November 17, 2021

VIA EDOCKETS

Ms. Kate Kahlert
Public Utilities Commission
121 Seventh Place East, Suite 350
Saint Paul, MN 55101-2147

RE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID 4151 Proposed Amendment to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines, Minnesota Rules Chapters 7849 and 7850 and Governing Notice Plan Filing Requirements, Minnesota Rules, part 7829.2550; Request to Schedule a Rules Hearing; and Request to Review Additional Notice Plan; Including Repeal of Minn. R. 7829.2550; 7849.0230; 7849.0240; 7849.1100; 7849.1300; 7850.1600; 7850.2000; 7850.2600; 7850.2900; 7850.3000; 7850.3100; 7850.3200; 7850.3300; 7850.3400; 7850.3500; 7850.3600; 7850.4000; 7850.4200
Docket No. E999/R-12-1246

Ms. Kahlert:

Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA) submits this letter in response to the Minnesota Public Utilities Commission's (Commission's) Dual Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received dated October 11, 2021.

EERA acknowledges the time and effort of Commission staff over many years that have been invested in the development of these proposed rules and appreciates the commitment of Commission staff as well as the contribution of the 2013-2014 advisory committee participants to this effort. Given this investment, EERA understands the Commission's interest in moving forward with the rules. However, EERA cannot support the adoption of the rules as currently proposed and believes substantive changes to the proposed rules are necessary to clarify Commission procedures for reviewing applications for large energy facilities.[1] EERA believes substantive changes are also necessary to address the Commission's stated desire to update the rules to align the procedures of Chapters 7849 and 7850 to the extent feasible, to clarify the structural framework of the processes,

1 EERA takes no position on proposed rule parts 7849.0030, 7849.0100, 7849.0110, 7849.0115, 7849.0120, 7849.0200, 7849.0208, 7849.0220, 7849.0250, 7849.0255, 7849.0260, 7849.0270, 7849.0275, 7849.0280, 7849.0290, 7849.0300, 7849.0400, 7849.1000, and 7849.1150

to resolve inherent timing conflicts, to maximize public participation, and to incorporate new statutory criteria. EERA requests a public hearing and believes public input in an open forum administered by an Administrative Law Judge is an important step in ensuring that the Commission is well informed and advised as they consider adoption of the proposed rules.

This letter outlines EERA's involvement in the rulemaking to-date and provides a broad overview of issues of concern related to the rulemaking's timeliness, the effectiveness of public engagement under the proposed rule, procedure and timelines associated with new proposed process elements, and matters of clarity and consistency across and within the revised chapters. Attachment 1 provides supporting information in the form of detailed EERA input by rule part and subpart.

EERA Involvement To-Date

In 2013 and 2014, EERA staff served on the Commission's rulemaking advisory committee for Minnesota Rules Chapter 7849 and Chapter 7850. This participation included approximately nine committee meetings, comments on proposed draft rules and flowcharts, and suggestions for possible rule revisions. Following the conclusion of the advisory committee's work, EERA staff continued to coordinate with Commission staff and provided comments on a proposed draft of the rules in September 2015. In 2017, EERA staff provided oral and written[2] comments on issues arising from February 2017 rule drafts,[3] and in 2018 EERA staff provided oral comments to the Commission regarding the proposed publication of revised rules in the State Register. Many of the issues raised at that time remain in the rules proposed for adoption at this time. Since 2018, EERA has not been engaged in the further development of the rules but has done a detailed review of the proposal filed in docket 12-1246 on October 12, 2021 (Attachment 1)[4].

Rulemaking Timeliness

EERA notes that there has been a long lag between initial rule development efforts and the release of the proposed rules; as a result, they are silent on many relevant issues of our time. In the nine years since this rulemaking docket was opened, our world, energy outlook, and cohort of stakeholders have changed in significant ways. EERA believes the composition of the workgroup established in 2013 does not adequately reflect the constituency that now commonly engages in need, routing, and siting dockets, including Tribes, other regulatory agencies, organized labor, and other advocacy organizations. Issues like climate change, environmental justice, decommissioning, modernization of noticing techniques, and use of prime farmland for utility scale solar have developed into issues of key significance in the intervening years but are not reflected in the rule. As detailed in Attachment 1, EERA believes it is critical that revisions to the 7850 and 7849 rules address these now well-established issues of concern.

2 EERA, May 8, 2017. Comments re: Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Generating Plants and High Voltage Transmission Lines, Chapters 7849 and 7850, eDockets no. 20175-131640-01; EERA May 31, 2017 Reply Comments re: Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Generating Plants and High Voltage Transmission Lines, Chapters 7849 and 7850 eDockets no. 20175-132345-01.

3 Commission February 24, 2017. February 2017 Draft for Public Review Chapters 7849 and 7850, eDockets no. 20172-129327-01 and 20172-129327-02.

4 Commission, October 11, 2021. Notice of Intent to Adopt Rules without a Public Hearing, eDockets no. 202110-178650-01, 202110-178652-01.

Effectiveness of Public Engagement

EERA understands that the Commission initiated this rulemaking, in part, to maximize public participation. EERA recognizes that efforts have been made to modify handling of notification lists and noticing procedures, and to add process steps that allow for public comment. EERA, however, is concerned that the proposed rules' implementation of these concepts is not sound and may unintentionally undermine engagement by making the process more confusing and increasing the participation burden. For example, a number of process steps have been added to increase opportunities for public comment, however, it appears that the additional process steps may overlap, resulting in multiple comment periods running simultaneously with different topics open for comment and comments directed to different agencies. In other cases, comment periods are offered with no apparent mechanism for considering comments and no pathway for comments to influence an outcome. EERA believes overlapping comment periods would increase the complexity of the process and create confusion for the public and other stakeholders. Additionally, EERA believes that dead-end comment opportunities could undermine stakeholder willingness to participate and make the process both frustrating and confusing. As detailed in Attachment 1, EERA proposes a number of revisions to the proposed 7850 and 7849 rules, ranging from minor to significant, to address public engagement issues.

Timelines Associated with New Proposed Process Elements

EERA understands that the Commission initiated this rulemaking, in part, to clarify the structural framework of the process and resolve inherent timing conflicts. However, in evaluating the new process elements and reviewing timelines for both the full and alternative review processes included in the Statement of Need and Reasonableness, EERA notes that in several areas the timelines are either inconsistent with rule requirements and practice or silent on how the requirement would fit into the process. EERA proposes that the rules be revised to clarify the procedural steps needed to accommodate each of the new process elements and to more robustly address the timelines that will be required to implement the new rules in practice.

EERA understands that the proposed rule leaves most elements related to timing and sequence of events to the "process schedule." However, EERA believes these elements need to be further fleshed out in rule in order to allow stakeholders as well as project proposers and interested agencies to better predict how the process might run on any given project. EERA believes leaving major issues of timing and sequencing undefined would make an already complex process even more complex and difficult to track. Attachment 1 provides detailed comments and proposed revisions with respect to procedure and timelines around the new process elements.

Matters of Clarity and Consistency

EERA understands that the Commission initiated this rulemaking, in part, to align the procedures of both rule chapters to the extent feasible and to provide better clarity and consistency. EERA's review has identified a need for additional revisions to address legacy inconsistencies as well as newly introduced issues of clarity and consistency. Given the time and effort that goes into the rule-making process, EERA believes it is valuable to be thorough in making a clean rule in which even small variations in word choice are made with intention and definitions, timelines, notice requirements, and document content requirements are constant across similar scenarios. Attachment 1 provides a detailed review of EERA's proposed revisions in this category.

EERA appreciates the opportunity to comment on the adoption of the proposed rules. We acknowledge that, despite our detailed review, the record is voluminous and there are likely items that we have overlooked or issues where additional information may be needed. EERA considers it critical to thoroughly review the proposed rules through the Office of Administrative Hearings hearing process to ensure clarity, encourage public participation and develop the best version of these rules practicable. EERA is available to answer any questions the Commission may have or to assist in any additional review that is needed.

Sincerely,

Louise I. Miltich

Enclosure: Attachment 1. Energy Environmental Review and Analysis detailed comments and recommendations on Proposed Permanent Rules Relating to Power Plants or Lines; Revising the Certificate of Need and Site or Route Permit Requirements

c: Will Seuffert, Executive Secretary - Public Utilities Commission
Bret Eknes, Supervisor Energy Facilities Permitting - Public Utilities Commission

Attachment 1: Energy Environmental Review and Analysis detailed comments on and proposed revisions to Proposed Permanent Rules Relating to Power Plants or Lines; Revising the Certificate of Need and Site or Route Permit Requirements

7850 Proposed Rules

7850.1000 Definitions

EERA proposes that the rule define "day" in this section so that it is generally more accessible to the public, applicants, and all participants in the process.

Subpart 10

This subpart defines "large electric power facilities" as "high voltage transmission lines and large electric power generating plants." This term, however, does not appear anywhere in the 7850 rules other than in the definitions section. Instead, the term "project" is used frequently throughout 7850 in a manner that seems consistent with the definition assigned in this subpart to "Large electric power facilities." EERA proposes defining "project" in this section as "high voltage transmission lines and large electric power generating plants" and deleting Subpart 10. Or, alternately, EERA proposes replacing the term "project" throughout the rule with the term "Large electric power facilities."

7850.1200 Applicability

This part appends the phrase "including the environmental review of such projects" to the "processing of permit applications by the commission for large electric generating plants and high voltage transmission lines." The phrasing suggests that the environmental review process sub-activity under the umbrella of the permitting process. EERA proposes replacing the word "including" with "as well as" to clarify that environmental review is its own, distinct process that does not produce an authorization or approval. In addition, EERA proposes restoring the reference to Chapter 4410. This chapter regulates the state's environmental review program and the authority for conducting review under 7850 comes from 4410, so it is reasonable to retain this reference.

7850.1300 Permit Requirement

Subpart 5

This subpart defines the term "commencing construction." For clarity and accessibility, EERA proposes moving this definition to the definition section 7850.1000.

7850.1400 ~~Small~~ Exempt Projects

Subparts 1 &2

Subpart 1 of this section requires that proposers of exempt projects obtain all approvals required by local, state, or federal units of government with jurisdiction over the project, including applicable environmental review provisions. EERA proposes striking the phrase "including applicable environmental review provisions" as environmental review is not an approval. EERA proposes replacing this language with the following: "and comply with the environmental review requirements of Chapter 4410 and Minnesota Statutes 116D," or, alternately, EERA proposes restoring the relevant portion of repealed Subpart 2.

7850.1500 Exceptions to Permitting Requirement for Certain Existing Facilities

Subpart 4

The need and reason behind the added exception "modification of an LEPGP powered by solar energy that is exempt from a certificate of need under Minnesota Statutes, Section 216B.243, Subdivision 8, clause (7), provided the plant is not expanded beyond the developed portion of the plant site;" is unclear. EERA would like to clarify the origin of this concept and what scenario this exception would

capture. Is this a repowering exemption? EERA proposes that either the rule or the Statement of Need and Reasonableness (SONAR) be modified to provide clarification.

7850.1610 Notice Lists

Subpart 1

This subpart indicates that this part lays out the requirements for list **establishment** and **maintenance**. For precision and clarity EERA proposes that the language of this first subpart be used in the subparts that follow so that both of these concepts - "establishment" and "maintenance"- are addressed. Subparts 2-6 use the term "maintain" but appear to address establishment rather than maintenance. Subpart 7 is specific to maintenance of the lists established under 2-6.

Subpart 6

This subpart lumps Tribal and local governments, puts the Tribal list under the applicant's responsibility, and limits the Tribal contact requirement to "chief executives" of Tribal governments located "in the proposed project area." EERA does not believe that this is an appropriate approach. Tribes are sovereign nations and should not be lumped into the local government contact list. A tribal contacts list should be established and maintained as a separate list under the Minnesota Public Utilities Commission's (commission's) responsibility. All 11 federally recognized tribes that share geography with Minnesota should be included on this list with appropriate contacts for each Tribal government identified through government to government Consultation between the commission and each Tribe. EERA proposes that the rule allow for all 11 federally recognized tribes that share geography with Minnesota to receive notice regardless of whether the tribal government is located "in the proposed project area."

Subpart 7

(D) This part indicates that "The entity maintaining a list must file the list and any updated list in the commission's electronic filing system." This language raises a number of questions for EERA. The Commission does not typically file contact lists; what is the reasoning for this new approach? In what format would these be filed? Where would non-project-specific (eg. general list) lists be filed? In each docket? EERA proposes that the rule be revised to clarify.

7850.1620 Preapplication Meetings; Transmission lines

EERA recognizes that preapplications meetings are a common practice for potential applicants and believes that these meetings can be a positive step in getting early engagement from stakeholders and giving stakeholders a chance to help shape the project before it enters the permitting stage.
EERA, however, proposes that this section be removed because it assigns regulatory responsibility at a point in the process where the agencies have little, if any, ability to oversee the potential future applicant. First, Subpart 3B contemplates the potential future applicant providing the public with contact information at a point in the process where it would not be feasible to have specific staff assigned, no public "adviser" (advisor?) would yet be assigned, and commission and Minnesota Department of Commerce (department) staff would have limited, if any agency knowledge about the project. This is a scenario that EERA believes is likely to lead to a confusing and disappointing experience for stakeholders who may try to get assistance or information from commission or the department. Second, Subpart 4 indicates that the potential applicant will take comments and this subpart makes the commitment that the potential future applicant "must" consider comments received when deciding which routes to include in its draft permit application. At the pre-application stage, however, there is no mechanism for the agency to follow-through and ensure an outcome consistent with this rule language. EERA believes this is likely to frustrate and disappoint stakeholders right from the outset of the process.

If this section is not removed, EERA proposes, for consistency, that it be applied to both high voltage transmission lines (HVTLs) and large electric power generating plants (LEPGPs). EERA understands that the historic intent was to include this additional process step for HVTLs on the theory that HVTL projects tend to impact more stakeholders. In EERA's experience, particularly in the last few years, project type alone is not a good predictor of number of affected persons. A 3,500 acre solar farm, for example, will likely have many more potentially interested persons than a 3 mile 115 kilovolt (kV) HVTL.

7850.1640 Draft Permit Application Required

The SONAR indicates that this section codifies current practice and that producing a draft permit application is "consistent with information applicants currently provide to the department on an *ad hoc* basis." EERA would like to clarify that EERA does not conduct review of draft permit applications on an *ad hoc* basis. The department has developed guidance for project proposers regarding draft permit applications and working with the department, it is not an *ad hoc* practice

EERA proposes the revisions identified below for each subpart of this part. As a general concept, EERA finds the draft permit concept problematic for a number of reasons and proposes that the rule be revised to address these issues. First, although it possibly offers an additional point in the process for the public and other stakeholders to participate, the implementation in the rule appears to provide a comment period (7850.1650 Subpart 2C, discussed below) without any mechanism for those comments to be considered by the commission and no avenue for these comments to influence the process. In EERA's experience, inviting comments with no intention of using them frustrates the public and other stakeholders and undermines goals and objectives around engagement. Second, adding a draft filing makes an already complex process (see Office of Legislative Auditor's 2020 evaluation report of Public Utilities commission's Public Participation Process) even more complex, creates confusion, and puts additional burden on the public. With two versions of the permit application in the record, those not well versed in the process are more likely to misunderstand where their efforts should be focused as the process unfolds.

As an additional general comment on this rule part, given the commission's directive to develop decommissioning plans for solar facilities in Docket 17-123 and specific permit requirements in recent solar siting permits, EERA proposes adding a decommissioning plan requirement under subparts 2 and 3. It is one of the issues that has become increasingly significant over the last few years, but was not prominent during the early years of this rulemaking's development.

Subpart 2

(B) EERA proposes restoring the language in this part to the exact language that appeared in the previous version of the rule and appears in the corresponding section of this proposed rule that addresses the same content requirement for HVTL draft permit applications (7850.1640 Subpart 3A). It is not clear why it was truncated in this one instance.

(I) EERA proposes reverting to the previous language. "given the facility's design" as the meaning is different than "that are dependent on design and route." The reason for the change is not provided in the SONAR and it does not appear to EERA to be necessary and reasonable.

(P) EERA proposes striking this new addition. It is not clear what weight is given to the applicant's recommendations on whether a full Administrative Law Judge's (ALJ's) report is needed, why it is reasonable to make a case for one approach or another at this early stage in the process, or why the permit application is a suitable platform to position on this issue.

(Q) EERA proposes modifying the rule to clarify what “multiple applications” means. Multiple permit applications under 7850? Multiple under the broader set of rules that govern commission facilitates siting7852? 7853? 7854?
(R) EERA proposes either deleting this new requirement or identifying a specific reason and need behind this addition. If it is not deleted, EERA proposes that corresponding language be added to 7850.1640 Subpart 3 for consistency.
(S) requires a draft site permit application to include a statement that the applicant may exercise the power of eminent domain under Minnesota Statutes, section 216E.12, to acquire land necessary for the project, including the phrase "your property may be included in the final site selected." This is also a required throughout the rule as part of the notice contents. This raises a number of concerns. First, it implies that any applicant has the authority to use eminent domain. EERA is not aware that the power of eminent domain has been established for all types of project proposers. Has this been established and if so, where, when? Second, it implies that the applicant intends to use eminent domain. What if the applicant has no intention of using eminent domain for the project? Third, the phrase “your property may be included in the final site/route selected” is not appropriate for a permit application. Permit applications are consumed by an audience that is not limited to landowners within the project area. EERA believes it would be confusing and frustrating for any and every reader of the permit application to believe their property might be included in the final site/route selected. Similarly, the statement would not be appropriate for a notice to any of the contact lists other than the landowner list. While the SONAR indicates that “This is a reasonable method of ensuring that the public is aware that eminent domain could apply without suggesting that it is likely to apply,” EERA disagrees for these reasons and proposes that this new requirement be stricken.
Other: EERA proposes restoring the language from 7850.1900 Subpart L (existing rules) to the draft permit application contents requirement (“a copy of the Certificate of Need for the project from the Public Utilities Commission, or documentation that a Certificate of Need has been submitted or is not required”). This language is both necessary and reasonable to ensure that a site permit application does not go forward without verifying whether or not a certificate of need is required. Since a site permit cannot be granted before a certificate of need (if one is required), verifying at the beginning of the process can help avoid inefficient use of the agency, public, and applicant’s time.

Subpart 3
(C) requires an alphabetical listing of each proposed route. EERA proposes removing this requirement. EERA understands that as a result of statutory changes under 216E.03, applicants are no longer allowed to specify a route preference. In EERA’s experience alphabetical listing is interpreted by stakeholders as an implied ranking and undermines the statutory intent. If there is a need to prescribe an approach in rule, color-coding would be more reasonable.
(D) requires a description of each route considered and rejected, including reasons for rejections. For consistency EERA proposes that the language in (D) mirror the language in 7850.1900 Subpart 2B. “Whether or not the project is eligible for alternative review under part 7850.2800, a list of each route the applicant has considered and rejected, including the reasons for rejecting the route.” While the inconsistency in the proposed rule language does not change the meaning, it does not seem reasonable to use slightly different language to describe a content requirement that applies to first the draft permit application and then the permit application. With this revision, the language in this subpart would also be more consistent with the parallel requirement in the draft LEPGP permit application under 7850.1640 Subpart 2A.
(F) requires that the draft HVTL permit application state whether or not the project is eligible alternative review. EERA either proposes removing this requirement or including it under 7850.1640 Subpart 2 as well, so that (for consistency) it is required for both draft HVTL permit applications and HVTL permit

applications. EERA believes it is not reasonable to include this requirement for HVTL permit applications but not for LEPGP permit applications.

(H&K) require certain information be included in the draft site permit application and specifies that it be provided in a "list" form. EERA proposes removing the specificity in form. List form is not reasonable for the types of information referenced; maps, tables, or charts are all more reasonable ways of communicating this type of spatial data. EERA believes it would be appropriate for the rule language to be broad, allowing flexibility in choosing appropriate form. EERA notes that the content requirement under H is redundant with the environmental information required under 7850.1640 Subpart 4 and proposes that it could be removed entirely.

(M) EERA proposes reverting to the language in the existing rule which requires a cost analysis for each route including the costs to construct, operate and maintain the HVTL "**that are dependent on design and route**." The proposed phrase "**given the facility's design**" does not have the same meaning as "**that are dependent on design and route**." The reason for the change is not provided in the SONAR and it does not appear to EERA to be necessary and reasonable.

(P) requires a list and brief description of federal, state, and local permits that may be required for the proposed HVTL. EERA proposes that this language be adjusted to align with the similar requirement for draft site permit applications under 7850.1640 Subpart 2L. a list and brief description of federal, state, and local permits that may be required for ~~the~~each proposed HVTL

(Q) EERA proposes restoring the language from 7850.1900 Subpart L (existing rules) to the draft permit application contents requirement ("a copy of the Certificate of Need for the project from the Public Utilities Commission, or documentation that a Certificate of Need has been submitted or is not required"). This language is both necessary and reasonable to ensure that a route permit application does not go forward without verifying whether or not a certificate of need is required. Since a route permit cannot be granted before a certificate of need (if one is required), verifying at the beginning of the process can help avoid inefficient use of the agency, public, and applicant's time.

(R) EERA proposes that, if the meeting summary required under this part is the same as the pre-application meeting summary prepared under 7850.1620, the rule should cross reference to close that item out. Particularly since there would be no open docket at the stage where the pre-application meeting would occur, this would give that document a place to come into the record.

(T) EERA proposes striking this new requirement. There is no indication of need or reasonableness in the SONAR. If need and reason can be established, EERA recommends adding a similar requirement under 7850.1640 Subpart 2, because similar need and reason would likely apply.

(U) EERA proposes striking this new addition. It is not clear what weight is given to the applicant's recommendations on whether a full ALJ's report is needed, why it is reasonable to make a case for one approach or another at this early stage in the process, or why the permit application is a suitable platform to position on this issue.

(V) EERA proposes that the rules be revised to clarify what "multiple applications" means. Multiple permit applications under 7850? Multiple under the broader set of rules that govern commission facilitates siting7852? 7853? 7854?

(W) This part requires a draft route permit application to include a statement that the applicant may exercise the power of eminent domain under Minnesota Statutes, section 216E.12, to acquire land necessary for the project, including the phrase "your property may be included in the final route selected." This is also a required throughout the rule as part of the notice content requirements. This raises a number of concerns. First, it implies that any applicant has the authority to use eminent domain. EERA is not aware that the power of eminent domain has been established for all types of project proposers. Has this been established and if so, where, when? Second, it implies that the applicant intends to use eminent domain. What if the applicant has no intention of using eminent domain for the project? Third, the phrase "your property may be included in the final site/route selected" is not

appropriate for a permit application. Permit applications are consumed by an audience that is not limited to landowners within the project area. EERA believes it would be confusing and frustrating for any and every reader of the permit application to believe the project might be included in the final site/route selected. Similarly, the statement would not be appropriate for a notice to any of the contact lists other than the landowner list. While the SONAR indicates that "This is a reasonable method of ensuring that the public is aware that eminent domain could apply without suggesting that it is likely to apply," EERA disagrees for these reasons and proposes that this new requirement be stricken.

Subpart 4
This subpart should specifically identify greenhouse gas emissions, climate change, and environmental justice. These are significant human and environmental issues of our time. In the many years since this rulemaking was started, addressing these issues in environmental review has been widely recognized as critical. It is both necessary and reasonable to modernize these rules to keep pace with the realities of our time and EERA notes that many other agencies at both a state and federal level recognize and have been responsive in their environmental review and permitting programs.

7850.1650 Notice of Draft Permit Application
In general for notices required under this chapter and under Chapter 7849 EERA proposes requiring consistent basic notice content across each of the required notices. For example, the draft permit application notice under 7850.1650 requires the applicant's name and contact information and does not require any project information. The permit application notice under 7850.2100 requires the applicant's name, does not require applicant contact information and does require project information. The certificate of need pre-application notice in 7849.0130 does not require applicant name or contact information but does require project information. It was difficult to do a thorough comparison of content requirement consistencies and inconsistencies because content requirements are ordered differently, stated differently, and described in different levels of detail for each of the required notices. EERA proposes that the rule be revised to order notice content requirements similarly across chapters and parts, state the requirements in a similar manner, and describe the requirements in similar level of detail.

Further, each of the required notices have different follow-up steps. For example, a compliance filing with an affidavit of service is required for the certificate of need pre-application notice in 7849.0130, for the draft permit application notice under 7850.1650 no affidavit is required, however an affidavit is required for the permit application notice under 7850.2100. Good-faith-sufficient applies to the certificate of need pre-application notice in 7849.0130, failure to notice is not addressed for the draft permit application notice under 7850.1650, and for the permit application notice under 7850.2100 there are provisions for failure to give notice but they are not presented as "good faith sufficient." EERA proposes that, unless there is a good reason for follow-up procedure to differ, the rule be revised for consistency across chapters and parts.

Subpart 1
(D) As under 7850.1610, EERA proposes that the tribal contact list should be separate from the local government contact list. EERA proposes this change be made in every instance of notice in both Chapters.

Subpart 2
EERA proposes that notice content include information about the project and the process. To that end, EERA proposes including content requirements in this section similar to those that currently exist in

7850.2100 Subpart 3D, 3E and 3F. Furthermore, EERA notes that based on overlapping timing requirements of this chapter and Chapter 7849, it is likely that this draft permit application notice and project notice (7849.0130) are likely to be sent out within two weeks of one another. EERA believes it would be reasonable and reduce confusion if both notices included similar basic content, such as project description. EERA proposes that the rule be revised by cross-checking the basic project and process content requirements of notices to ensure that they are consistent. Including information about the process in notices is reasonable and necessary to help the public and other stakeholders understand that there is a permitting process and to let them know that there are specific opportunities for them to engage in the process. EERA believes public engagement is a critical part of the process and should be facilitated by including adequate information in notices.

(C) requires the applicant to state that they have been required by the commission to mail the notice and that the commission is soliciting comments on the draft permit application from interested persons. EERA proposes that the rules be revised to explain the purpose and procedure for handling and addressing comments. EERA cannot identify in the proposed rules where the commission solicits comments from the public on a draft permit application. What are recipients to comment on? To whom shall comments be submitted? When are the comments considered and how? In EERA's experience, meaningful stakeholder engagement requires an opportunity for comment **as well as** a mechanism by which comments can inform a decision or effect change. Dead-end comment opportunities can undermine stakeholder willingness to participate and can make the process both frustrating and confusing. If, indeed, the commission intends to take comments from the public on the draft permit application, EERA proposes that the notice for comment come from the commission rather than indirectly indicated by the applicant and that the rule be modified to include some mechanism by which these comments might be considered by the commission and have some influence on process or outcome.

(F) EERA believes the language regarding eminent domain is problematic for the reasons discussed above and proposes it be stricken.

(H) EERA proposes striking the word "completed" in line 75.9. While the applicant might be able to a provide a date that they intend to file a permit application, that permit application will not be a "complete" permit application until the Executive Secretary makes a completeness determination under 7850.1710 Subpart 1 or 2.

7850.1680 Comments and Process

Subpart 1

EERA proposes striking the word "complete" from "complete draft" in line 75.15. The rule does not contemplate a process for determining completeness of the draft permit application, so referring to it as a "complete draft" is not reasonable.

EERA proposes a longer time period for EERA's review of the draft permit for deficiencies. Under EERA's current practice, review of a draft permit application can take on the order of several weeks of review and iteration with the applicant to ensure that the permit application contains adequate information to make the formal process efficient and that it is worthwhile for stakeholders to spend their time engaging in the process. The proposed rules do not appear to include any mechanism by which EERA's comments are considered or recommendations implemented, so it is unclear why this expedited time period is necessary. It is also unclear why it is reasonable, given the inconsistency of this timeframe with the timeframe of the existing practice it purportedly attempts to codify. EERA believes that, at a minimum, EERA's review comment period should be allowed to run concurrently with the 21-day advisory task force comments under 7850.1680 Subpart 2. EERA proposes that the rules be revised to clarify the purpose or intended use of the comments supplied by EERA under this subpart and provide a mechanism by which the comments inform the process. Is the applicant required to address these

comments? If so, how is that action documented? Are these comments used by the Executive Secretary to help inform his completeness determination under 7850.1710 Subpart 1? If so, allowing enough time for EERA to be thorough is likely critical to ensuring the Executive Secretary has adequate information to rely on in this determination.

Subpart 2
This subpart requires notice for comments on an advisory task force (ATF) to go to the general list, among others. EERA proposes that the requirement of providing notice the general list be eliminated if indeed, as described under 7850.1610 Subpart 2, the general list is a list of persons who want to be notified of an application. This issue of requiring notification of the general list for all notices throughout the permitting and review process surfaces throughout the notice requirements in this proposed rule. If the commission contemplates the general list differently, for example, a list of persons who wish to receive all notices for every project, EERA proposes that this should indicated under 7850.1610 Subpart 2.

EERA proposes that the rule be revised to clarify the timeline for comment on the ATF. EERA recognizes that an early opportunity to weigh in on the ATF may be desirable for some stakeholders. EERA however, also notes that the hypothetical timeline offered in the SONAR seems to contemplate that this comment period would close well before the permit application is filed. Because the rules place no limit on the extent to which a project proposer can modify the project between the draft permit application and the permit application, EERA believes it is possible that new issues may arise at the permit application stage that warrant establishment of an ATF. Therefore, EERA believes it is unreasonable to close the window for comments on ATF before the permit application is even filed. If, however, the comment period on ATF is held open for a reasonable period of time, EERA has a different set of concerns around potentially overlapping comment periods between this ATF comment period and the comment period on the permit application under 7850.2110 and the scoping comment period under 7850.2300. These concerns are discussed further below under EERA's comments on 7850.2110 and 7850.2300.

EERA proposes revising line 75.21 to replace the word "made" with "filed." It is not clear what it means to "make" notice, however "filing" notice is a specific action that we can track and verify.

Subpart 3
EERA understands that the proposed rule leaves most elements of timing and order of events to the "process schedule." EERA recognizes this has the benefit of offering flexibility and allowing process and timing to be tailored to each project. EERA, however, has concerns that the new process steps introduced in the new rule, combined with procedural realities will not result in a process that can plausibly meet the statutory timelines under Minnesota Statute 216E. The schematic schedule attached to the SONAR does not address, for example, the need for commission to meet to make decisions at various points in the process or account for the time associated with the procedural steps these meetings involve (scheduling, briefing, meeting, and producing an order). EERA proposes that the SONAR include a detailed timeline that addresses each step that would actually be required to implement the requirements in this proposed rule. EERA also believe it is not entirely reasonable to leave timing and order of events so undefined that stakeholders (who are not part of the "process schedule" development) have very limited ability to predict how the process might run on any given project. EERA believes this approach makes an already complex process even more complex and difficult to track. Issues of timing are discussed further at the end of this document.

7850 1700 Permit Application and Manner of filing

Subpart 2

This subpart has been repealed. EERA proposes restoring this subpart. Although Subpart 1 addresses electronic filing, file size limitations in the electronic filing system make the e-filed electronic files cumbersome to use for purposes of posting on a website. For purposes of clarification, however, an update to Subpart 2 to reflect longstanding practice of the department (as opposed to commission) posting the electronic application is reasonable and necessary so EERA proposes this be updated.

7850.1710 Application Completeness; Schedule

Subpart 1

This subpart indicates that at this step in the process a Public Advisor will be designated. EERA notes that this appears inconsistent with the proposed pre-application meeting, public involvement step under 7850.1620 Subpart 3 B, which directs pre-applicants to provide contact information for the public advisor. The advisor is again assigned under 7850.2200. EERA proposes that the rule be revised to clarify when the public advisor is to be assigned. Is there a single person on the commission staff that will function as a public advisor on every docket? A temporary advisor assigned prior to assignment in 7850.2200?

It is unclear to EERA what information or analysis the Executive Secretary would rely on to make the completeness determination. Completeness review is typically conducted by EERA staff and involves non-trivial analysis of the information in the permit application. EERA notes that a thorough analysis during the department's review of the draft permit application (7850.1680 Subpart 1) will be critical in reducing the complexity of the completeness evaluation by the Executive Secretary at the permit application stage. As noted above, EERA will need more than 10 days at the draft permit application stage to conduct a meaningful review.

Subpart 2

It is unclear to EERA what information or analysis the Executive Secretary would rely on to evaluate the adequacy of information submitted by the applicant to remedy incompleteness. Review of information submitted to remedy incompleteness is typically conducted by EERA staff and involves non-trivial analysis of the information filed. EERA notes that a thorough analysis during the department's review of the draft permit application (7850.1680 Subpart 1) will be critical in reducing the complexity of the completeness evaluation by the Executive Secretary at the permit application stage. As noted above, EERA will need more than 10 days at the draft stage to conduct a meaningful review.

Subpart 3

This subpart uses the phrase "multiple permit applications or on applications filed under this chapter and Chapter 7849." In other parts of this rule that make reference to this concept, it is phased as "both a certificate of need application and a site application or… multiple applications" (eg. 7850.1640 Subpart 2 Q and Subpart 3V). It is not clear if this alternate phrasing is intentional, and if so, what the distinction may be. For consistency, EERA proposes using consistent language throughout the rule to refer to the concept of site/route and CN or multiple applications.

Subpart 4

This subpart indicates that the updated process schedule must be shared with the department and the applicant, but indicates it would only be available to the public upon request. For transparency and to aid the participation of the public and other stakeholders, EERA proposes that the updated process schedule be filed in the record.

Subpart 5
The SONAR indicates that this subpart codifies Minnesota Statutes 216E Subdivision 9 or 216E.04 Subdivision 7. EERA notes that the rule language truncates the statutory language. For consistency, EERA recommends including the additional language from statute: "for just cause or upon agreement of the applicant."

7850.1800 Permit Fees
Subpart 2
EERA recommends a revision to the proposed language in line 78.16 to clarify that the department determines that the additional percentage is reasonably necessary.
EERA proposes a revision to the proposed language in line 78.17 to clarify that this Subdivision applies to both site **or route** evaluation and design process

Subpart 3
EERA proposes a revision to the proposed language in line 78.24 to clarify that the department notifies the applicant of additional fees are necessary for completion of the permitting process.

7850.1900 Application Contents
Subpart 1
(A) For consistency EERA proposes that the language in this subpart mirror the language in 7850.1640. Subpart 2A so that it reads: "For all ~~proposed~~ projects, including projects eligible for alternative review, ~~a list of~~ each site…" For clarity and consistency, EERA proposes that the proposed rule be revised to eliminate these kinds of minor consistencies. Although, in most cases, these minor inconsistencies appear benign, EERA notes that slight variation can result in unintended room for interpretation or misunderstanding.

Alternately, EERA proposes that this language could be stricken entirely, since it is already listed as a requirement of the draft site permit application under 7850.1640 Subpart 2 and 7850.1900 Subpart 1 states that the site permit application must include the information required for a draft site permit application.

Subpart 2
(A) EERA proposes striking the rule language indicating that the routes must be labeled alphabetically. Minnesota Statute 216.03 Subdivision 3 requires that "the applicant shall propose at least two sites for a large electric power generating plant and two routes for a high-voltage transmission line. Neither of the two proposed routes may be designated as a preferred route and all proposed routes must be numbered and designated as alternatives." Alphabetic labeling gives the perception of ranking, which is not consistent with statutory intent.

Subpart 2
(B) This proposes that this language could be stricken entirely, since it is already listed as a requirement of the draft site permit application under 7850.1640 Subpart 3 and 7850.1900 Subpart 2 states that the site permit application must include the information required for a draft site permit application.

Subpart 3
EERA proposes that Line 83.13 and 83.14 be modified to as follows: An application must include the information required for a draft site or route permit application under 7850.1640 and must identify any

material change made to the information filed in the draft application. EERA believes this subpart was intended to apply to both site and route permit applications. In addition, EERA believes that identifying material changes as opposed to every change will allow members of the public and stakeholders to more easily get a sense of the substantive differences without having to weed through an exhaustive list of changes.

7850.2100 Notice of Application

Subpart 3

EERA proposes that Subparts 3D, 3E and 3F and 3H that are included in existing rules be restored. Including information about the process in notices is reasonable and necessary to help the public and other stakeholders understand that there is a permitting process and to let them know that there are specific opportunities for them to engage in the process. EERA believes public engagement is a critical part of the process and should be facilitated by providing adequate information in notices.

As indicated above in EERA's comments on 7850.1650 Subpart 2, EERA believes the language regarding eminent domain under Subpart F is problematic as it presumes all permittees have the power of eminent domain and this has not been established for independent power producers. In addition, EERA believes this language is inappropriate for a notice that is to be sent to all of the lists including under 7850.2100 Subpart 2 A-F as it would not apply to any of the recipients other than perhaps those on the landowner list.

Subpart 4

Subpart 4 requires newspaper notice. EERA proposes that the mechanism for distributing notice be expanded to include a requirement to use more modern formats to ensure that notice reaches stakeholders. EERA believes it is reasonable to supplement the newspaper notice with notice in formats that are more applicable to a significant segment of the modern public. This is a proposed change that EERA believes should be applied to all areas in the proposed 7850 and 7849 rules that require newspaper notice.

7850.2110 Comments on Application

Subpart 1

EERA proposes that the rules be revised to clarify procedure and timing of this comment period.

EERA believes it is problematic to run two concurrent comment periods for routing/siting – one with comments going to the commission regarding the permit application and one with scoping comments coming to EERA as contemplated in 7850.2300. Presumably both comment periods would have to be completed by the time the commission considers the scope (see 7850.2520). Thus, it appears that the comment periods would be concurrent or overlapping. This would increase the complexity of the process and create confusion for the public and other stakeholders. The existing rules do not have concurrent comment periods; adding them materially degrades the process from a public engagement standpoint. To make matters worse, if the comment period on ATF is of sufficient length to account for potential changes between draft permit application and permit application, there could be a third concurrent comment period.

Although the comment periods could be run separately to avoid this confusion, avoiding concurrent comment periods, e.g., waiting to scope until close of commission comment period on the permit application would lengthen the permitting process, adding 30+ days to the schedule.

Finally, EERA proposes that the rule be revised to clarify where and how comments on "the application and whether any changes from the draft permit application exist that are relevant to record

development" are considered. Can these comments address completeness, even though the Executive Secretary will have already made a completeness determination under 7850.1710? Do they address the merits of the permit application? Does the commission consider these comments on merit at the time they meet to review scoping alternatives? At some earlier point in time?
EERA notes that clarification of procedure and timing is important to the substance of the proceeding (are comments considered and how) and the ability of the proceeding to plausibly meet statutory timelines (does consideration require the commission to meet, which includes time for scheduling, noticing, briefing, meeting, producing an order).

EERA proposes that in line 87.6 "upon acceptance" be added to clarify that the Executive Secretary will decide completeness first, or the rules should clarify if a different start time was contemplated.

EERA proposes that the requirement of providing notice the general list be eliminated if indeed, as described under 7850.1610 Subpart 2, the general list is a list of persons who want to be notified of an application.

Subpart 2
This subpart indicates that comments filed by the department or the commission in the commission's electronic filing system on behalf of another state agency or a federal agency participating in the process must appear as "on behalf of" the agency that authored the comments. EERA proposes removing "state agencies" from this subpart as Minnesota Statutes 216.17 Subdivision 3 requires that state agencies e-file on their own behalf.

7850.2120 Commission Referral
EERA proposes that the rule clarify procedure and timing of this referral. It is not clear whether this referral is to be made before or after scoping, for example. If it occurs after, it is unclear to EERA whether the case would need to be referred back to the commission to consider scoping alternatives EERA understands that the proposed rule leaves most elements of timing and order of events to the "process schedule."

7850.2140 Joint Proceeding
EERA proposes that the rule be revised to clarify procedure and timing of this decision. It is not clear whether this decision is to be made before or after scoping, for example. Since the determination on joint proceedings shapes how EERA proceeds on scoping (eg. joint vs. not joint scoping meetings), it seems that the decision would need to be made prior to scoping. EERA expects this decision would require the commission to meet and issue an order which requires time for scheduling, noticing, briefing, meeting, producing an order. However, the schematic schedule attached to the SONAR contemplates a 15-day period between the executive secretary's completeness determination and the information and scoping meetings. EERA understands that the proposed rule leaves most elements of timing and order of events to the "process schedule."

Line 87.22-87.23 indicate that "the commission must…set a process schedule." It is unclear to EERA if this language means that the commission itself would be setting the schedule in a meeting/order. EERA proposes revising the rule so that the handling of process schedule is consistent and clear. In the majority of instances, the rules indicate that commission staff must consult with the department and applicant when it comes to process schedule. EERA proposes this approach be applied throughout with commission staff must consult with the department and applicant and filing the schedule so that it is publicly available via e-dockets.

7850.2300 - 7850.3750

EERA proposes that an update to "process schedule" be required at some point or points after determinations on task force, joint procedure and scoping. These events all have an impact on schedule and, while commission staff could theoretically update the "process schedule" as needed, EERA believes it is reasonable to provide stakeholders with known points at which they can expect to see an updated schedule.

7850.2300 Public information and scoping meetings

As noted above, EERA believes it is problematic to run two concurrent comment periods for routing/siting – one with comments going to the commission regarding the permit application as indicated in 7850.2110, one with scoping comments coming to EERA under this part, and potentially one with comments going to the commission regarding the ATF as indicated in 7850.1680. EERA also acknowledges that avoiding concurrent comment periods will lengthen the process. EERA proposes that the rules be revised to clarify procedure and timing of these comment periods.

Subpart 2

EERA proposes that the requirement of providing notice the general list be eliminated if indeed, as described under 7850.1610 Subpart 2, the general list is a list of persons who want to be notified of an application.

EERA proposes adding a requirement to publish notice of the public information and scoping meeting in the Environmental Quality Board (EQB) monitor. This has become a standard best practice, is consistent with notice requirements under the 4410 rules and EERA believes it is reasonable to provide notice in this well-recognized publication.

Subpart 2a

(C) EERA proposes adding length/close date of comment period to the required notice content. EERA believes it is reasonable to inform people of how long they will have to comment/when comments are due.

(N) EERA proposes eliminating this requirement as it raises same concerns as discussed above with respect to the eminent domain language.

Subpart 3

EERA proposes revising the rule to require that a transcript be kept. It is a standard practice as it is an important element in ensuring and accountability in developing the scope. EERA believes that it would be reasonable to codify this practice in rule.

Subpart 4

EERA proposes removing the requirement for the applicant to provide "in writing, an electronic link to the application" at the meeting in lieu of the actual permit application. It is necessary and reasonable for the applicant to provide the permit application itself, and it is not clear how a written electronic link at the meeting would serve that need.

7850.2400 Citizen Advisory Task Force

Subpart 3

This subpart indicates that "The charge must identify additional sites or routes, or particular impacts recommended for evaluation…" EERA would like to clarify that the charge itself does not identify sites,

routes, or impacts; the task force does this. EERA proposes that the language be revised to read: "The charge must include identification of…"

7850.2500 EIS Preparation

Subpart 2

This subpart indicates that "the applicant must be provided an opportunity to respond to public input" at the public meeting. It is unclear what this requirement will accomplish. EERA believes it is important to have the applicant available as a resource to answer specific questions, but providing the applicant the right to comment on each public comment in a meeting setting is not productive and has the potential to shut down public participation. EERA proposes striking this language.

Subpart 3a

EERA proposes modifying this subpart to indicate that "The department must provide a ten day comment period of at least ten days after the meeting…" EERA believes this allows reasonable flexibility to avoid shortchanging the public participation in pursuit of a speedy decision in situations where additional time is warranted.

7850.2530 Scoping Decision

Subpart 3

EERA proposes that the requirement of providing notice the general list be eliminated if indeed, as described under 7850.1610 Subpart 2, the general list is a list of persons who want to be notified of an application.

EERA proposes adding a requirement to publish notice of the scoping decision in the EQB monitor. This has become a standard best practice, is consistent with notice requirements under the 4410 rules and EERA believes it is reasonable to provide notice in this well-recognized publication.

Subpart 4

This subpart indicates that "Once the department has determined the scope of the EIS, the scope must not be changed unless the department determines that substantial changes have been made in the project or substantial new information has arisen that significantly affects the potential environmental effects of the project or the availability of reasonable alternatives has been identified." The language "has been identified" is new and changes the meaning without any indication in the SONAR of why this change is necessary or reasonable. This new addition is also inconsistent with corresponding language in 7849.1425 Subpart 1 and "sister language" in 4410.4300 Subpart 3A that allow re-opening scope when there is substantial new information that affects the availability of alternatives (but not just any time another reasonable alternative has been identified). EERA proposes that the "has been identified" language be stricken.

7850.2540 Supplemental Filing by Applicant

EERA proposes striking this part. EERA previously advised the commission staff that this section is at odds with the agency conducting its own environmental review. It remains so. It is EERA practice to request supplemental data as needed and vet the data provided by the applicant as we compile information from many different sources into the environmental review document. Although it is unclear when this filing is intended to occur, if near in time to the draft Environmental Impact Statement (EIS), could be confusing for the public as well.

Additionally, the sites and routes "not proposed by the applicant [that] must be examined in addition to

the applicant's proposed sites and routes" are identified in the scoping decision. The commission has input on the scoping decision (7850.2530). Thus, EERA proposes editing the proposed rule to state: "If the scoping decision includes a site or route…" Referencing solely to the commission disregards the scoping process and scoping decision. Further, referencing solely to the commission raises the possibility that the commission takes no action regarding site or routes not proposed by the applicant, yet the scoping decision contains such sites or routes.

7850.2550 Draft EIS

Subpart 4

EERA proposes that the requirement of providing notice the general list be eliminated if indeed, as described under 7850.1610 Subpart 2, the general list is a list of persons who want to be notified of an application.

7850.2570 Public Hearing

Subpart 2-5

EERA has offered a number of proposed changes to notices generally above. EERA proposes changes here consistent with comments above, including under Subpart 2A providing information on the length/closing date of the comment period.

Subpart 2

EERA proposes restoring timing requirements around the hearing notice that are included the existing rule. It is not clear why the requirement to provide notice at least 10 days and not more than 45 were removed in the proposed rule, however, EERA believes it is reasonable to provide a timeframe in which notice is to occur.

Subpart 3

EERA proposes that the requirement of providing notice the general list be eliminated if indeed, as described under 7850.1610 Subpart 2, the general list is a list of persons who want to be notified of an application.

EERA proposes adding a requirement to publish notice of the public hearing in the EQB monitor. This has become a standard best practice, is consistent with notice requirements under the 4410 rules and EERA believes it is reasonable to provide notice in this well-recognized publication.

7850.2650 Final EIS

Subpart 2

This subpart requires that at the time of final EIS filing the department must certify that the final EIS complies with the adequacy factors in part 7850.2700. Adequacy is a determination made by the responsible governmental unit. In these matters, the responsible governmental unit is the commission. It is not clear how department certification would be relevant. The SONAR does not address the need or reasonableness of this new requirement, so EERA proposes it be stricken.

Subpart 3

Proposed rule part 7850.2650 adds a comment period on a final EIS. EERA is supportive of this comment period but proposes that the rule be amended to require comments on the adequacy of the final EIS. To EERA's understanding, adequacy is only lens through which the commission can review an EIS. Per 116D.04, Subdivision 2(j) "the responsible governmental unit shall determine the adequacy of an environmental impact statement…" Requesting comment more generally is likely to result in confusion

and frustration when there is no framework to consider those general comments.
Further, the commission is charged with determining the adequacy of the final EIS (7850.2700). In order to receive public comments on adequacy, the commission needs to direct commenters to this topic. Otherwise, the commission may have no comments in the record regarding adequacy other than EERA's certification.

Additionally, EERA proposes the rule clarify who "the public" is and how they will receive notice. For all other notices in 7850, the recipients are clearly defined (e.g., lists of 7850.1610) as are the means of notice (e.g., mail, publication, EQB Monitor).

Subpart 4
The proposed rule indicates that the applicant must "pay the department's reasonable costs" whereas existing rule indicates the applicant shall "pay the reasonable costs." It is not clear whether or how this is meant to change the way costs are handled and EERA has not fully vetted what the consequence of this change might be. The SONAR does not address the need or reasonableness of this new requirement, so EERA proposes it be stricken.

7850.2675 Procedure after Administrative Law Judge Report
Subpart 2
EERA proposes the rule be revised to clarify what is meant by "participating agency." The SONAR does not help clarify what agencies should be considered "participating." Does this require party status? Is it just any agency? Agencies that are jointly preparing the environmental review document?

7850.2700 Final Decision
Subpart 2a
This subpart prohibits the commission from deciding the adequacy until at least 10 days after the date of availability is published in the EQB monitor. EERA believes it would be reasonable to wait until at least after the close of the 25-day comment period in 7850.2650 Subpart 3 and therefore proposes that "at least 10" be changed to "at least 25."

Subpart 4
Throughout 7850, notices are sent out broadly to all of the various contact lists. In this subpart, notice is limited to the project contact list. EERA proposes that the rule require notice to the same contact lists that have been routinely notified throughout the process.

7850.3700 –7850.3900
EERA has two overarching concerns with these parts:

Item #1: There are many issues in parts 7850.2500-7850.2700 that are also present in the corresponding parts of 7850.3700-7850.3900. EERA has not reiterated them all here, but proposes that the same issues be remedied in the same manner. EERA has not conducted an exhaustive review, but some examples are provided below.

Item #2: At the same time, there are many areas of 7850.3700-7850.3900 that are not consistent with the corresponding parts/subparts in 7850.2500-7850.2700. EERA proposes that the rule be revised to eliminate any inconsistencies that are not intentional or any variation in language that is not intended to convey a different meaning. EERA has not conducted an exhaustive review, but some examples are provided below.

In addition, all of the above comments regarding notice are also applicable to these parts, but EERA has not reiterated those points here.

7850.3700 Environmental Assessment Preparation

Subpart 1

In contrast to 7850.2500 Subpart 1, this subpart specifies that the Environmental Assessment (EA) "must contain information on the human and environmental impacts resulting from the proposed project." Does this mean that an EA must contain this information, but an EIS does not need to? It seems unlikely that this is what was intended, but it would be clearer if both of these subparts that are serving similar roles were more consistent with one another. This is an example of item #2 (see above).

Subpart 2

This subpart indicates that "the applicant must be provided an opportunity to respond to public input" at the public meeting. It is unclear what this requirement will accomplish. EERA believes it is important to have the applicant available as a resource to answer specific questions, but providing the applicant the right to comment on each public comment in a meeting setting is not productive and has the potential to shut down public participation. EERA proposes striking this language. This issue is also present in 7850.2500 Subpart 2 and was mentioned above. This is an example of item #1 (see above).

Subpart 2a

The first sentence of Subpart 2a is similar to existing rule language, but unnecessary and not present in the corresponding area of 7850.2500. It states "The department must include in the scope of the EA any alternative sites or routes proposed by the citizen advisory task force or by the commission prior to the close of the scoping period." This is something that is done as a matter of course, is not considered necessary and reasonable in 7850.2500 Subpart 3. For consistency EERA proposes it be stricken. This is an example of item #2 (see above).

7850.3720 Notice to Commission

This part indicates that "the department must include any alternative identified by the commission in the scope of the EA." The similar part of rule for the full process indicates that "the department must include in the scope of the EA any alternative identified by the commission **or the applicant**." It is not clear to EERA why alternatives identified by the applicant must be included in an EIS, but not an EA. Is there a need or a reason for this difference? If not, EERA proposes the rule be revised to make these two parts consistent in their approach. This is an example of item #2 (see above).

7850.3730 Scoping Decision

Subpart 2

EERA proposes that the requirement of providing notice the general list be eliminated if indeed, as described under 7850.1610 Subpart 2, the general list is a list of persons who want to be notified of an application. This is an example of item #1 (see above).

EERA proposes adding a requirement to publish notice of the scoping decision in the EQB monitor. This has become a standard best practice, is consistent with notice requirements under the 4410 rules and EERA believes it is reasonable to provide notice in this well-recognized publication. This is an example of item #1 (see above).

7850.3740 Supplemental Filing by Applicant

As with 7850.2540, EERA proposes striking this part. EERA previously advised the commission staff that

this section is at odds with the agency conducting its own environmental review. It remains so. It is EERA practice to request supplemental data as needed and vet the data provided by the applicant as we compile information from many different sources into the environmental review document. Although it is unclear when this filing is intended to occur, if near in time to the EA, could be confusing for the public as well. This is an example of item #1 (see above).

Additionally, EERA proposes that the appropriate reference for sites and routes not proposed by the applicant is the scoping decision, not the commission (see comments regarding 7850.2540).

7850.3750 Environmental Assessment

This subpart should specifically identify greenhouse gas emissions, climate change, and environmental justice. These are significant human and environmental issues of our time. In the many years since this rulemaking was started, addressing these issues in environmental review has been widely recognized as critical. It is both necessary and reasonable to modernize these rules to keep pace with the realities of our time and EERA notes that many other agencies at both a state and federal level recognize and have been responsive in their environmental review and permitting programs.

7850.3800 Public Hearing

Subpart 1b

EERA proposes that the requirement of providing notice the general list be eliminated if indeed, as described under 7850.1610 Subpart 2, the general list is a list of persons who want to be notified of an application. This is an example of item #1 (see above).

EERA proposes adding a requirement to publish notice of the public hearing in the EQB monitor. This has become a standard best practice, is consistent with notice requirements under the 4410 rules and EERA believes it is reasonable to provide notice in this well-recognized publication. This is an example of item #1 (see above).

Subpart 2

This subpart seems to contemplate that the under the alternate process the default is for the ALJ to prepare a summary proceeding rather than a summary report. EERA staff proposes striking this language. In general, EERA believes that a full ALJ report with recommendations provides an unbiased, efficient, and transparent method to air and resolve any issues that may emerge as the record is developed. Requiring a full ALJ report reduces the burden on commission staff and helps to ensure that the commission has a robust record on which to base its decision. Additionally, a full ALJ report does not significantly lengthen the permitting process.

Subpart 4

It is not clear why the restriction on addressing size, type, and timing in the hearing appears in the alternative review process hearing rules, but not in the full process hearing rules. EERA proposes that the rules be revised for consistency or that the SONAR address the reason for this discrepancy. This is an example of item #2 (see above).

Subpart 5

This subpart notes that persons can comment on the EA at the hearing… but that the **commission** is not required to revise or supplement the EA document. EERA proposes that this part should refer to the **department**, as it is the department and not the commission that prepares the EA.

7850.4100 Factors Considered

This subpart should specifically identify greenhouse gas emissions, climate change, and environmental justice. These are significant human and environmental issues of our time. In the many years since this rulemaking was started, addressing these issues in environmental review has been widely recognized as critical. It is both necessary and reasonable to modernize these rules to keep pace with the realities of our time and EERA notes that many other agencies at both a state and federal level recognize and have been responsive in their environmental review and permitting programs.

(A) EERA proposes that if electric and magnetic fields are included in the list of factors, they are more appropriately appended to **B**. effects on public health and safety (not A effects on human settlements). Electric and magnetic fields raise health related concerns, not concerns related to the kinds of things (recreation, aesthetics, etc.) that fall under the umbrella of "human settlement."

7850.4400 Prohibited Sites

Subpart 4

The prime farmland rule was discussed extensively during comment periods and oral arguments around this rulemaking and has increasingly become a point of discussion in large scale solar proceedings. EERA believes it would be helpful if, at a minimum, the SONAR was revised to discuss the decision not to make any changes to or clarifications around the prime farmland rule, particularly determinations of feasibility of alternatives.

Missing Part

The proposed rule no longer contains a part addressing prohibited routes. EERA proposes restoring this part from the existing rule (7850.4300).

7850.4650 Compliance Filing

Subpart 1

This subpart refers to "the applicant." EERA proposes that "the applicant" become "the permittee" in this and all other subparts that address post permit issuance items.

7850.5000 Permit Transfer

This part indicates that the commission must approve a permit transfer if the commission determines that the new permittee **complies** with the conditions of the permit. The existing rules indicate that that the commission must approve a permit transfer if the commission determines that the new permittee **will comply** with the conditions of the permit. EERA proposes reverting back to existing language as it is unclear how a new permittee could show that it actively complies with a permit before the permit is even transferred. For example, it would be impossible for a potential new permittee to show that it is managing project right-of-way vegetation as required by the permit before it even owns the project. The potential permittee could, however, show that it has the requisite knowledge and capability to appropriately manage vegetation such that it would be reasonable to conclude it **will comply** with that condition.

7850.5300 Local Review of Proposed Sites

Subpart 5

EERA proposes the following correction: "The local unit of government is ~~prohibiting~~ prohibited from making a final decision…"

7849 Proposed Rules

EERA has two overarching concerns with parts of this chapter:

Item #1: There are many issues in this parts 7850.2500-7850.2700 and 7850.3700-7850.3900 that are also present in the corresponding parts of this chapter. EERA has not reiterated them all here, but proposes that the same issues be remedied in the same manner. EERA has not conducted an exhaustive review, but some examples are provided below.

Item #2: At the same time, there are many areas of 7850.3700-7850.3900 and 7850.2500-7850.2700 that are not consistent with the corresponding parts/subparts in this chapter. EERA proposes that the rules be revised to eliminate any inconsistencies that are not intentional or any variation in language that is not intended to convey a different meaning. EERA has not conducted an exhaustive review, but some examples are provided below.

7849.0010 Definitions

Subpart 6a

For consistency, EERA proposes that the definition of associated facilities under 7849 match (word for word) the definition in 7850. This is an example of item #2 (see above).

For clarity, EERA proposes that the term “large high voltage transmission line” not be used as it is undefined and inconsistent with 7850. This is an example of item #2 (see above).

Subpart 9d

For consistency, EERA proposes the language in this definition mirror the language in 7850.100 Subpart 2, so that line 2.9 reads “…to mitigate anticipated adverse such impacts.”

For clarity EERA proposes that the term “large high voltage transmission line” not be used as it is undefined and inconsistent with 7850. This is an example of item #2 (see above).

Subpart 12a

For consistency, EERA proposes that the definition of HVTL under 7849 match (word for word) the definition in 7850. This is an example of item #2 (see above).

Subpart 13

EERA proposes the rules be revised to clarify the difference between a large electric generating facility and the term defined LEPGP under 7850.1000 Subpart 11. If there is no difference EERA proposes, for consistency, that the definitions match (word for word).

Subpart 24a

This subpart defines region. The word “region” is used in7849.0330 G, but the definition established in this subpart does not make sense in the context of 7849.0330 G. EERA proposes that the rule be revised to correct this issue.

7849.0125 Notice Lists

EERA’s comments and proposals regarding 7850.1610 apply to this part as well. In addition, EERA proposes that the notice lists be consistent across 7850.1610 and 7849.0125. For example, EERA

proposes that the criteria for including a landowner on the landowner list for a certificate of need and for a route permit applications be the same. This is an example of both item #1 and item #2 (see above).

7849.0130 Project Notice

EERA's comments and proposals regarding notice under7850 apply to this part as well. In addition, as discussed above, EERA proposes that the rule be revised so that the basic notice content and steps (eg. compliance filing) be consistent across notices and across chapters. This is an example of both item #1 and item #2 (see above).

7849.0320-7849.0340

EERA proposes that these parts be revised to specifically identify greenhouse gas emissions, climate change, and environmental justice. These are significant human and environmental issues of our time. In the many years since this rulemaking was started, addressing these issues in environmental review has been widely recognized as critical. It is both necessary and reasonable to modernize these rules to keep pace with the realities of our time and EERA notes that many other agencies at both a state and federal level recognize and have been responsive in their environmental review and permitting programs. This is an example of item #1 (see above)

7849.1400 Process for Environmental Report Preparation

Subpart 2.

EERA's comments and proposals regarding notice under 7850 apply to this part as well. In addition, EERA proposes that the rule be revised so that the basic notice content and steps (eg. compliance filing) be consistent across notices and across chapters. This is an example of both item #1 and item #2 (see above).

Subpart 3a

This subpart requires two publications of a newspaper notice – at 30 days and at 14 days. This is not required under existing rules and is not a requirement anywhere else under 7849 or 7850 in existing or proposed rule, but its addition here is not addressed in the SONAR. For consistency, EERA proposes a single newspaper notice at least 10 days before the meeting.

EERA proposes that the requirement of providing notice the general list be eliminated if indeed, as described under 7850.1610 Subpart 2, the general list is a list of persons who want to be notified of an application. This is an example of item #1 (see above).

EERA proposes adding a requirement to publish notice of the public information and scoping meeting in the EQB monitor. This has become a standard best practice, is consistent with notice requirements under the 4410 rules and EERA believes it is reasonable to provide notice in this well-recognized publication. This is an example of item #1 (see above).

Subpart 4

This subpart requires the commission to keep an audio recording of the information and scoping meeting. Consistent with 7850.2300 Subpart 3, EERA proposes revising the proposed rule to require that a transcript be kept instead. It is a standard practice as it is an important element in ensuring and accountability in developing the scope. EERA believes that it would be reasonable to codify this practice in rule.

7840.1410 Notice to Commission

This part requires commission review of system alternatives prior to finalizing scope. This is not typical practice and is not explicitly called out in the existing rules. EERA notes that returning to the commission for a review of alternatives prior to finalizing scope will extend the project schedule by 30+ days in cases where there is no joint proceeding.

7849.1425 Scoping Decision

Subpart 2

EERA proposes that the requirement of providing notice the general list be eliminated if indeed, as described under 7850.1610 Subpart 2, the general list is a list of persons who want to be notified of an application. This is an example of item #1 (see above).

EERA proposes adding a requirement to publish notice of the scoping decision in the EQB monitor. This has become a standard best practice, is consistent with notice requirements under the 4410 rules and EERA believes it is reasonable to provide notice in this well-recognized publication. This is an example of item #1 (see above).

7849.1500 Environmental Report Content

EERA proposes that these parts be revised to specifically identify greenhouse gas emissions, climate change, and environmental justice. These are significant human and environmental issues of our time. In the many years since this rulemaking was started, addressing these issues in environmental review has been widely recognized as critical. It is both necessary and reasonable to modernize these rules to keep pace with the realities of our time and EERA notes that many other agencies at both a state and federal level recognize and have been responsive in their environmental review and permitting programs. This is an example of item #1 above.

Subpart 1

EERA notes that there appears to be a potential a conflict between 7849.1500 Subpart 1 which requires that certain alternatives be analyzed in an ER, and 7849.1400, Subpart 12 which allows the department to exclude from its analysis "any alternative that does not meet the underlying need…." EERA proposes that the rules be revised to eliminate or clarify how to resolve this apparent conflict.

7849.1550 Public Hearing

Subpart 2

EERA proposes that the requirement of providing notice the general list be eliminated if indeed, as described under 7850.1610 Subpart 2, the general list is a list of persons who want to be notified of an application. This is an example of item #1 (see above).

EERA proposes adding a requirement to publish notice of the public hearing in the EQB monitor. This has become a standard best practice, is consistent with notice requirements under the 4410 rules and EERA believes it is reasonable to provide notice in this well-recognized publication. This is an example of item #1 (see above).

Subpart 6

This subpart allows for a post-hearing comment period of 30 days. Under the 7850 rules, similar post-hearing comment period runs 10 days. EERA proposes that these comment period lengths be aligned or that the reason for the difference in length of comment period be clarified. This is an example of item 2 (see above)

7849.1600 Agency Assistance and Filing of Agency Comments

This part requires department to file in eDockets with “on behalf of” when filing comments on behalf of another state or federal agency. EERA proposes removing “state agencies” from this subpart as Minnesota Statutes 216.17 Subdivision 3 requires that state agencies to e-file on their own behalf. This is an example of item #1 (see above).

Other

Housekeeping Items

EERA understands that one of the objectives of this rulemaking is to improve consistency. To that end EERA proposes the use of consistent terminology unless there is an intention underlying slightly different choices of language. For example, throughout the rules the phrases “each proposed” “any proposed” “all proposed” appear to be used interchangeably. Similarly, “the LEPGP” and “the HVTL” are used interchangeably with “the proposed LEPGP” and “the proposed HVTL”, respectively. Clarification would be helpful if there is intention in this variation in wording. EERA proposes revising the rules to eliminate inconsistencies of this sort.

Items related to process steps and timelines

With respect to the alternative process, EERA believes it is worth noting that the application of the alternative process is often conflated with a project’s straightforwardness or lack of complexity and controversy. In practice, this is not always the case. All projects seeking a permit from the commission are large infrastructure projects that have human and environmental effects related to construction and operation and will exist on the landscape for decades following the decision. The majority of projects seeking permitting in the past 15 years have been reviewed under the alternative process, and the commission has had to address difficult questions about alternative routes, compatibility with existing and planned land uses, engineering and design issues related to transmission structures and right-of-way, stormwater requirements, and a number of other issues. Development of an adequate record in these instances does not fit the hypothetical ideal schedule. The introduction of the “process schedule” concept has merit in acknowledging that process and schedule can and should be tailored to the unique elements of each project. However, EERA has identified a number of timeline/procedure issues below that need to be considered across all projects – from simple to complex.

In reviewing the timelines for both the full and alternative review processes included in the SONAR, EERA notes that in several areas the timelines are either inconsistent with rule requirements and practice or silent on how the requirement would fit into the process. For example:

- For both the full and alternative review permitting processes scoping, summary and recommendations to the commission are shown to be filed ten days after the close of the scoping comment period. This is inconsistent with the requirement in 7850.2500, Subpart 3 and 7850.3700, Subpart 2A, that the applicant must have an opportunity to respond to proposed alternatives. In practice, it may take up to two days for EERA staff to identify and map proposed alternatives, perhaps up to a week for an applicant to respond to the alternative, and then some time for EERA staff to digest and synthesize the applicant’s response in its recommendation to the commission. EERA believes 14 to 20 days is a more realistic estimate of time required.
- The alternative process allows for only 60 days between the filing of the EA scoping decision and the release of the EA. EERA believes the development time for an EA should be 90 days, or 120 days in a joint proceeding where an EA is prepared in lieu of an ER - consistent with that for the draft EIS which also requires 120 days.
- The timeline for the alternative process allows only 14 days between the Executive Secretary’s completeness determination and the public information and scoping meeting. This does not reflect the requirement for a notice of the meeting to be published at least 14 days prior to the meeting. EERA notes that many of the smaller newspapers publish only

once or twice per week. EERA believes that the 20 day timeframe anticipated in the full permitting process is reasonable.

- The timeline for the alternative process anticipates the ALJ's report five days after the close of the comment period and the commission decision in the matter 30 days after the ALJ's report. This timeframe does not appear to allow for development and review of findings of fact and proposed permit conditions. If the findings of fact and recommendation of permit conditions are not entered in the record by the applicant, then that responsibility falls to commission staff. In practice projects reviewed under the alternative process often have multiple alternatives and complicated issues that require analysis. For this reason, EERA routinely recommends the commission request a full report from ALJ. Typically, the applicant prepares draft findings of fact during the comment period, and the schedule allows an opportunity to respond to the proposed findings.
- The timeline for the full permitting process does not identify where the supplemental filing by the applicant in 7850.2450 would be filed.
- The timelines do not identify where an advisory task force would happen. Currently, the ATF process occurs at the same time as the scoping period and the ATF report is an important reference in developing the scoping recommendations.
- In several areas, the process timelines do not reflect the commission's notice requirements for its meetings 7829.2800.