. 7. **File.** "File" means to deliver 40 copies to the office of the chair of the board.

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

Subp. 10. **Large electric power generating plant; LEPGP.** "Large electric power generating plant" and "LEPGP" mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more. (*Note: A dry cask facility is an associated facility. "Dry cask storage facility" means a high-level radioactive waste facility that is located in Goodhue county but not on Prairie Island for storage of spent nuclear fuel produced by a nuclear reactor at the Prairie Island nuclear power generating plant. Minn. Stat. §116C.80, Subdivision 1. 1994*)

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

Subp. 13. **Prime farmland.** "Prime farmland" means those soils that meet the specifications of Code of Federal Regulations 1980, title 7, section 657.5 (a).

Subp. 14. **Public adviser.** "Public adviser" means a staff person designated by the board for the sole purpose of assisting and advising affected or interested citizens on how to effectively participate in the site or route designation processes.

Subp. 18. **Site.** "Site" means an area of land required for the construction and operation of an LEPGP.

Subp. 19. **Technical assumptions.** "Technical assumptions" means the assumptions necessary to evaluate resource requirements of LEPGPS of a specified capacity, fuel type, and design and to evaluate the availability of resources to meet those requirements.

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

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

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

It is the purpose of the act and 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 ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion. The board shall provide for broad spectrum citizen participation as a principle of operation. To

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

## SITE DESIGNATION AND CERTIFICATE OF SITE COMPATIBILITY

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

Subpart 1. **Contents.** An application shall be filed that includes any information necessary to make the evaluation required in part 4400.3310 and the following:

- A. a statement of proposed ownership of the facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of those planning to participate in the project;
- B. the size and type of the proposed LEPGP;
- C. at least two proposed sites for the proposed LEPGP;
- D. the engineering and operational design for the LEPGP at each of the proposed sites;
- E. a cost analysis of the LEPGP at each proposed site;
- F. an engineering analysis of each of the proposed sites;
- G. a description of the environmental setting and the potential human and natural environmental impacts of each site and measures proposed by the applicant to mitigate adverse effects, presented in the order shown in part 4400.3310;
- H. a listing and brief description of federal and state permits that may be required for each proposed site; and
- I. the certificate of need if available, or an acknowledgment of the receipt of a substantially complete certificate of need application by the Public Utilities Commission, if a certificate of need is required by Minnesota Statutes, Chapter 216B.

Subp. 1a. **Distribution.** A copy of the application shall be provided by board staff to each member of the board.

### 4400.2710 ACCEPTANCE OF APPLICATION FOR SITE DESIGNATION AND CERTIFICATE OF SITE COMPATIBILITY.

Subpart 1. **Board action required.** The board shall either accept or reject an application at its first regularly scheduled meeting after the application is filed with the board, provided the application is filed at least 21 days before that meeting.

Subp. 2. **Rejection of application.** If the board rejects the application, the board shall inform the applicant in writing which deficiencies, if corrected, will allow the application to be accepted. If the applicant has corrected the deficiencies or provided the board with the required information 14 days in advance of a regularly scheduled meeting, the board must reconsider acceptance of the application at that meeting. If the applicant fails to meet the conditions established by the board for reconsideration of the rejected application, the rejection shall stand.

If the rejection stands, the applicant may reapply at any time. If the board fails to act within the times specified in this subpart, the application shall be considered accepted.

Subp. 3. **Additional information.** On acceptance of the application, the board shall proceed with the actions required in parts 4400.2800 to 4400.3500. The applicant shall provide additional relevant information that the board considers necessary to process the application.

#### **4400.2720 BOARD ACTION UPON ACCEPTANCE.**

On acceptance of an application for site designation and a certificate of site compatibility, the board shall designate a project leader who shall serve as an independent representative of the board during the formal siting proceedings. The project leader shall be responsible for coordinating assigned staff responsibilities during the siting process and in preparing the EIA. The project leader shall ensure that the record of the proceedings is fully developed and responsive to all issues raised in the process. The project leader may intervene as a party in the public hearing if appropriate. Positions taken or representations made by the project leader during the siting process are not binding on the board.

#### **4400.2800 SITE ADVISORY TASK FORCE.**

Upon acceptance of an application for site designation and a certificate of site compatibility, the board may appoint a site advisory task force and its chair consistent with the act and part 4405.0800. The board shall provide guidance to the task force in the form of a charge. Site advisory task forces are advisory and are to assist the board in evaluating the application and alternatives, and in determining the scope of the EIA prepared under part 4400.3210.

#### **4400.2900 PUBLIC ADVISER.**

On acceptance of an application for site designation and a certificate of site compatibility, the board shall designate a public adviser. The public adviser shall be available to any person to advise that person on how to effectively participate in the siting process. The public adviser shall not give legal advice or advice which may affect the legal rights of the person being advised or act as an advocate.

#### **4400.3000 INFORMATION MEETINGS.**

The board shall hold at least two information meetings. After acceptance of an application for site designation and a certificate of site compatibility, the board shall hold at least one information meeting in the area affected by the applicant's proposal to explain the site designation process, receive comments on the scope of the EIA, and to respond to questions raised by the public.

Before the public hearings held to consider the sites approved for consideration by the board, the board shall hold an information meeting in each county in which a site is proposed to be located

to explain the site designation process, receive comments on issues and alternatives described in the EIA, and to respond to questions raised by the public.

#### **4400.3100 SITE PROPOSALS.**

Subpart 1. **Acceptance for consideration.** The board shall accept for consideration the sites proposed by the applicant and may accept for consideration any other site which is proposed in accord with this part. Only sites which have been accepted by the board prior to notice of the public hearing shall be considered at the public hearing. Sites accepted shall be identified by the board in accordance with part 4400.3710. In order that a site be included in the public hearing record, any proposer of a site which has been accepted for consideration at the public hearing by the board shall make a presentation of facts on the merits of the proposal at the public hearing.

Subp. 2. **Agency and advisory task force site proposals.** The board member agencies, power plant siting staff, and the site advisory task force may propose sites directly to the board. Site proposals made by the site advisory task force must be made no later than 105 days after acceptance of the application by the board.

Subp. 3. **Other sources of site proposals.** Any other person may propose a site as provided in this subpart:

A. The proposed site must be set out specifically on the appropriate general county highway map available from the Minnesota Department of Transportation or on United States Geological Survey topographical maps.

B. The proposal must contain the data and analysis required in parts 4400.2600 and 4400.3310 with the exception of part 4400.2600, subpart 1, items C and E, unless the information is the same as provided by the applicant.

C. The proposal must be presented to the chair of the board within 70 days of acceptance of the application by the board.

Subp. 4. **Adequate preparation of proposal.** Within ten days of receipt of a site proposal, the chair of the board shall determine if the proposal is adequately prepared in accord with this part. If the chair of the board determines that it is adequately prepared, the chair shall forward the proposal to the board for its consideration at its next meeting. If the chair of the board determines that the proposal is not adequately prepared, the chair shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days to provide additional information to the chair of the board. The chair of the board shall determine within ten days whether the amended proposal is adequately prepared. If the chair of the board then determines that the proposal is not adequately prepared, the proposer may appeal to the board at its next meeting to determine the adequacy of the proposal.

#### **4400.3200 PUBLIC HEARINGS.**

Public hearings held by the board under parts 4400.2600 to 4400.3500 shall be held for the purposes of collecting and verifying data and establishing a complete and accurate record upon which to base a decision. The hearing shall be conducted by an independent administrative law judge from the Office of Administrative Hearings. The conduct of these hearings shall be as prescribed by chapter 1405.

#### **4400.3210 ENVIRONMENTAL IMPACT ASSESSMENT FOR LEPGP.**

Subpart 1. **Record of hearings.** An environmental impact assessment (EIA) must be prepared for inclusion in the record of the public hearing under Minnesota Statutes, section 116C.58.

Subp. 2. **Contents.** The EIA must contain:

- A. a summary of the project description provided in the project proposer's application;
  - B. a summary of the certificate of need decision, if one was required and is available;
- the EIA shall not consider need for the project and other issues determined by the Public Utilities Commission;
- C. a description of the applicant's proposed sites and any alternative sites approved by the board for consideration at public hearing;
  - D. a description of feasible alternative designs;
  - E. an analysis of the potential human and natural environmental effects of each alternative site or design. The analysis must include those issues identified by the site advisory task force or by any interested person during the first public information meeting held under part 4400.3000;
  - F. a description of mitigative measures that could reasonably eliminate or minimize potential adverse effects;
  - G. a discussion of all known governmental permits and approvals required; and
  - H. an explanation of the board's siting process and how the public can participate, and specifically, how public comments on the EIA will be received for inclusion in the record of the public hearing.

Subp. 3. **Notice of availability.** The chair or the chair's designee shall provide notice of the availability of the EIA and how the public can participate in its review. The notice must be provided according to Minnesota Statutes, section 116C.58, and part 4400.3710, and may be provided in the notice of the hearing required. Notice must also be published in the EQB Monitor.

Subp. 4. **Distribution.** When notice of availability is provided under subpart 3, the EIA must be distributed to each member of the board and by certified mail to the persons receiving notice. At least one copy must be available for public review at the last public information meeting held before the public hearing and during the public hearing conducted under Minnesota Statutes, section 116C.58.

Subp. 5. **Comments.** The comment period begins when notice of availability of the EIA is published in the EQB Monitor and closes at the end of the oral portion of the public hearing. At least 30 days must be provided for comments. All comments become part of the hearing record as provided in part 1405.1800, subpart 5. The hearing record remains open until responses have been provided to all relevant comments which address deficiencies in the EIA pursuant to subpart 2. The date shall be set by the administrative law judge under part 1405.1400.

Subp. 6. **Adequacy.** Prior to designating a site and issuing a certificate of site compatibility for an LEPGP, the board shall make a finding and conclusion that the EIA, comments on the EIA, and responses to comments:

- A. have adequately addressed significant environmental issues identified by the site advisory task force and the public under parts 4400.2800 and 4400.3000;
- B. have been prepared in compliance with the requirements of this part; and
- C. have addressed the issues raised on the scope of the EIA so that all issues have been analyzed.

Subp. 7. **Cooperative processes.** The chair or the chair's designee shall cooperate with federal agencies to the fullest extent possible to reduce duplication between Minnesota Statutes, Chapter 116D, and the National Environmental Policy Act, United States Code, Title 42, sections 4321 to 4361.

Subp. 8. **Costs.** The board shall assess the project proposer for its reasonable costs of preparing and distributing the EIA pursuant to part 4410.6000.

#### **4400.3310 SITING CONSIDERATIONS.**

Subpart 1. **Considerations.** To facilitate the evaluation and designation of LEPGP sites, the board shall be guided by the act and the following considerations:

- A. effects on human settlement, including but not limited to, displacement, noise, aesthetics, community benefits, cultural values, recreation, and public services;
- B. effects on public health and safety;
- C. effects on land-based economies, including but not limited to, agriculture, forestry, tourism, and mining;
- D. archaeological and historic resources;
- E. effects on the natural environment;
- F. rare and unique natural resources;
- G. cumulative present and future demands on air and water resources;
- H. application of design options which maximize energy efficiencies, mitigate adverse environmental effects, and could accommodate expansion of generating capacity;
- I. use of existing LEPGP sites;
- J. use of existing transportation, pipeline, and electrical transmission systems;
- K. costs of constructing and operating the facility which are dependent on design and site; and
- L. adverse human and natural environmental effects which cannot be avoided.

Subp. 2. **Site exclusions.** The following resources within the state have been designated for preservation by action of the state or federal government for the benefit of the people and for future generations:

- A. national parks;
- B. national historic sites and landmarks;
- C. national historic districts;
- D. national wildlife refuges;
- E. national monuments;
- F. national wild, scenic, and recreational riverways;
- G. state wild, scenic, and recreational rivers and their land use districts;
- H. state parks;
- I. nature conservancy preserves;
- J. state scientific and natural areas; and
- K. state and national wilderness areas.

These areas shall not be designated as a site for an LEPGP except for use for water intake or discharge facilities. If the board includes any of these areas within a site for use for water intake or discharge facilities, it may impose appropriate conditions in the certificate of site compatibility which protect these areas for the purpose for which they were designated. The board shall also consider the adverse effects of proposed sites on these areas which are located wholly outside of the boundaries of these areas.

Subp. 3. **Site exclusions when alternative sites exist.** Certain resources within the state shall not be designated for LEPGP sites unless all feasible and prudent alternatives would have greater adverse human and environmental impact. Designation of a site in these areas shall be consistent with Minnesota Statutes, section 116C.53, subdivision 1, and shall include conditions to minimize impacts which adversely affect the unique character of these areas. Economic considerations alone shall not justify approval of these areas. These areas are:

- A. state registered historic sites;
- B. state historic districts;
- C. state wildlife management areas (except in cases where the plant cooling water is to be used for wildlife management purposes);
- D. county parks;
- E. metropolitan parks;
- F. designated state and federal recreational trails;
- G. designated trout streams; and
- H. the rivers identified in Minnesota Statutes, section 85.32, subdivision 1.



Subp. 4. **Prime farmland exclusion.** When there exists a feasible and prudent alternative with less adverse environmental and noncompensable human effects, no LEPPG site shall be designated where the developed portion of the plant site includes more than 0.5 acres of prime farmland per megawatt of net generating capacity, and no makeup water storage reservoir or cooling pond site shall include more than 0.5 acres of prime farmland per megawatt of net generating capacity. These provisions do not apply to areas located within home rule charter or statutory cities; areas located within two miles of home rule charter or statutory cities of the first, second, and third class; or areas designated for orderly annexation under Minnesota Statutes, section 414.0325.

Subp. 5. **Sufficient water supply required.** No site shall be designated that does not have reasonable access to a proven water supply sufficient for plant operation. No use of groundwater shall be permitted where removal of groundwater results in material adverse effects on groundwater in and adjacent to the area, as determined in each case. The use of groundwater for high consumption purposes, such as cooling, shall be avoided if feasible and prudent surface water alternatives less harmful to the environment exist. Groundwater use to supplement available surface water shall be permitted if the cumulative impact minimizes environmental harm.

#### **4400.3400 SITE DESIGNATION AND ISSUANCE OF CERTIFICATE OF SITE COMPATIBILITY.**

Within one year after the board's acceptance of an application for a certificate of site compatibility, the board shall act on that application. When the board designates a site it shall issue a certificate of site compatibility with any appropriate conditions. The board's decision shall be based on the record, part 4400.3310, and the act. The board shall give the reasons for its decision in written findings of fact. If the board refuses to designate a site, it shall indicate the reasons for the refusal and indicate the necessary changes in size or type of facility to allow site designation.

#### **4400.3500 CERTIFICATE COMPLIANCE.**

Following site designation and issuance of a certificate of site compatibility, the board may require the permittee to supply plans and information as it deems necessary to determine whether or not the LEPPG is in compliance with the conditions of the certificate of site compatibility.

#### **4400.3710 NOTICES.**

Subpart 1. **When to notice.** The chair or the chair's designee shall provide notice consistent with the act at the following points in the routing and siting processes:

- A. within 20 days of acceptance of any application filed with the board under the act, except an exemption application;
- B. public information meetings;
- C. availability of EIA;
- D. public hearing; and
- E. board designation of a site or route.

Subp. 2. **Content of notices.** All notices shall be provided consistent with the act, except for subpart 1, item E, and shall include, but not be limited to, the following information:

- A. identification of the applicant;
- B. date, time, and location of any action, meeting, or public hearing being noticed;
- C. a brief description of the proposed large electric power facility;
- D. a map showing the location of the proposed facility;
- E. procedures for participating in the routing or siting process and for interested persons to be placed on a mailing list for future notices;
- F. locations where documents are available for public review; and
- G. the name and function of the public advisor and the address and telephone number where that person can be reached.

Subp. 3. **Proposals required to be noticed.** For purposes of providing notice, a route, route segment, or site proposal shall be any route, route segment, or site proposed by the applicant or accepted by the board under part 4400.1100 or 4400.3100.

#### **4400.4000 DELAY IN ROUTE OR SITE CONSTRUCTION.**

If construction and improvement of a route or site have not commenced four years after the construction permit or site certificate has been issued by the board, the board shall suspend the certificate or permit. If at that time, or at a time subsequent, the utility decides to construct the proposed large electric power facility, it shall certify to the board that there have been no significant changes in any material aspects of the conditions or circumstances existing when the permit or certificate was issued. If the board determines that there are no significant changes, it shall reinstate the permit or certificate. If the board determines that there is a significant change, it may order a new hearing and consider the matter further, or it may require a new application.

#### **4400.4100 MINOR ALTERATIONS IN CONSTRUCTION PERMIT OR CERTIFICATE OF SITE COMPATIBILITY.**

Following issuance of a construction permit for an HVTL or a certificate of site compatibility for an LEPGP, a utility may apply to the board for minor alterations on conditions specified in the permit or certificate. The utility shall submit an application for a minor alteration which contains sufficient information for the board to determine within 45 days the following: whether the requested changes are significant enough to warrant board study and approval; whether to order public hearings near the affected area; or whether additional fees shall be assessed.

If the board decides to study the application, the board shall determine within 70 days whether granting the application would be consistent with part 4400.1310 or 4400.3310 and shall grant or deny the utility's application accordingly.

#### **4400.4200 REVOCATION OR SUSPENSION OF CERTIFICATE OR PERMIT.**

Subpart 1. **Initiation of action to revoke or suspend.** The board may initiate action to consider revocation or suspension of a construction permit or certificate of site compatibility on its own motion or upon the request of any person who has made a prima facie showing by affidavit and documentation that a violation of the act has occurred under Minnesota Statutes, section 116C.645 or this chapter.

Subp. 2. **Hearing.** If the board initiates action to consider revocation or suspension of a construction permit or certificate of site compatibility, it will consider in a hearing under Minnesota Statutes, section 116C.645 the following matters:

- A. whether a violation of any of the conditions in Minnesota Statutes, section 116C.645 has occurred;
- B. whether the violation will result in any significant additional adverse environmental effects;
- C. whether the results of the violation can be corrected or ameliorated; and
- D. whether a suspension or revocation of a permit or certificate will impair the utility's electrical power system reliability.

Subp. 3. **Finding of violation.** If the board finds that a violation of Minnesota Statutes, section 116C.645 or this chapter has occurred, it may revoke or suspend the permit or certificate, require the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension, or require corrective measures and suspend the permit or certificate.