STATE OF MINNESOTA
MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption of Amendments to the EQB Power Plant Siting Rules

STATEMENT OF NEED AND REASONABLENESS

Minnesota Rules chapter 4400

I. BACKGROUND AND INTRODUCTION

In 1973 the Minnesota Legislature passed the Power Plant Siting Act. Minnesota Laws 1973, chapter 591, codified at Minnesota Statutes sections 116C.51 – 116C.69. The Power Plant Siting Act requires that any person who wants to build a Large Electric Power Generating plant (LEPGP) or a High Voltage Transmission Line (HVTL), as those terms are defined in the Act, is required to obtain approval from the Minnesota Environmental Quality Board (EQB) for a specific site for the plant or a specific route for the transmission line.

When the Power Plant Siting Act was passed in 1973, the EQB was granted the authority to adopt rules to implement the requirements of the Act. Minnesota Statutes section 116C.66. The EQB first adopted rules for power plant siting in 1974. Minnesota Rules MEQB 71-75. These rules have been amended several times since and are now found at Minnesota Rules chapter 4400.

During the 2001 legislative session, the Minnesota Legislature considered a number of bills that addressed various issues relating to the generation and transmission and distribution of electricity. One major issue that was addressed was the siting and routing of new power plants and high voltage transmission lines.

On May 21, 2001, the Legislature passed a comprehensive energy bill that included significant changes in the Power Plant Siting Act. The bill was signed into law by Governor Ventura on May 29, 2001. The law is Minnesota Laws 2001, chapter 212. For a description of the bill, see the memorandum prepared by House Research staff at Exhibit 19. (A list of Exhibits is attached at the end of this document.) This 2001 energy bill changed significantly the EQB siting and routing process. Because of these changes, the EQB must amend its power plant siting rules in chapter 4400.

In July 2001, the EQB staff put together some possible amendments to chapter 4400 and distributed the draft to various persons known to be interested in the matter. Exhibit 1. On September 10, 2001, the EQB published in the State Register a notice indicating that the EQB was contemplating amendments to its power plant siting rules and

environmental review rules and was soliciting public comments on the subject matter. Exhibit 5. In the notice, the EQB indicated that the draft 4400 amendments were available for review but that no draft amendments to 4410 had been prepared. The public comment period ended on December 7, 2001.

On October 18, 2001, the EQB Board acted to establish draft amendments as interim guidance. Exhibits 2 and 3. At that time it was anticipated that the EQB would receive permit applications for power plants and transmission lines before the agency could complete the rulemaking process and amend its rules. The Board recognized that the interim guidance would not have the force and effect of law, but that the guidance would be helpful to the EQB, the applicants, and the public in knowing how to proceed under the new statutory provisions while the EQB went forward with the rulemaking process.

Throughout the October 2001 to June 2002 timeframe, the EQB staff continued to work with interested persons in the development of the proposed amendments. Several versions of the amendments were circulated among the interested persons for their comments and suggestions. On March 13, 2002, a revision of the October 18 version was made available to the public for its review. Exhibit 4. In May, another version, in the format required by the State Revisor's Office, was made available for review. Exhibit 21.

In June, 2002, the amendments were revised further, and this is the version that is described in this Statement of Need and Reasonableness and will be proposed for adoption when notice of proposed rulemaking is given. Some members of the public have indicated that they would ask for a rulemaking hearing on the proposed amendments. A petition for a rulemaking hearing has already been filed with the EQB. Exhibit 24. Therefore, the EQB will plan from the outset to publish Notice of Public Hearing on Proposed Amendments to Chapter 4400.

In the 2001 legislation, the Legislature also made changes in the jurisdiction and tasks of the Public Utilities Commission. A certificate of need from the PUC is required for nearly every LEPGP and HVTL that will come before the EQB for permitting. Minnesota Statutes section 216B.243. The EQB first promulgated rules for the conduct of environmental review at the certificate of need stage in 1981. Minnesota Rules parts 4410.7000 to 4410.7500. These rules are entitled "Special Rules for Certain Large Energy Facilities and High Voltage Transmission Lines." Because of the changes in the way environmental review is conducted on LEPGPs and HVTLs under the new statutes, amendments to parts 4410.7000 to 4410.7500 to address how environmental review will be conducted at the certificate of need stage are also going to be necessary. Those rule amendments are under development. The EQB intends to go forward with the chapter 4410 amendments separate from this proceeding to amend chapter 4400.

Alternative Format

Upon request, this Statement of Need and Reasonableness can be made available in a different format, such as large print, Braille, or cassette tape. To make a request, contact

Alan Mitchell at the Minnesota Environmental Quality Board, 658 Cedar Street, St. Paul, Minnesota 55155, phone (651) 296-3714, fax (651) 296-3698, or e-mail, alan. mitchell@state.mn.us For TTY, contact Minnesota Relay Service at 800-627-3529 and ask for EQB.

II. STATUTORY AUTHORITY

The Minnesota Environmental Quality Board has had power plant siting rules in effect since 1974. The agency was granted authority to adopt rules in the 1973 Power Plant Siting Act. The EQB's authority to adopt rules on power plant siting is found in Minnesota Statutes section 116C.66

That statute provides, in part:

> The board, in order to give effect to the purposes of sections 116C.51 to 116C.69, may adopt rules consistent with sections 116C.51 to 116C.69, including promulgation of site and route designation criteria, the description of the information to be furnished by the utilities, establishment of minimum guidelines for public participation in the development, revision, and enforcement of any rule, plan or program established by the board, procedures for the revocation or suspension of a site or route permit, and the procedure and timeliness for proposing alternative routes and sites. No rule adopted by the board shall grant priority to state-owned wildlife management areas over agricultural lands in the designation of route avoidance areas. The provisions of chapter 14 shall apply to the appeal of rules adopted by the board to the same extent as it applies to review of rules adopted by any other agency of state government.

Section 116C.66 is a broad grant of authority to adopt rules for the administration of the power plant siting program.

III. NEED FOR THE RULES

Amendments to the Power Plant Siting Rules are needed because the changes made in the Act by the 2001 energy bill render some of the provisions in the existing rules obsolete and require new language to be drafted. In addition, the rules have not been amended since 1990, and in some instances, there are matters that can be improved and clarified by amendment. For example, the matters of filing the permit application and giving notice to the public of such filing and the standards to apply in deciding whether to issue a permit and under what conditions could all be improved even without the changes in the law.

The reasons the Legislature considered a major energy bill last session also support the need for amending the power plant siting rules. The Minnesota Legislature made significant changes in the law relating to large electric energy facilities because of reports that Minnesota was going to need several thousand more megawatts of generation and

additional transmission infrastructure within the next decade to supply the increasing demand for electricity in various demand centers. (More specific information on future demand and the situation with the transmission grid is reported in the State Energy Planning Report that the Department of Commerce released in January 2002.) The Legislature was interested in ensuring that review of proposed large energy projects would be conducted expeditiously but comprehensively and with ample opportunities for public involvement.

The fact that the electric utility industry is changing was another reason the Legislature considered a major energy bill in 2001. The Federal Energy Regulatory Commission (FERC) has in the last few years taken action to open up access to the nation-wide transmission grid, which has allowed nonregulated entities to seek access to the transmission grid. Some states have deregulated the electric utility business. These actions have resulted in independent power producers seeking to build what are called merchant plants to sell electricity on the wholesale market in Minnesota and elsewhere.

After a lull in the construction of new large energy facilities in the state for the past twenty years or so, the state is now seeing a surge in the number of proposals coming forward. For example, Xcel Energy, Inc. has applied for a certificate of need for a new 345 kilovolt high voltage transmission line and several smaller related transmission lines in the Buffalo Ridge area in southwestern Minnesota. Great River Energy is planning to file an application for a certificate of need for a thirteen mile long 115 kilovolt line in western Hennepin County. In a Transmission Report filed with the Public Utilities Commission on November 1, 2001, Minnesota's regulated utilities identified sixty or so other transmission projects that may be required in the state over the next ten year period. Several of these are expected to go forward in year 2002. A number of proposals have been mentioned by various developers for new power plants. Rapids Power, LLC has proposed a 225 megawatt coal and wood waste fired power plant in Grand Rapids, Minnesota. Xcel recently solicited bids for a 1000 megawatt plant.

All these reasons support going forward with amendments to the EQB's rules relating to the siting of large electric power generating plants and high voltage transmission lines.

IV. COMPLIANCE WITH VARIOUS STATUTORY REQUIREMENTS.

A. SOLICITATION OF OUTSIDE OPINION

Minnesota Statutes section 14.101 requires an agency to solicit public comments on the subject of the proposed rulemaking. On September 10, 2001, the EQB published notice in the State Register of its intent to promulgate amendments to Minnesota Rules chapter 4400 and 4410. 26 State Register 368. Exhibit 5. The notice was also posted on the EQB webpage.

The public was given until December 7, 2001, to submit comments in response. Nine written comments were received. Exhibits 8 – 16.

B. DISCUSSION OF TOPICS IDENTIFIED IN SECTION 14.131

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

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

The persons who will be primarily affected by these rules are the people and organizations that seek approval to construct large electric power generating plants and high voltage transmission lines. Local governmental officials and the general public and organizations involved in environmental protection are also affected by these rules but not in the same way as the project proposers. Landowners who own property along a proposed high voltage transmission line route or the property for a proposed power plant will, of course, be affected by these rules.

Project proposers will bear the costs of the proposed rules because they are the persons who apply for the permits to construct the projects. The Power Plant Siting Act requires permit applicants to pay the reasonable fees incurred by the EQB in processing the application. Minnesota Statutes section 116C.69. Minnesota Statutes section 216B.243, subd. 6. The proposed rule amendments address in more detail the specifics of how those fees are to be paid to the EQB.

The permit conditions that are imposed in a site or route permit, such as environmental mitigation and construction limitations, will also result in costs to the permittee to perform these tasks. In some cases the designation of a specific site or route by the EQB may have cost implications for the project proposer.

Permittees will also receive a benefit from these rules, however. The permit from the EQB will authorize the permittee to proceed with construction of a large electric power generating plant on a specific site or high voltage transmission line along a specific route. The permit may be an effective tool in finalizing financing of a proposed project. The state permit will pre-empt local review of the project and eliminate the need to seek separate permits from a number of local governmental bodies. Minnesota Statutes section 116C.61, subd. 1.

Local government will be affected by these rules in a couple of ways. One, there will be ample opportunity for local officials and citizens to be involved in siting and routing proceedings. Local units of government will benefit from an open and comprehensive review of proposed projects. Two, in some instances local units of government will take over the review of certain projects and be the permitting body, and the rules address the manner in which that will occur. Local units of government could also be affected by the fact that granting of an EQB permit will pre-empt certain local ordinances. Minnesota Statutes section 116C.61, subd. 1.

The general public will surely have an interest in new power plants and transmission lines. The general public will be interested both from a concern over environmental and other impacts associated with the project, but also from the standpoint of how the project will ensure a continued reliable source of electricity. The rules address the manner in which the general public can participate in proceedings, from scoping the environmental review documents to final deliberations on the permit. Environmental organizations, too, will be interested in proposals to build new large energy facilities and will often elect to participate in the proceedings.

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

The Environmental Quality Board is authorized by statute to charge permit applicants with the necessary and reasonable costs incurred by the EQB in processing the permit application. Minnesota Statutes section 116C.69, subds. 2 and 2a. In addition, the EQB is authorized to make a general assessment against utilities in the state to fund the EQB's work with energy facilities. Minnesota Statutes section 116C.69, subd. 3. None of the expenses incurred by the EQB in either promulgating these rules or in administering permit applications will be paid for out of the general fund. Thus, implementation and enforcement of these rules should have no effect on state revenues.

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

As explained above in the Need section, amendment of the Power Plant Siting Rules is required because the Minnesota Legislature passed a significant energy bill in 2001 amending the Power Plant Siting Act. Minnesota Laws 2001, ch. 212. A major focus of the Legislature was to streamline the power plant siting process. To the extent that these rule amendments incorporate the statutory changes enacted by the Legislature, efforts to identify less costly and less intrusive methods have already been taken into account. A good example of how the Legislature attempted to streamline the process is the shorter, alternative review concept for the smaller projects. These legislative changes have been incorporated into the proposed rules.

An example of how the EQB has considered ways to reduce the intrusion of these rules is the creation of an exceptions category to the permit requirement. This provision is found in part 4400.0650. It is the consideration of the EQB that there are certain modifications that can occur with existing projects that do not have significant siting or routing impacts. Such modifications do not require a siting or routing decision. In addition, the rules also provide for the approval of minor alterations of existing facilities in an expeditious fashion. Part 4400.3820. Minor alterations can be reviewed and processed with minimum burden on the applicant and speedy resolution by the EQB. The specific language being proposed in each of these two provisions is explained below under the discussion for parts 0650 and 3820.

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

As with some of the other discussion points, the considerations envisioned by this category are the kind of considerations that went into the 2001 energy bill. The alternative review process, the local option, the elimination of the exemption provision, were all major issues that were resolved by the Legislature.

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

The most readily identifiable costs of the proposed rules are the fees to be charged for processing the permit application. How much it will cost to conduct the environmental review and hold the public hearings and perform the other procedural steps will depend on the size of the project and the controversy involved. Smaller projects, with little controversy, will involve less costs than the bigger projects.

Two fairly recent projects – the Lakefield Junction and Pleasant Valley natural-gas fired peaking plants – cost the applicants about $50,000 on average for the EQB to process those permit applications. That is probably a reasonable estimate of the cost at the EQB permitting stage for large but relatively noncontroversial projects. More controversial projects, with more intervenors and longer hearings, will cost more.

The EQB presently has two projects pending under the alternative review process – the Solway 115 kilovolt line in Beltrami County and the St. Bonifacius peaking plant modification in Chaska County. Exhibits 17 and 18. While final costs have not been determined yet for these projects, the EQB expects that these costs will be less than $10,000. Of course, these are the costs for expenses incurred by the EQB and do not account for those costs incurred by the applicant in preparing the application and participating in the project. These costs can often be substantial.

Permittees could also incur costs in complying with conditions imposed in the permit. If specific mitigating measures were imposed in the site or route permit, there could be financial repercussions from such requirements. If an applicant had to move to a site other than the preferred site, or had to re-route a transmission line to avoid certain impacts, additional costs could be incurred. It is not possible at this stage to estimate what those costs might be, but the economics of the various alternatives considered would be an issue in the administrative proceeding.

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

This statutory requirement is primarily designed to address the situation where a proposed state rule is more stringent than a corresponding federal requirement. In this

case, there is no corresponding federal regulation. Chapter 4400 relates to the permitting of proposed power plant sites and transmission line routes. The federal government does not have jurisdiction over the selection of specific sites and routes so there are no federal regulations to compare in this situation.

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

Minnesota Statutes section 14.002 requires an agency that is developing rules to describe in the Statement of Need and Reasonableness how it considered ways it might afford flexibility in complying with the regulatory requirements being proposed while still meeting the agency's objectives. A great deal of flexibility is built into the rules based on the statutory changes that were adopted by the Legislature in 2001. For example, the entire alternative review process for the smaller projects is an attempt to expedite the EQB permitting process. The option of allowing project proposers to apply to local units of government rather than to the EQB for authorization to construct certain smaller projects is also intended to expedite the process. The elimination of the exemption provision in the Power Plant Siting Act does away with a process that resulted in simply a decision to go to another unit of government for actual authorization to construct a project. Also, the expansion of EQB jurisdiction to transmission lines over 100 kilovolts in size (rather than over 200 kV), allows utilities to obtain authorization from a single agency rather than to seek authorization from numerous local units of government through which the line would cross.

Another way in which the proposed rules provide flexibility and help ensure expeditious consideration of an application is through provisions that allow the Chair of the EQB, rather than the full Board, to make decisions to keep the process moving. The decision on whether an application is complete is made by the Chair. Part 4400.1250. Decisions on whether or not to appoint a citizen advisory task force is made by the Chair. Part 4400.1600. The Chair determines the scope of the environmental impact statement and the environmental assessment. Parts 4400.1700, subpart 2 and 4400.2750, subpart 2. The rules recognize, however, that certain decisions can be brought to the full Board if there is disagreement over the Chair's decision, which allows aggrieved persons an opportunity to seek review of the decision. See Parts 4400.1700, subpart 2 (EIS scoping) and 4400.1600, subpart 2 (citizen advisory task force). The Chair could always elect to bring a matter within the Chair's authority to the Board for ultimate determination.

Another example of how the EQB has considered ways the rules might minimize the regulatory burden but yet carry out the statutory objectives is found in parts 4400.0650 and 4400.3820, where certain modifications of existing facilities are either exempt from review or subject to treatment as a minor alteration. These two provisions were discussed earlier on page 7 under the topic of reducing the costs and intrusion of the rules.

Throughout development of the proposed rules, the EQB was cognizant of the desire by applicants to minimize the burden of applying for a permit and to provide for an expeditious final decision. The EQB also considered that the public wants to be informed about proposed projects and to have an opportunity to participate in the decisionmaking

process. The EQB believes that these rules will result in an open, informed, expeditious permitting process.

All interested persons are encouraged to submit comments on any parts of the rules. If there are other instances where additional flexibility is possible, or concerns that too much expedition has been provided at the expense of public review and participation, the EQB certainly wants to learn about those suggestions and comments.

D. NOTICE TO COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE

Minnesota Statutes section 14.111 provides that before an agency may adopt rules that affect farming operations, the agency must provide a copy of the proposed rules to the Commissioner of the Department of Agriculture at least 30 days before publishing notice in the *State Register*. In this case, these proposed rules will not directly regulate farming operations, and this notice is probably not required. However, because power plants and high voltage transmission lines can be located on or cross farm land, farming operations can be impacted when these projects are constructed, and it is appropriate to notify the Commissioner.

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

E. ADDITIONAL NOTICE GIVEN TO THE PUBLIC

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

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

In addition, the EQB will post a copy of the notice, the proposed rules, and this Statement of Need and Reasonableness directly on the EQB webpage.

The EQB has begun to compile a list of persons who want to be advised of applications that have been submitted to the EQB for a site permit or a route permit. The EQB will

mail a copy of the notice of proposed rulemaking to those persons who have placed their name on the list, either by postal mail or by electronic mail.

Not only will the EQB provide the additional notice described above regarding the proposed rulemaking, but the EQB has already engaged in substantial efforts to notify interested persons of this ongoing rulemaking effort. The EQB provided copies of the first draft of the rule amendments in July 2001 to those persons who the agency knew were interested in this matter. The EQB staff advised the Board at its August 2001 monthly meeting about the draft rules. In October 2001, the EQB Board actually adopted the draft amendments as Interim Guidance. Exhibits 2 and 3. This version of the rule amendments was published on the EQB webpage.

In September, 2001, the EQB published notice in the State Register that it was intending to amend its Power Plant Siting rules and solicited public comments on the draft rules that were provided. Exhibit 5. A number of persons did submit comments. Exhibits 8 – 15. When the EQB revised the draft amendments in March 2002, in response to the comments that were received, the revised draft was sent to those who commented and the amendments were placed on the EQB webpage.

V. RULE-BY-RULE ANALYSIS

This part of the SONAR is a rule-by-rule discussion of the reasons why the rule or the amendment is being proposed. In a number of places, the EQB identifies documents that provide information that supports the proposed language. A list of Exhibits is found at the end of this document.

4400.0200 DEFINITIONS.

Subpart 2a. Associated Facilities. What the EQB permits is power plants and "associated facilities" and transmission lines and "associated facilities." Both Minnesota Statutes section 116C.52, subdivision 4 (high voltage transmission line) and subdivision 5 (large electric power generating plant) include "associated facilities" within the definition of both terms. Since a permit is required not only for the primary project but also for "associated facilities," it seems advisable to include a definition of just what are "associated facilities." The Legislature did not define the term in the Power Plant Siting Act.

The proposed language in subpart 2a defines "associated facilities" broadly to include any physical structure that is necessary to operation of the power plant or transmission line. This is simply a common sense definition. If the power plant or transmission line could not function without the particular structure or equipment, it is an "associated facility." This definition is consistent with how the EQB has applied the term in the past when permitting projects.

The present definition of high voltage transmission line identifies certain structures (insulators, towers, substations, and terminals) within the term. These are good examples of what are considered "associated facilities" with respect to HVTLs. There is no language identifying "associated facilities" for power plants, but examples would be fuel storage facilities, wastewater facilities, and turbines and generators. The normal practice is to incorporate into the permit the description of the project provided by the applicant.

Subpart 3a. Chair. This definition is added because there are a number of places in the rules where it is the Chair of the EQB that performs certain tasks. The Chair, of course, is the person appointed by the Governor to serve as Chair. Minnesota Statutes section 116C.03, subdivision 3a.

Subpart 4. Community Benefits. The old subpart 4 had a definition of "community benefits." The EQB is proposing to delete this provision because the term "community benefits" does not appear in the rules. Deletion of the subpart does not mean that community benefits are not an important item to consider when conducting environmental review of a proposed project. Applicants must still include in the application information about impacts on local communities, and these impacts will be evaluated in the environmental review.

Subpart 4a. Certified HVTL List. This is the list created by the Public Utilities Commission under the new statutory transmission planning procedure in Minnesota Statutes section 216B.2425. The Public Utilities Commission may give the certified list a different name than Certified HVTL List. Regardless of the name the PUC gives to the list, the EQB's referral to "Certified HVTL List" means the list created and maintained by the PUC under section 216B.2425.

Under this new transmission planning procedure, utilities are required to submit a report by November 1 of each odd numbered year identifying foreseeable transmission inadequacies and alternatives for addressing each inadequacy. By June 1 of the following year, the PUC has to establish a transmission project list certifying certain projects as to need. Placement on the list satisfies the statutory obligation to obtain a Certificate of Need.

There are several references to this list in the proposed rule amendments. Parts 4400.1150, subpart 2.O., 4400.1700, subpart 5, 4400.2750, subpart 7, and 4400.5000, subpart 7. Because placement of a high voltage transmission line on the Certified HVTL List satisfies certain obligations and precludes environmental review of certain issues, the rules repeat the statutory prohibition on reviewing certain issues at the EQB permitting stage once the need decision is resolved by PUC. This would include placing a proposed transmission line project on the Certified HVTL List.

It should be pointed out that when the utilities filed their first transmission planning report on November 1, 2001, the utilities did not identify a single transmission line project for which they sought certification. The Public Utilities Commission is presently soliciting public comments on how it should proceed in responding to this first planning

report and has opened a rulemaking docket to consider the promulgation of rules for this transmission planning process. It is unlikely that the PUC will place any proposed HVTL projects on a certified HVTL list by June 1, 2002, and it may not be until the next cycle for action under the statute – June 1, 2004 – that a list is developed.

Subpart 5. Construction. This term is being eliminated in the definition section and addressed in Part 4400.0400 subpart 5. The only place the word is used is in part 4400.0400, subpart 5 so it is preferable to describe the term there.

Subpart 6. Developed portion of plant site. This term is being eliminated because it is not used in the rules.

Subpart 6a. Environmental Assessment. An Environmental Assessment is the environmental review document required under the Power Plant Siting Act for the smaller projects that are eligible for review under the alternative permitting process. Minnesota Statutes section 116C.575, subdivision 5. The definition included here is just a broad description of what is included in an EA. Basically, what an EA includes is a discussion of the impacts of a proposed project and of reasonable alternatives to the project and a discussion of various mitigative measures that might be implemented. The concept of an Environmental Assessment is described more fully in the discussion under Part 4400.2750.

The EQB has recently completed its first two Environmental Assessments on proposed projects. EAs have just been completed on the Great River Energy proposal to modify the St. Bonifacius peaking plant, Exhibit 17, and on a short 115 kilovolt transmission line in Beltrami County proposed by Otter Tail Power Company. Exhibit 18. As more of these are prepared, applicants, the public, and the EQB will become more familiar with them.

Subpart 6b. Environmental Impact Statement. The definition is being changed from an Environmental Impact Assessment to an Environmental Impact Statement. An EIA is essentially an EIS, so when the Legislature changed the law in 2001, it was decided for consistency sake to simply call environmental review of the larger facilities an EIS rather than an EIA. The change in the rule also makes it clear that it is an Environmental Impact Statement that will be prepared on the larger facilities.

Subpart 7. File. This term is being eliminated because filing requirements are addressed in the substantive provisions of the proposed rules where the matter of filing documents with the EQB is addressed. See Part 4400.1025. Also, the existing language requires the filing of 40 copies, and this requirement is being eliminated so the EQB can decide each time how many copies are necessary, in an effort to minimize the number of hard copies that are required.

Subpart 7a. EQB. This definition is being added to distinguish the agency (the EQB) from the Board. When an obligation is to be performed by the Board, the rule will say that specifically. But in many instances, the obligation is one that is imposed on the

agency in general. In those situations where the rule states that the EQB shall complete some task, it will usually be the staff who actually performs the task, and the Board will not be involved.

For example, it is the Board that will make the final decision on a permit. Part 4400.1900, subpart 1. However, the Board will not actually maintain the various lists of names of people (Part 4400.1350), or give notice of public meetings (Part 4400.1550, subpart 2), or schedule the contested case hearing (Part 4400.1800, subpart 1), or prepare the environmental impact statement (Part 4400.1700, subpart 1), although the Board will decide whether the EIS is adequate (Part 4400.1700, subpart 10). These tasks will be carried out by the EQB staff on behalf of the agency.

Subpart 8. High Voltage Transmission Line. The only change here is to make the rule definition consistent with the statutory definition and make any line over 100 kilovolts a high voltage transmission line.

Subpart 10. Large Electric Power Generating Plant. No changes in this definition are being proposed.

Subpart 11. Large Electric Power Generating Plant Study Area. This term was necessary when the Power Plant Siting Act addressed the matter of establishing an inventory of large electric power generating plant study areas. Minnesota Statutes section 116C.55 (2000). However, this statutory provision was deleted by the Legislature in the 2001 energy bill. Minnesota Laws 2001, ch. 212, art. 7, sec. 36. A definition is no longer necessary.

Subpart 11a. Mail. This definition has been added to clarify that when the rules require notice to be given, electronic mail will suffice for U.S. postal service delivery, unless a statute specifically requires U.S. post. Electronic mail in most instances is both quicker and less costly to the agency. Many members of the public prefer electronic notice of upcoming events and of the availability of documents.

Subpart 13. Prime Farmland. This definition is being deleted in the definition section but retained in Part 4400.3350, subpart 4, which is the only place in the entire chapter where the phrase is used. It seems more convenient to include the definition right in the subpart where it is being used when that is the only place in the rules where the term is referred to.

Subpart 14. Public Adviser. This definition is being deleted in the definition section but addressed in the substantive provision where the term is used. Part 4400.1450.

Subpart 15. Right-of-way. The change here is to recognize that while a transmission line right-of-way may be up to 1.25 miles in width, it need not be and usually is not that wide. The definition helps clarify that the right-of-way for a route can be less than 1.25 miles in width. The other change – to add the word "maintenance" to

construction and operation – is simply to be more inclusive of the activities that occur with a transmission line.

Subpart 16. Route. The changes proposed in this definition are intended to more precisely track the statutory definition and make the rule clearer. First, the definition clarifies that a route is the location for a transmission line between two end points. When a certificate of need from the Public Utilities Commission is obtained, the certificate will identify the two end points. The second change is intended to clarify that while a right-of-way may be up to 1.25 miles in width, according to the statute, Minnesota Statutes section 116C.52, subdivision 8, the right-of-way can be a strip of land much smaller than the 1.25 miles in width, and indeed, in most situations, will be much narrower than the maximum.

Subpart 18. Site. The EQB is proposing to add the word "maintenance" to the definition simply to ensure that maintenance is recognized as one of the tasks that occurs at a site for a LEPGP.

Subpart 19. Technical Assumptions. This definition is being deleted because the term is not used anywhere in the rules.

Subpart 20. Utility. The words "or intending to engage" are being added because the Legislature added this phrase to the statutory definition. Minn. Laws 2001, ch. 212, art. 7, §2. The purpose of adding the phrase is to ensure that entities that are not presently engaged in generation, transmission, or distribution but intend to do so, fall within the jurisdiction of the EQB and are required to obtain a site permit or route permit for proposed facilities.

The definition is also being changed to add limited liability companies to the list of entities that may engage in business as a utility. The existing language is broad enough to include limited liability companies because utility was not limited to those kinds of entities listed, but because it is becoming more and more common to have limited liability companies apply for permits, it makes sense to specifically recognize this type of entity within the definition.

4400.0300. PURPOSE AND AUTHORITY

The changes to this part are not substantive. One change simply recognizes that the Power Plant Siting Act has been amended. The other change simply spells out the type of energy facilities that are included within these rules.

4400.0400. PERMIT REQUIREMENT

Subpart 1. Site Permit. This subpart reiterates the statutory language that a site permit from the Environmental Quality Board is required to construct a large electric power generating plant and that a LEPGP can be built only on a site approved by the EQB. Minnesota Statutes section 116C.57, subdivision 1. Previously, authorization from

the EQB for a LEPGP was called a Certificate of Site Compatibility but that term has been replaced with site permit.

Subpart 2. Route Permit. This subpart reiterates the statutory language that a route permit from the Environmental Quality Board is required to construct a high voltage transmission line. Minnesota Statutes section 116C.57, subdivision 2. Of course, a HVTL can only be constructed on a route approved by the EQB.

Subpart 3. Expansion of Existing Facility. This subpart applies specifically to expansions of existing facilities. An existing facility is one that is in existence on the effective date of these rules or has been authorized by the appropriate governmental body prior to the effective date of these rules.

Item A. This provision provides that the voltage of an existing HVTL cannot be increased without approval from the EQB. When the rules address the matter of the voltage of a transmission line, what is meant is the nominal operating voltage. Fluctuations in the operating voltage of a transmission line occur all the time. The normal operating voltages that exist in Minnesota are 115 kV, 161 kV, 230 kV, 345 kV, and 500 kV.

If a utility intends to increase the nominal operating voltage of a transmission line, review by the EQB is required. This could be changing a 115 kV line to a 161 kV or higher line. It is reasonable to require EQB review before the voltage of an existing line is increased. Increasing the nominal operating voltage could involve changing the size and type of the structures and expansion of the right-of-way. Such impacts should be considered in a route permit proceeding.

The proposed language recognizes that the EQB could give approval to increase the nominal operating voltage without issuing a route permit. This would occur if the EQB determined that increasing the voltage did not involve significant human or environmental impacts and the change could be considered a minor alteration in the line under Part 4400.3820.

Also, an increase to a nominal operating voltage of less than 200 kV could be reviewed by local units of government under the local option provisions of the statute and the rules. *See* Minnesota Statutes section 116C.576 and Part 4400.5000 of these rules.

Item B. This provision applies to the situation where the existing line is under 100 kV, and thus not within EQB jurisdiction, but the utility wants to increase the nominal operating voltage to something over 100 kV. Since increasing the voltage would mark the first time the EQB had jurisdiction over the transmission line, it makes sense to require review and a full permit to authorize such action. Whether or not the full review process or the alternative process applies depends on the voltage to be carried on the new line. If the voltage were to be increased to something above 200 kV, the full siting process would be followed. If the new voltage is less than 200 kV, the alternative

process would be followed by the EQB if the utility applied to the EQB for a permit, and the utility would have the option of applying locally for authorization.

Item C. This provision applies to the expansion of the generating capacity of a LEPGP. As with increases in the voltage of transmission lines, increasing the capacity of a power plant generally triggers the requirement for review. However, Part 4400.0650 recognizes that some expansions do not require a permit, so the language in this Item C recognizes that EQB approval is not required if the project qualifies under Part 0650. Also, some expansions could be ones that while not exempt from review, are still insignificant enough to qualify for a minor alteration so a reference to Part 4400.3820 is included. Finally, if the expanded plant is under 80 MW in size, the person could apply to the local unit of government for approval.

Item D. This provision applies to the expansion of an existing plant from less than 50 megawatts to more than 50 MW. Since the owner of the existing plant will not have a site permit from the EQB because the EQB had no siting authority over the plant when it was less than 50 MW, it makes sense to require a permit to implement the expansion and increase the capacity to more than 50 MW. Thereafter, further expansions could qualify for an exemption or a minor alteration. Also, if the plant as expanded is less than 80 MW, the option to proceed locally is available as well.

The EQB presently has a situation where an existing plant of less than 50 MW is planning to expand to more than 50 MW. This is Great River Energy's peaking plant in Carver County, Minnesota. *See* Exhibit 17. Even though the project underway is simply the installation of an air cooling system, with little environmental impacts, the alternative siting process was followed since this was the first time a siting decision was made regarding this plant. Once a permit is issued, future modifications of little environmental impact could qualify as minor alterations under Part 4400.3820.

Subpart 4. Local Authority. This subpart is a recognition of the statutory provision that certain projects are eligible for review by local governmental bodies, and in such situations, no permit from the EQB is required. Minnesota Statutes section 116C.576.

Subpart 5. Commencement of Construction. The purpose of this provision is to ensure that proposers of LEPGPs and HVTLs do not begin construction of a proposed facility until the EQB has completed its process and made a decision on the permit. Commencement of construction prior to a final EQB decision could not only result in irreversible environmental degradation that should have been avoided, but it could also result in significant financial investment by the utility that could be used to promote approval of a site or route that might otherwise not be approved. The EQB wants to avoid both of these situations.

It is not unusual for permitting agencies to prohibit commencement of construction until a final permit has been issued. The EQB provides the same thing in its recently promulgated wind rules. Minnesota Rules part 4401.0100, subpart 5 and part 4401.0300,

subpart 1. The Pollution Control Agency restricts construction in the same manner. Minnesota Rules parts 7007.0150 and 7001.1020. The Public Utilities Commission does not allow an applicant for a Certificate of Need to begin construction until the Certificate is issued. Minnesota Rules part 7849.0010, subpart 9.

The question, of course, is what is commencement of construction. The proposed rule defines commencement of construction to mean conduct that begins or causes to begin a continuous program of placement, assembly, or installation of facilities or equipment or significant physical site preparation or route preparation work. Obviously, the EQB does not want an applicant out on a proposed site turning dirt and performing other conduct that physically alters the proposed site or route before a permit is issued.

Not everything an applicant might do in preparation for construction of a LEPGP or a HVTL is prohibited prior to the time a permit is issued by the EQB, however. Subpart 5 specifically recognizes tasks that can be undertaken prior to the time a permit is issued. Conducting survey work or collecting geological data is certainly permissible. The kind of work the applicant must do to complete a permit application and provide information necessary for the environmental review must be performed to ensure adequate information is available for the decisionmakers. If there is any question about whether certain work is permissible, it would be advisable for the applicant to contact the EQB staff for advice about whether the work falls within the regulatory prohibition.

The rule also does not restrict a project proposer from contacting landowners to discuss possible construction on their property. The EQB wants to encourage utilities and other applicants to contact the public and to give the public advance notice of possible projects so this language will help encourage early notice to landowners.

In the earlier July 2001 draft of the proposed rules (Exhibit 1), language was included to prohibit proposers from entering into binding contractual obligations for the purchase of facilities or equipment before the permit was issued. The utilities commented that this restriction was unnecessary and would lead to delays in constructing facilities because of long lead times in obtaining equipment. Exhibits 11 and 14. Xcel recognized in its comments that the risks involved in purchasing equipment and entering into other binding contractual obligations rests with the applicants and their shareholders. It makes sense to not prohibit applicants from ordering equipment and making other financial commitments prior to the final permit decision, so that projects are not unduly delayed, with the understanding that the risks inherent with making commitments before a final decision is made fall entirely on the applicant.

4400.0500. SMALL PROJECTS

Subpart 1. No EQB Permit Required. This rule simply memorializes the principle that if a project does not fall within the EQB's jurisdiction, no permit from the EQB is required. The rule goes on to emphasize, however, that whatever other permits are required for such projects from a local body (like a county or city, or the state, like the Pollution Control Agency, or the federal government, like the U.S. Forest Service) must

still be obtained. This is the law whether the EQB adopts the language in rule or not, but it is helpful to include it in the Power Plant Siting rules.

The Sierra Club, in its June 5, 2002, comments, Exhibit 23, suggested that language be added to this provision to require a site permit if a subsequent power plant were to be proposed for the same or an adjacent site and the total capacity exceeded 50 MW. The EQB has not chosen to add the requested language for a couple of reasons. One, if the second power plant really is on the same site, the provisions of Part 4400.0400 should capture that situation and require a permit. Two, if the developer of the second power plant really is a separate entity from the owner of the first plant, it is doubtful that the Power Plant Siting Act requires a site permit to build a power plant under 50 MW simply because another person built a similar power plant in a nearby area. Third, while a site permit may not be required for the second project, permits from the Pollution Control Agency will be required and the cumulative impacts of the second project will have to be considered. And four, it is unlikely that the situation will arise where a second project is proposed by a completely separate entity in an area so close to an existing power plant that the second person should be required to obtain a site permit for a power plant of less than 50 MW.

Subpart 2. Environmental Review. There may still be obligations to conduct environmental review of projects that are too small to fall within the EQB's permitting jurisdiction. The Minnesota Environmental Policy Act, Minnesota Statutes chapter 116D, will still apply in such situations. The EQB's environmental review rules, Minnesota Rules chapter 4410, establish other requirements for environmental review of proposed projects. For example, a power plant between 25 megawatts and 50 megawatts still requires the preparation of an Environmental Assessment Worksheet. Minnesota Rules part 4410.4300, subpart 3. A transmission line between 70 kV and 100 kV still requires preparation of an EAW. Part 4410.4300, subpart 6. This rule serves as a reminder that an EAW may still be required on proposed projects that are not large enough to require an EQB permit.

4400.0650. EXCEPTIONS TO PERMITTING REQUIREMENT FOR CERTAIN EXISTING FACILITIES.

Subpart 1. No Permit Required. The purpose of this part is to identify certain projects that do not really involve a siting or routing decision because there is nothing to be decided about where to site or route a facility. The EQB proposes to exempt these projects from review.

Subpart 1 applies to both facilities that hold a permit from the EQB and to facilities that were not permitted by the EQB in the past, either because they were built before the Power Plant Siting Act went into effect in 1973, or they were not within the EQB jurisdiction at the time they were constructed but are large enough to fall within EQB jurisdiction as it is defined today.

Item A. Substations. There is nothing for the EQB to decide regarding siting if a utility is merely proposing to modify a substation without doing any work outside the substation, where no additional land is required, and there is no increase in voltage. Such work might be the replacement or addition of a transformer, the installation of capacitors, or the addition of other breakers or other hardware. If the addition of equipment will change the voltage, or increase the amount of land required for the substation, then authorization from the EQB or the local unit of government is required.

The proposed language does allow a utility to do a small amount of work on the transmission lines outside the substation site. The proposed rule exempts work on up to five power line structures immediately outside the substation and allows the structures to be moved up to 500 feet without a route permit from the EQB. This language is intended to cover situations where a utility wants to move the power lines at the substation a short distance to accommodate some additional equipment at the substation. As long as the other conditions of the rule are met – no change in the size of the substation or the voltage of the lines – the EQB is prepared to allow some minor adjustments of the transmission line configuration at the substation. The limitation on five structures and 500 feet should ensure that no significant changes in the route will result in such situations. The EQB does expect, however, that the right-of-way will continue to be at least as wide as it was before the structures were moved.

An example of where this provision might apply is at a substation in Willmar, where a new line between the Willmar substation and the Paynesville substation may require some adjustment in the location of other lines at the substation to provide enough room for the new line. It is reasonable to allow the utility to move a couple of structures near the substation a short distance to ensure proper and safe operation of the substation.

Item B. HVTLs. There are four situations involving changes in high voltage transmission lines that the EQB believes do not require review before being implemented. These are discussed below in turn.

(1). Maintenance and Repair. Maintenance and repair occur all the time on HVTLs. The EQB does not expect utilities to obtain prior approval to conduct maintenance or repair. In fact, the EQB expects the utilities to ensure that the lines are functioning properly. Maintenance and repair involve such conduct as replacing broken insulators and installing new structures to replace ones destroyed in a storm. It would be burdensome and unnecessary to expect utilities to seek EQB approval every time some sort of maintenance occurs. Approval of maintenance and repair has not been required in the past, and it is helpful to memorialize this practice in the rules. If the work performed on an existing transmission line should become substantial and really involve more than what is normally considered to be maintenance or repair, the provisions of Item B(2) would determine whether the work is exempt or not.

(2). Reconductoring or Reconstruction. A utility often replaces the conductor on an existing transmission line with new conductor. For example, Minnesota utilities have identified hundreds of miles of lines to be reconductored in the next few

years in the 2001 MAPP Update to 2000 Regional Plan. Exhibit 25. (MAPP is the Mid-continent Area Power Pool.) Most of these lines are under 200 kV in size. The EQB has not had jurisdiction at all over these types of projects in the past, and does not see any necessity for the EQB to make a routing decision if the action will not increase the voltage or require additional right-of-way.

A utility may replace old structures with new, modern ones without a permit from the EQB. It makes sense to allow modern structures to be installed on an existing transmission line without undergoing EQB review if the voltage and right-of-way stay the same. The limitation of the width of the existing right-of-way will act to limit the size of the structure that can be installed to some extent. On the other hand, if the utility is intending to use the new structures to increase the voltage of the line at some point in the future, the EQB expects the utility to advise the EQB of such intent and to undergo review and obtain approval.

The EQB is aware that new conductors on a line will likely allow the utility to push more electricity through the line. Indeed, that is why utilities install new conductors. The Sierra Club and others want the EQB to require a route permit whenever new conductors will allow the utility to transmit more electricity on the line. Exhibit 23. The EQB does not agree that a route permit is required simply because the reconductored line can handle more electricity when the other conditions of the rule – no change in voltage and no change in right-of-way – are applicable.

(3). Relocation for Road Construction. Frequently, utilities are required to move structures to accommodate new road construction. Some of these relocations have been handled as minor alterations in the past. Now that the EQB's jurisdiction extends to 115 kV and 161 kV lines, there are likely to be many more situations where utilities have to move power poles on lines within the EQB's purview to allow the Department of Transportation or a local unit of government to complete a road realignment or other road construction project. The EQB believes it makes sense to provide an exception for this kind of work. As long as the relocation of the structures has been required by the agency conducting the road work, the EQB is prepared to defer to the DOT or other agency. In many cases an EIS on a highway project will address the matter of relocating a portion of the line. This rule is intended to cover any type road construction, whether it is a highway, a county road, or a street.

Item C. LEPGPs. There are several situations where it seems proper to not require prior EQB authorization to make modifications at a large power plant.

(1). Maintenance or Repair. As with maintenance or repair of HVTLs, the EQB cannot possibly review and authorize all such work at LEPGPs prior to its implementation. The EQB has never done this and it makes sense to memorialize such fact in the rules.

The EQB considered using the words "routine and emergency maintenance and repair" to describe what conduct is exempted here. The utilities requested that the words "routine and emergency" be deleted because the U.S. Environmental Protection Agency and a number of utilities around the country are presently involved in litigation over whether changes in existing power plants constitute maintenance or something more substantial that triggers application of new source review standards. The EQB is satisfied that the words "routine and emergency" can be deleted because work at an existing LEPGP that really is more substantial than what is normally considered maintenance or repair is covered by the other provisions of Item C, and those are discussed below.

(2). Efficiency Improvements. The language in this provision is taken from the exemption language added to the Public Utilities Commission's certificate of need statute by the Legislature in the Energy Security Reliability Act of 2001. Minnesota Laws 201, ch. 212, art. 7, § 33, codified at Minn. Stat. § 216B.243, subd. 8(5). Under that statutory provision a certificate of need is not required to modify an existing LEPGP to increase the efficiency by 10 % or 100 MW, whichever is larger. It is reasonable to exempt from the site permit requirements the same kind of efficiency improvements that the Legislature exempted from the certificate of need requirement.

The EQB has added the additional requirement, not found in the statute, that the modification not require an expansion of the plant beyond the developed portion of the site. By developed portion of the site, the EQB means the area of land that is required for the physical plant and associated facilities, such as coal piles, cooling towers, and ash containment. The EQB will take into account the existence of a fence around the facility in deciding what constitutes the developed portion of the site. Initially, the EQB considered requiring that the footprint of the plant not change, but that restriction is too narrow because essentially any modification will require some additional square footage of building. On the other hand, utilities often own a large amount of land around an existing power plant, and just staying within the boundaries of the utility's property is not enough to qualify for the exemption. If the land needed to operate the new expanded plant increases, it makes sense to require review by the EQB and a site permit.

The limitation on the exemption for an efficiency improvement is 10 % of the capacity of the plant or 100 MW, whichever is greater. Thus, a LEPGP of more than 1000 MW could increase even more than 100 MW. The three units operated by Xcel at the Sherco site are capable of generating over 2300 MW. However, the EQB does not intend this provision in the rules to exempt an expansion of over 200 MW at any one of the three Sherco units. Sherco III, for example, with a generating capacity of 870 MW approximately, would be limited to an efficiency increase of 100 MW, not to an increase in excess of 200 MW.

Just because certain efficiency modifications do not require a site permit from the EQB does not mean that other permits are not required. An increase of the output of a LEPGP, even if it results from an efficiency improvement, will require the Pollution Control Agency to issue air and water permits allowing the modification. Also, exemption from the EQB siting process may not eliminate the requirement to conduct environmental

review of the proposal. An environmental assessment worksheet would still be required on the project if air emissions were projected to increase by more than 100 tons. Minnesota Rules Part 4410.4300. subpart 15.A.

Also, a series of modifications to improve efficiency could trigger the need for review as the amount of megawatts continued to increase. Once the 100 megawatt figure was exceeded, this exception would no longer apply. If all the efficiency improvements had been proposed at the same time, so that the capacity of the plant would expand by more than 100 MW, the exemption would not apply, so it makes sense to review the proposal once the 100 MW level is exceeded.

(3) Refurbishment. The language in this provision is designed to capture that point in the replacement of equipment at an existing plant where the work has gone so far beyond regular maintenance and repair that the plant is essentially being reconstructed and a siting decision is appropriate. It is difficult to define that point with specificity.

The language here is taken from Minn. Stat. §216B.2422, subd. 1(e), a statute that applies to the Public Utilities Commission review of utilities' resource plans. That statute defines "refurbish" to mean "to rebuild or substantially modify an existing electricity generating resource of 30 megawatts or greater." Subdivision 4 goes on to provide, "The commission shall not approve a new or refurbished nonrenewable energy facility in an integrated resource plan or a certificate of need . . . unless the utility has demonstrated that a renewable energy facility is not in the public interest." It is reasonable to rely on a decision by the Public Utilities Commission that an existing plant is being modified to such a substantial extent that a certificate of need or other PUC approval is required to determine whether an exemption from the EQB siting provisions is warranted.

Of course, if the capacity of the plant is increasing, or if the physical facilities are being expanded beyond the present developed portion of the site, then a siting decision is also appropriate, regardless of the issue over whether a certificate of need is required. As with Item C.(2), the EQB will look to whether the developed portion of the site is being expanded to determine whether the exemption applies.

It may also be difficult to distinguish whether Item C.(3) or Item C.(2) applies to a particular modification. Some substantial modifications will constitute efficiency improvements. If the capacity of the plant is being expanded, the utility will have to fit the modification into Item C.(2) because capacity expansions are not exempted under Item C.(3). The EQB will look to the utility to explain why a particular modification is actually an efficiency improvement and not a reconstruction of the plant if the utility wants to exempt a substantial modification of the plant. The PUC will also likely be involved in determining whether a certificate of need is required for a particular modification.

(4). Conversion to Natural Gas. In the year 2000, the Legislature amended the Power Plant Siting Act to allow a utility that was repowering or retrofitting

an existing power plant to burn natural gas to apply for an exemption from the requirement to get an EQB site permit. Minn. Laws 2000, ch. 289, § 1. The reason this amendment was passed was to address a proposal by Xcel to remove two coal-fired units at the Black Dog Plant in Dakota County and install a new combined cycle natural gas unit. Without the statutory amendment, Xcel would have been required to obtain a site permit from the EQB. (The exemption procedure itself, which the old Power Plant Siting Act allowed in Minn. Stat. § 116C.57, subd. 5a, was repealed in 2001 and no longer exists. Minn. Laws 2001, ch. 212, art. 7, § 36.)

In 2001 the Legislature amended the law so that conversions to natural gas at existing power plants were exempt from the requirement to obtain a certificate of need from the Public Utilities Commission. Minnesota Laws 201, ch. 212, art. 7, § 33, codified at Minn. Stat. § 216B.243, subd. 8(4). The language in this Item C.(4) is taken from the language in section 216B.243, subd. 8(4).

It makes sense to exempt fuel conversions from the siting requirements when no certificate of need is required, but the proposed language also limits the exemption to ones that can be implemented without any expansion of the developed portion of the site. If the conversion to natural gas requires expansion of the plant beyond its present developed site, approval by the EQB of the action is appropriate. Also, if conversion to natural gas required a new natural gas pipeline, a pipeline permit from the EQB under Minn. Stat. chapter 116I could be required, depending on the specifics of the pipeline.

It is important to emphasize that conversion of coal-fired power plants to natural gas has important public policy implications. Exempting such fuel conversions from EQB siting procedures does not mean that increasing commitments to natural gas as the fuel of choice for electricity generation should not be carefully scrutinized by state regulators. The Legislature may still want to consider whether extensive burning of natural gas for electricity generation is wise public policy.

In early May 2002, Xcel announced that it was planning to modify three of its existing power plants – the High Bridge plant on the Mississippi River in St. Paul, the Riverside plant on the Mississippi River in Minneapolis, and the Allen S. King plant on the St. Croix River in Oak Park Heights near Stillwater. All three of these plants were built before the Power Plant Siting Act was adopted in 1973. In fact, the Riverside plant was built in 1911 and the High Bridge plant in 1924. It is not possible at this time to determine in any final sense what level of review is appropriate, but the following discussion should be helpful in analyzing the manner in which such a decision would be made.

Xcel announced that it was planning to convert the Riverside plant from coal to gas, with new combustion turbines and heat recovery boilers. Conversions to natural gas are exempt from EQB siting under the proposed rule if the conversion can be accomplished without an expansion of the developed portion of the plant site. Of course, authorization from the Pollution Control Agency will be required after a complete analysis of the environmental consequences of the changes.

At the High Bridge plant, apparently Xcel is planning to ultimately tear down the existing plant and replace it with an entirely new gas-fired plant capable of generating over 500 MW of electricity. A site permit from the EQB will be required to build the new plant. A natural gas-fired plant, however, is eligible for review under the shorter, alternative review process. Xcel would not be required to identify two sites when it applied for an EQB permit, but alternative sites could be identified as part of the environmental review process and considered by the Board. The new plant would not be subject to local review because local units of government have jurisdiction over a natural gas fired power plant only if it is a peaking plant, regardless of size. Minn. Stat. § 116C.576, subd. 2(2).

At the Allen S. King plant, the company is planning to install pollution control equipment to remove sulfur dioxide, nitrogen oxides, and other pollutants. Power output will increase from 564 MW to 624 MW, an increase of 60 MW. If the modification qualifies as an efficiency improvement under Item C.(2), the action could be implemented without EQB siting review if the developed portion of the plant site is not expanded. If the project does not qualify under Item C.(2), the fact that the capacity is expanding would mean it does not qualify under Item C.(3). Assuredly, review by the Pollution Control Agency will be required to address the air pollution improvements that are expected.

(5) Start-up of Closed Plant. This provision is intended to cover the situation like the power plant in Taconite Harbor, which has been closed from time to time since its construction in 1967. If any person should propose to start up a plant after it had been closed for a while, there really is no siting decision to make as long as no major changes are proposed, such as a change in fuel or an expansion of the plant site. The Sierra Club suggested that a time limit be included in this provision, so that if the plant had been closed for longer than one year, the exception would not apply. Exhibit 23. The EQB does not believe that the length of time an existing plant has been closed so affect its status if the other criteria are met.

In addition, the Pollution Control Agency may impose requirements regarding the start-up of the plant and would establish appropriate emission limits and other conditions in permits that would be required from that agency.

Subpart 2. Minor Alteration. The EQB has attempted to be quite specific in its exceptions. Since a project that falls within the exception category can go forward without any EQB involvement, the EQB is necessarily cautious in establishing exceptions. However, just because a particular project does not qualify for an exception does not mean that the EQB intends to conduct a full permitting process. A project might still qualify for treatment as a minor alteration, and this subpart recognizes that fact. The decision whether a proposed change in an existing project qualifies as a minor alteration will be made in accordance with the procedures and requirements of Part 4400.3820 at the time the change is proposed.

Subpart 3. Notice. Even though a change in an existing facility may not require EQB review, the EQB would still like to know that the change is being undertaken. In

most cases the EQB will learn from any number of sources about proposed changes in existing facilities. The type of projects specified in this rule for which review is not required are not the type of projects that are generally conducted in secret. It is not burdensome to require a utility or other person to notify the EQB of anticipated changes. The EQB wants notice before the project is commenced so that it has that knowledge at the time the work is underway. The rule requires notification at least thirty days before commencement of construction; it should not be burdensome to comply.

The rule specifically provides that utilities and others need not notify the EQB of maintenance and repair activities nor of movements of power line structures to accommodate road construction. There simply are too many of these activities to expect the utilities to advise the EQB of every one. The EQB has not required or requested this information in the past and does not see a need for it now. It would be burdensome on both the utilities and the EQB to require notice of all maintenance and repair and road moves. If the EQB should receive inquiries about any maintenance activities, the EQB can readily ask the utility for an explanation. Also, it is likely the EQB may ask utilities periodically to report on the structures that have been moved in response to road and highway construction because the EQB is preparing a map of all transmission lines in the state over 69 kV, and the map will be updated periodically. In order to keep the mapping current, the EQB may need to know about transmission lines that have been moved.

Subpart 4. Local Review. The way the Power Plant Siting Act works is that the proposer of a project that qualifies for local review may elect to seek authorization from the EQB, or to bypass the EQB and seek authorization from local units of government with jurisdiction over the facility. If the EQB has determined to exempt a certain project from review, then the utility will exercise the option to go to the EQB for its authorization. That authorization will be granted by operation of this part of the rules and local review over siting or routing is not required. Any other interpretation of this provision would have the unintended result of requiring local review for small projects that are not subject to EQB review, and no review by EQB or local government for large projects over which local government does not have jurisdiction.

4400.0710. JOINT PROCEEDING

The 2001 amendments to the Power Plant Siting Act were intended to streamline the EQB permitting process. The purpose of this part 4400.0710 is to recognize that oftentimes with major power plants, there are other related projects, such as a short transmission line to connect the plant to the transmission grid, or a pipeline to bring natural gas or petroleum to the plant, that may also be involved as a necessary part of the larger project. This rule provides that in such instances, the applicant can request and the EQB can elect to combine the various parts of the overall project that require different types of approvals from the EQB into one proceeding. This will allow the EQB to make all the decisions necessary to authorize the complete project at the same time, so that a site permit, a route permit, and a pipeline permit could be issued on the same day.

In the past the EQB has had occasion to combine several permit applications for the same project into one proceeding. In April 2000, the EQB made both a siting decision and a routing decision for the 445 megawatt natural gas-fired peaking plant called Pleasant Valley in Mower County and a short transmission tap. In November 1999, the EQB issued both a site authorization and a pipeline permit for the Lakefield Junction plant in Martin County.

FULL PERMITTING PROCESS FOR LARGE ELECTRIC POWER FACILITIES

General Discussion. Whenever a LEPGP or HVTL project is proposed, the initial question always is: what level of review is required of the project. The following options are available:

(1) Exception	Part 4400.0650
(2) Minor Alteration	Part 4400.3820
(3) Alternative Review	Parts 4400.2000 – 4400.2950
(4) Local Review	Part 4400.5000
(5) Full Review	Parts 4400.1025 – 4400.1900

Each of these rules is described in detail in this document under the specific parts referenced. However, it is helpful to focus initially on the kind of analysis that is required to determine what level of review is required for a particular project.

The first issue to consider in determining what level of review is required for a project (assuming the facility qualifies as a LEPGP or HVTL) is to determine whether the project is a brand new facility or the modification of an existing power plant or transmission line. If the project is the expansion of an existing facility, the provisions of Part 4400.0400 should be consulted. If the project is the modification of an existing facility, then the first determination is whether the modification is exempt from review under Part 4400.0650 or entitled to be reviewed as a minor alteration under Part 4400.3820. If neither of those provisions applies, then a permit from the EQB is required and the question becomes which of the three levels of permitting review is applicable, and the answer depends on the specifics of the project.

For a new facility, the exemption provision and the minor alteration provision are not applicable. Instead, the question is whether the project is subject to full review, alternative review, or local review. The decision depends on the size and type of the project.

Parts 4400.1025 to 4400.1900 are the provisions that apply to the full review process. The full review process applies to the larger projects, both LEPGPs and HVTLs. Basically, what is required is a permit application with at least two sites or routes identified, the preparation of an environmental impact statement, and the holding of contested case hearing. A schematic of the process for consideration of a permit application for a proposed project under the full process is shown in Exhibit 6. The full process is explained in more detail in the following discussion.

4400.1025. PERMITTING APPLICATION UNDER FULL PERMITTING PROCESS

Subpart 1. Filing of Application for Permit. This provision requires the applicant for a site permit or route permit to file three copies of the application. The existing rules (part 4400.0200, subpart 7) require the applicant to file 40 copies. Rather than require 40 copies upfront, the amended rule provides that the Chair will advise the applicant how many copies must be filed. The Chair will attempt to keep the number down but with major projects, there are a large number of people within state agencies who require a copy of the application. The EQB may in some instances even require more than 40 copies.

Subpart 2. Electronic Copy. The EQB is attempting to make more information available to the public through use of the internet. The EQB hopes to make permit applications available to the public through posting of the application on the internet. Providing access to an application through the internet should help to minimize the number of hard copies that the applicant must provide. Project proposers and their consultants are accustomed to providing electronic copies of such documents as permit applications and the EQB does not expect applicants to have difficulty in complying with this requirement.

4400.1050. PERMIT FEES

Subpart 1. Requirement. Minnesota Statutes section 116C.69 requires the applicant for a site permit or route permit from the EQB to pay the costs associated with processing of the application. The statute sets forth a mechanism for estimating the amount of the fee, based on the cost of the power plant or the length of the transmission line. This rule simply references the statutory requirements.

Subpart 2. Initial Payment. The existing rules require an applicant to submit 25% of the estimated fee with the application and the remaining portion within a certain number of days after submission. Minnesota Rules part 4400.4900. The new language requires an upfront payment of 50% of the estimated fee, unless the applicant requests the Chair to reduce the amount. The reason the EQB is proposing to require 50% of the fee upfront is because with the smaller projects in the alternative review process, events happen so quickly that the EQB could be asking for additional payments within a short period of time if only 25% of the fee were paid with the application. The ability of the Chair to reduce the amount will be sufficient to address those situations where a large amount of money would otherwise be required.

This rule also provides that the EQB shall deposit all money received from an applicant into a special account. This has been the past practice of the agency, and the practice will continue. A separate account helps ensure that project costs are not mixed with general assessment monies.

Subpart 3. Additional Payments. This provision is intended to ensure that the applicant keeps a positive balance in the account for the project. Normally, the EQB staff requests additional payments as the fund becomes depleted and additional tasks are coming up. The last sentence of this subpart recognizes that the EQB will not issue the permit if there are assessed fees that have not been paid. The EQB has not experienced any difficulties in the past with applicants paying the assessed fees.

Subpart 4. Final Accounting. This rule also memorializes past agency practice. Once the project is completed, the EQB will give the applicant a final accounting of the costs. If the applicant has any objections regarding the costs charged by the EQB, the applicant can bring the matter to the Board's attention. The final accounting occurs after the time for judicial review has expired, because if the EQB is sued over its decision, the costs of defending that decision are passed on to the applicant. Since a legal challenge to an EQB permitting decision is brought in the Minnesota Court of Appeals, the judicial review period expires after the Supreme Court has ruled or review in the high court is not granted or not sought. It is reasonable to require the final payment, whether an additional payment by the applicant or a refund by the agency, to be made promptly, within thirty days after the final accounting is determined.

Applicants for permits must pay the reasonable costs incurred by the EQB in processing the application. The rule describes some of the costs the EQB normally incurs in processing an application. Much of the expense is incurred for EQB staff time, of course, but there are other costs involved as well. Costs of publishing notices of meetings and hearings, administrative costs for copying documents, travel expenses to hearings and to investigate a site or route, and legal expenses are all passed on to the applicant. The costs of the Office of Administrative Hearings or of other persons who serve as hearing examiners are charged to the applicant also. In the end, the applicant will have a full accounting of the costs incurred and can bring the matter to the attention of the Board if there is any disagreement.

4400.1150. CONTENTS OF APPLICATION

Subpart 1. Site Permit for LEPGP. This is the rule that sets forth the information that must be included in an application for a site permit for a large electric power generating plant. Most of this information has been required in the past under the existing rules. Part 4400.2600, subpart 1. The requested information relates to the considerations the Board must take into account when it makes a decision on a permit for a proposed LEPGP. Minnesota Statutes section 116C.57, subdivision 4. (The same kind of information is required of applicants for route permits for high voltage transmission lines under subpart 2, which is discussed below.)

Item A. Ownership. It is reasonable to expect an applicant to identify not only who is applying for the permit but also who will be the owner of the facility when it goes into commercial operation if a change is anticipated. It is not unusual to have new entities created to apply for permits, so it is reasonable to expect a precise identification of the entity applying for the permit. Nor is it unusual for a different entity to take over

operation of a facility once it is built. It is reasonable to expect an applicant to identify the person or entity that will operate the facility once it goes into operation.

Item B. Permittee. At the end of the process the applicant expects the EQB to issue a permit. The EQB must know who is to be named as the permittee on the permit. Sometimes more than one person or entity may be a co-permittee. Sometimes the permittee is not the same person or entity as the one applying for the permit. Also, the applicant may be anticipating turning over the permit to another entity once it is issued or once the facility is constructed. The EQB would like to know the name of the new person if that is the case.

Item C. Alternative Sites. The statute requires an applicant for an LEPGP site permit to propose at least two sites when it submits an application to the EQB. Minnesota Statutes section 116C.57, subdivision 2a. The rule merely repeats the statutory requirement.

Normally, an applicant for a site permit for a LEPGP will identify a preferred site and an alternative site. It has been acceptable and will continue to be acceptable to the EQB for an applicant to identify two sites that are contiguous. For example, when the permit application for the Lakefield Junction peaking plant was submitted to the EQB in February 1999, the applicants identified a preferred site and an alternative site that was directly southeast of the preferred site so that the sites touched at one corner. While the EQB would prefer to see an applicant suggest two distinct sites, the agency will not reject an application simply because the two sites are next to each other.

As is explained below under Part 4400.1700 and 4400.2750, however, the EQB may very well identify possible sites not included in the application as sites to investigate as part of the Environmental Impact Statement or Environmental Assessment.

As various independent power producers without condemnation power come to the EQB with proposals for merchant plants, the issue of alternative sites becomes more and more crucial because an independent power producer may only have one site within its control for the proposed project. The fact that a project proposer is an independent power producer will not eliminate the requirement to identify two possible sites. In the Lakefield Junction case, the project proposer owned the preferred site but only was negotiating an option for the alternative site. The availability of alternative sites will be a matter to take into account by the EQB, but the lack of control over a specific site will not preclude the EQB from choosing an environmentally superior site in appropriate circumstances.

Item D. Project Description. Obviously, the EQB must know exactly what is being proposed. This rule simply requires a permit applicant to describe the project that is being proposed.

Item E. Environmental Information. This rule references subpart 3, which is the rule that sets forth the environmental information an applicant must submit as part of

the permit application. Because the EQB must prepare an Environmental Impact Statement or Environmental Assessment, the applicant must supply a great deal of information that will go into the environmental review document. The specific information required is discussed under subpart 3.

Item F. Owner of the Property. This rule requires the project proposer to identify the owner of the property for the preferred site and the owner of the alternative site. This information is required to ensure that the owners receive proper notice of the proposed project. Identifying the owners also makes this information readily available in the event the EQB requires access to the property or for other reasons must contact the owners.

Item G. Design Specifics. The engineering and operational design details will be helpful in identifying and analyzing the environmental effects of the proposed project.

Item H. Cost Analysis. Under the Minnesota Environmental Policy Act, economic considerations alone will not justify pollution, impairment or destruction of natural resources, Minnesota Statutes section 116D.04, subdivision 6, but costs are an important part of an application because one of the considerations for the EQB to consider is the state goal to provide cost-effective, efficient, electric energy. Minnesota Statutes section 116C.57, subdivision 4.

Item I. Engineering Analysis. This requirement is similar to Item G (Design Specifics) but Item G relates to the equipment that will be installed, like the turbine and generator, while this Item relates to construction factors that arise from the particular sites that are being analyzed, such as protecting wetlands or crossing rivers. The rule specifically provides for the applicant to describe how each site could accommodate future expansion, because possible future expansion is an important factor in selecting a site or route.

Item J. Pipelines and Transmission Facilities. This Part is intended to inform the EQB of related facilities, such as highways, railroads, pipelines, and transmission lines, that will be required to accommodate the new power plant if it is to be built. All of these related facilities will have environmental impacts that must be considered. Also, in some situations, the applicant may want to combine a site permit with a pipeline permit or a route permit, which Part 4400.0710 specifically provides for, so it is helpful to know what facilities of this type will be required.

Item K. Other permits. It is helpful to the EQB, to other agencies, and to the public to know what other permits besides a site permit from the EQB will be required before the project can go forward. A site permit from the EQB will pre-empt local zoning, building, and land use requirements, Minnesota Statutes section 116C.61, subdivision 1, but other permits will still be required. Permits such as a DNR water appropriation permit, a Pollution Control Agency air permit or water discharge permit (National Pollutant Discharge Elimination System), and a Certificate of Need from the Public Utilities Commission are the types of state permits that are usually required for a

new LEPGP. Sometimes approvals are also required from federal agencies like the Federal Aviation Administration or the Federal Energy Regulatory Commission. The list of required permits will also be included in the EIS or the EA that is prepared on the project.

Item L. Certificate of Need. For nearly every LEPGP project that will come to the EQB for a site permit, a Certificate of Need will be required from the Minnesota Public Utilities Commission. There are a few power plant modifications that are exempt from the Certificate of Need requirement. Minnesota Statutes section 216B.243, subdivision 8(4) and (5). If no Certificate of Need is required, a statement to that effect will suffice, of course. The EQB will confirm that the Public Utilities Commission is aware of such projects.

The law requires the proposer of a LEPGP that requires a Certificate of Need to apply for the Certificate before applying to the EQB for a permit. Minnesota Statutes section 216B.243, subdivision 4. ("Any person proposing to construct a large energy facility shall apply for a certificate of need prior to applying for a site or route permit under sections 116C.51 to 116C.69 or construction of the facility.") Therefore, this rule requires the applicant for a site permit to either provide the EQB with a copy of the Certificate of Need or provide other documentation that an application for a Certificate of Need has been submitted to the PUC. In most cases, the EQB will be aware of the status of the Certificate of Need proceeding before the Public Utilities Commission because such proceedings are public and the EQB receives notice from the Commission of such filings.

Subpart 2. Route Permit for HVTL. This subpart is the mirror image of subpart 1, except it applies to high voltage transmission lines rather than to power plants. Most of this information is already required under the existing rules. Minnesota Rules part 4400.0650. As with subpart 1, this information relates to the considerations the Board must take into account when it makes a decision on a route permit. Minnesota Statutes section 116C.57, subdivision 4.

Item A. Ownership. The EQB must know who the owner of a new HVTL will be, just as it does with LEPGPs.

Item B. Permittee. The rationale here is the same as for the corresponding language in subpart 1.

Item C. Alternative Routes. The rationale here is the same as the rational for requiring the proposer of a LEPGP to identify two sites when an application is submitted – an applicant is required by statute to propose two routes. Minnesota Statutes section 116C.57, subdivision 2a.

When the proposer of a new HVTL obtains a Certificate of Need from the Public Utilities Commission, the matter of system alternatives to a proposed transmission line will have been determined. The EQB will consider alternative routes for getting from point A to

point B, but the EQB will not consider different endpoints. System alternatives are not within the EQB's jurisdiction when the PUC has issued a Certificate of Need. Minnesota Statutes section 116C.53, subdivision 2.

Item D. Project Description. The EQB must know what specific HVTL is being proposed, just as it needs to know the details of a LEPGP proposal.

Item F. Land Uses and Environmental Conditions. It is reasonable to require an applicant for a HVTL route permit to provide information about the land uses and environmental conditions along the entire length of the line. Linear facilities like transmission lines can run for many miles, and the topography and land uses and environmental conditions can change along the proposed route. The information required under this Item is essentially the same type of information required under subpart 3 for environmental impacts. An applicant is not required to submit the same information twice, and can decide whether certain land use and environmental information should be included here or under subpart 3.

Item G. Owners of the Property. This is the same requirement as Subpart 1, Item F., and the rationale is the same.

Item H. Topographical Maps. United States Geological Survey maps or other maps like these are valuable to evaluate the environmental impacts along the proposed route. U.S.G.S. maps are the preferred map but in certain instances, the Chair may accept other types of maps if the information is satisfactory.

Item I. Private and Public Rights-of-Way. In 1978, in *People for Environmental Enlightenment and Responsibility, Inc. (PEER) v. Minnesota Environmental Quality Council*, 266 N.W.2d 858 (Minn. 1978), a case involving the siting of a 345 kilovolt line from Chisago County through Washington County to the Twin Cities, the Minnesota Supreme Court held that the state should follow a policy of nonproliferation in selecting routes for new transmission lines. The Supreme Court said, at 868:

> We therefore conclude that in order to make the route-selection process comport with Minnesota's commitment to the principle of nonproliferation, the MEQC [the predecessor to the MEQB] must, as a matter of law, choose a pre-existing route unless there are extremely strong reasons not to do so. We reach this conclusion partly because the utilization of a pre-existing route minimizes the impact of the new intrusion by limiting its effects to those who are already accustomed to living with an existing route. More importantly, however, the establishment of a new route today means that in the future, when the principle of nonproliferation is properly applied, residents living along this newly established route may have to suffer the burden of additional powerline easements.

Therefore, in order to determine whether a proposed powerline will follow an existing right-of-way or not, the EQB must know what existing utility and public rights-of-way are presently in existence between the end points of the proposed line. While the Supreme Court focused on existing powerline rights-of-way, the EQB would like to know about all kinds of rights-of-way that might be available for a new powerline. This could include pipelines and highways, in addition to high voltage transmission lines.

Item J. Design Specifics. This provision is the same as subpart 1, item. G. The design information is necessary to evaluate the potential impacts of the line. This rule specifically asks for information about the electric fields and magnetic fields associated with a line of the size and type being proposed. These impacts are usually referred to as EMF impacts. It is important to include this information because the public wants to know about EMF impacts associated with a line of the size and type being proposed.

Item K. Cost Analysis. The cost figures for a proposed HVTL are necessary for the same reason costs associated with a LEPGP are necessary.

Item L. Design Options. The EQB is requiring the applicant to submit information about options to the proposal that may accommodate expansion of the transmission capacity in the future. The reason this information is necessary is because the EQB is directed by statute to take into account future needs for transmission capacity. Minnesota Statutes section 116C.57, subdivision 5(10). The Supreme Court has also directed the EQB to attempt to avoid the proliferation of HVTLs. *People for Environmental Enlightenment & Responsibility Inc., (PEER) v. Environmental Quality Council,* 266 N.W.2d 858 (Minn. 1978

Item M. Acquisition of Right-of-Way. The EQB wants to know how the applicant proposes to acquire the right-of-way that would be necessary to construct the proposed transmission line. This is important information for the public to know as well. Details about construction practices and maintenance and restoration practices and procedures helps the EQB evaluate the potential environmental and human impacts of the proposed line.

Item N. Other Permits. This is the same kind of information required under subpart 1, Item K. for LEPGPs. The listing of other permits will also be provided in the EIS or EA.

Item O. Certificate of Need. This rule is the same as subpart 1, item L. Nearly all HVTLs that come to the EQB for a route permit are required to obtain a Certificate of Need from the Public Utilities Commission. Short transmission lines under 200 kilovolts in size, less than 10 miles long and not crossing state boundaries, are exempt from the Certificate of Need requirement, Minnesota Statutes section 216B.243, subdivision 2(3), but other power lines over 100 kV in size require a Certificate of Need. The EQB will administer this requirement in the same fashion it administers the requirement for LEPGPs.

Subpart 3. Environmental Information. This rule is intended to describe the information an applicant must submit as part of its application to assist the EQB in its preparation of an Environmental Impact Statement or an Environmental Assessment on the proposed project considering both the preferred site and any alternative sites identified by the applicant. The information required to be submitted under this rule is really no different than information that has been required of applicants in the past. While the scope of an EA is likely to be narrower than the scope of an EIS, simply because the projects for which an EA is required are the smaller projects, and also because an applicant for a permit for one of these smaller projects qualifying for alternative review need not propose any alternative sites or routes, the type of information required for projects in both categories is essentially the same. The information required under this rule is essentially the information that is required to be included in the EIS or EA.

Item A. Environmental Setting. This requirement is simply one to provide a general description of the setting of each proposed site and route.

Item B. Human Settlement Effects. Human settlement is a broad category that is intended to include a number of different impacts. These effects are ones that have always been evaluated under the Power Plant Siting Act for proposed LEPGPs and HVTLs. Minnesota Rules parts 4400.1310, subpart 1.A. and 4400.3310, subpart 1.A.

The examples of human settlement effects included in this rule are not inclusive. If there are other effects that fall within this category, the EQB expects the applicant to address them as well. On the other hand, if a proposed project does not have certain effects, such as effects on recreational areas or public services, then, of course, no analysis is required. It is more likely with smaller projects qualifying for alternative review and preparation of an Environmental Assessment that some of these impacts will not require analysis.

Some of the common effects evaluated under this category include air pollution, impacts on drinking water, noise, and visual impacts. These effects can often be evaluated in objective terms. Other impacts, like socioeconomic impacts and impacts on cultural values, may be quite subjective, but they can be important nonetheless. Socioeconomic impacts include such impacts as new residents moving into a community, local businesses selling products and services, and new schools being required because of an increase in population. Cultural values often involve an historical perspective of the community.

Item C. Effects on Land-Based Economies. This category is intended to address the impacts of the project on the major economies of the area where the facility will be located. The categories listed – agriculture, forestry, tourism, and mining – are ready examples of major economies of various parts of the state. Obviously, the proposer of a power plant in western Minnesota must take into account the impacts on agriculture, while a facility in Hibbing would require an analysis of the impacts on mining and tourism. The impacts can be both positive and negative.

Item D. Archaeological and Historic Resources. Normally, what applicants have done in the past is request the assistance of the Minnesota Historical Society in identifying any historical or archaeological resources that are known in the area where the facility is proposed to be constructed. In some instances, applicants are requested to conduct their own survey, through actual onsite survey work or just a literature-type survey using county historical societies or other historical resources.

Item E. Effects on the Natural Environment. This is the category that includes the traditional environmental effects, like effects on air quality, and on nearby streams and lakes, and on wetlands, and on plants nearby, and on habitat in the area, and on fish. The specific impacts to be addressed depends on the impacts that are likely to result from the proposed project, depending on its size and type and its location.

Item F. Rare and Unique Natural Resources. It is necessary for an applicant for a permit to determine whether there are any rare and unique natural resources in the area of the project that may be adversely affected by construction and operation of the facility. The Minnesota Department of Natural Resources and the U.S. Fish and Wildlife Service and other agencies like those are valuable sources of this type of information and will need to be consulted. It is especially crucial to identify any endangered species that may be located within the vicinity of the project. Special restrictions are likely to be imposed by one agency or another if an endangered species is found within the impact zone of the project.

Item G. Unavoidable Effects. Items A – F are intended to identify the kind of impacts that may result from the proposed project. This Item G is intended to determine which of the possible effects that have been identified will not be able to be avoided if the project goes forward at a particular site or along a particular route.

Item H. Mitigation. This category is similar to Item G, in that it is not the identification of an impact that is required, but the analysis of what measures are possible to mitigate the adverse consequences of the project that have been identified. It is necessary to put some cost estimates on each of the mitigative measures that are evaluated so the EQB can determine if a particular mitigative measure is within the realm of feasibility.

4400.1250. REVIEW OF APPLICATION.

Subpart 1. Review by Chair. This Subpart incorporates the statutory requirement that the Chair has only ten days after receipt of an application to decide whether the application is complete. Minnesota Statutes section 116C.57, subdivision 2a. The EQB intends for the decision on the adequacy of the application to be made within ten calendar days of submission. The Chair will obviously depend on assistance from the staff to determine whether an application is complete. Once a determination on the completeness of the application is made, the Chair will send a letter to the applicant confirming the Chair's decision. If the Chair rejects the application, the letter will explain the deficiencies the Chair has found.

It is the Chair, not the full Board, that will decide whether the application is complete. This will allow the decision to be made expeditiously and to allow the EQB to proceed with the next steps in the process without delay.

Acceptance of an application is important because under the Power Plant Siting Act, acceptance triggers the timeframe for completing action on a permit application. Minnesota Statutes section 116C.57, subdivision 7. Traditionally, the EQB staff has requested project proposers to provide a draft application to the staff for review before the applicant submits the final application for acceptance. The EQB trusts that applicants will continue to advise the staff in advance of a pending application and give the staff an opportunity to review a draft application. In probably every instance in the past, the staff has found parts of a draft application that need to be supplemented before the actual application is submitted. The EQB would expect that staff can review a draft application within a matter of a week or so and the applicant can revise the application accordingly depending on what supplemental information is required.

Subpart 2. Resubmission of Rejected Application. This rule covers the situation where the Chair has rejected an application and the applicant submits a revised application addressing the deficiencies that were noted. This rule simply states the when the applicant submits a revised application, the same process spelled out in subpart 1 will be followed again to review the completeness of the application.

Subpart 3. Reasons for Rejection. This rule repeats the statutory direction that the Chair shall not reject an application and stop the time period from commencing if the deficiency is one that can be readily corrected by the applicant and the lack of the information will not interfere with the public's ability to review the proposed project. Minnesota Statutes section 116C.557, subdivision 2a. The EQB believes that sixty days is a reasonable deadline for correcting one of these minor deficiencies. If the deficiency cannot be corrected within that timeframe, the applicant should be required to resubmit a new application when the information can be provided. Sixty days will carry the project significantly along the process, particularly under the alternative review process that only has 180 days to complete.

The EQB is not attempting to identify in the rule the kind of deficiencies that will not interfere with the public's ability to review the project. That will be decided ad hoc when the issue arises. Obviously, information about a particular site or route will be more crucial than information about estimated costs or potential owners, but a final decision will be made at the time the Chair completes review of the application.

It should be emphasized that it is not in anybody's interest for the Chair to reject an application. That is why the EQB requests applicants to submit a draft application for staff review before submitting the final application. Allowing the staff a short period of time to review a draft application should alleviate the situation where the Chair has to decide whether missing information necessitates rejection of an application or not.

Subpart 4. Schedule. This rule simply recognizes that the acceptance of the application by the Chair will mark the start of the schedule – one year for the big projects and six months for the smaller projects.

4400.1350. NOTICE OF THE PROJECT

Subpart 1. Notification Lists. The EQB will maintain two lists to ensure than interested individuals and organizations are kept advised of the status of large electric energy projects.

Item A. General List of Interested Persons. The first list the EQB will maintain is a list of persons who want to be advised of all LEPGPs and HVTLs that come to the EQB for permitting. The EQB has already begun to create this list. Persons attending the annual hearing on December 1, 2002, were asked if they wanted their names included on a list like this. On March 18, 2002, the EQB put a notice in the EQB Monitor announcing that people who wanted to have their names placed on this list should contact the EQB. The same notice was placed on the EQB website and persons were given the opportunity to sign up electronically. The notice can be found at:

http://www.mnplan.state.mn.us/eqb/EnergyFacilities/mailinglist.html

The most recent version of the General List is Exhibit 20.

The General List is used to provide interested persons notice when a particular project first comes to the EQB for approval. When persons on this list are advised about a particular project, these persons will have to have their names placed on the second list – the Project Contact List – to continue to receive notification about events affecting the particular project.

Item B. Project Contact List. This list contains the names of persons who want to be notified about events relating to a specific project. Persons can ask to add their names to a particular project list, and the EQB on its own volition can also decide to add the name of any persons the agency knows are interested in a particular project. Persons who live near a proposed project will usually have their names on this list.

While there is only one General List for all projects, each project will have its own Project Contact List. Once a particular project has been completed, and a final decision on a permit has been made, the Project Contact List will essentially cease to exist. The General List will continue indefinitely, although Item A does recognize that the EQB can from time to time delete names from the list if the persons do not respond affirmatively to a notice that the EQB is seeking to update the list.

Subpart 2. Notification of Persons on the General List. Major projects are often publicly announced months in advance of the time that the proposer seeks governmental approval. Also, with most large energy projects, the proposers will have applied for a Certificate of Need from the Public Utilities Commission sometime prior to

submitting a permit application to the EQB. The public will usually have notice that a particular project is under consideration weeks in advance of a permit application being submitted to the EQB. However, the general public will not necessarily know when a project proposer actually submits a permit application to the EQB. This rule is designed to get the word out that the proposer has submitted an application to the EQB.

The rule places the obligation on the applicant to notify those persons on the General List that an application has been submitted to the EQB. The notification must state that an application has been submitted and give a general description of the project. The notice must also advise the persons where a copy of the application may be reviewed. Usually, arrangements are made to provide a hard copy of the application in a library, a city hall, or other public place in the area of the proposed project. As more and more applications are placed on the internet, and more people obtain access to the internet, the distribution of a hard copy becomes less important. Nonetheless, at least one copy must be available at a public place in the area.

Importantly, the notice must also advise recipients that in order to receive future notices about the project, the person must arrange to get his or her name on the Project Contact List. That is simply a matter of contacting the EQB staff and asking to have the name added.

The rule requires this notice to be given within fifteen days after the application is submitted. This requirement is found in the statute. Minnesota Statutes section 116C.57, subdivision 2b. In most situations, the applicant will likely wait until the Chair has made a decision on whether to accept the application. It does not make sense to send out notice that an application has been rejected. Otherwise, a second notice would be required after a revised application was submitted and the Chair accepted it.

It should be mentioned that whenever a time period is described in these rules, the period refers to actual days, counting Saturdays, Sundays, and holidays. However, if the time period should end on a Saturday, Sunday, or holiday, the period will carry over to the next working day.

There is no provision in the draft rules requiring that notice of the submission of a draft application be given. The reason for that is because there may be several draft applications that are submitted. Moreover, draft applications are sometimes submitted in sections, with portions of the application coming in to the staff periodically. It is too unwieldy and burdensome to require an applicant to give notice every time a draft application or a portion of an application is submitted. It is enough to require notice when a final permit application has been accepted by the Chair.

However, persons who are interested in keeping advised about the status of a particular project they are concerned about can certainly request to be kept advised about the project. The EQB staff can notify persons who request to be notified about draft applications. Any draft applications in EQB files that are public documents are certainly available for public review.

Subpart 3. Publication of Notice. A lot of people in the area of a proposed project may be interested in a particular project but will not have placed their names on the General List to receive notice of all large energy projects. Therefore, this requirement is designed to give notice to the general public by publishing a notice in a newspaper of general circulation in the area. The paper could be the St. Paul Pioneer Press or the Minneapolis Star-Tribune or a local newspaper. The newspaper notice gives the same general information as the mailed notice about the project and where an application can be reviewed. The EQB has found that a large tombstone ad on one of the pages of the paper is a better device for informing the public than a lengthy legal ad on the legal page, but the placement of the ad is up to the applicant. This notice must also be given within fifteen days of submission of the application.

Subpart 4. Notification of Local Officials. The statute requires an applicant to give local officials direct mailed notice of a proposed project in their area. Section 116C.57, subdivision 2b. These local officials will most assuredly be aware of the project already by the time this notice arrives, but they may not know that a permit has been applied for from the EQB and that the time period has begun to run. This rule and statute are designed to give local officials at all levels of government – township, city, county, and regional – notice of the project. Not every local official need be notified. It is sufficient if the notice is sent to a clerk or other administrator who can then report to the board or council.

Subpart 5. Notification of Property Owners. Unlike a Certificate of Need application, the permit application must describe a preferred site and an alternative site for a LEPGP, and a preferred route and an alternative route for a HVTL, at least if it's one of the larger projects. For the smaller projects, at least one site or route must be identified. Since a specific site or route is being proposed, it is possible to identify the property owners who own the proposed sites or land adjacent to one of the sites or own land along the proposed routes. The statute requires an applicant to mail notice to these land owners. Section 116C.57, subdivision 2b. These people need to be given notice that a project proposer has submitted an application to the EQB to build a project on their land or adjacent to their land.

Minnesota Statutes section 116C.57, subdivision 2b specifically describes how an applicant shall identify who the property owners are. The language in this rule is taken from the statute. The statute specifically allows a project proposer to rely on records other than the records identified for determining who property owners are. The rule provides that if the applicant is not going to rely on one of the records mentioned in the statute, the applicant must obtain approval of the Chair to use the proposed list. Getting the approval of the Chair upfront will help to avoid any disagreements at the end.

Subpart 6. Confirmation of Notice. This rule requires the applicant to provide the EQB with documentation that the notices required by subparts 2-5 have been given. A simple affidavit of service or affidavit of publication with a copy of the notice will

suffice. An applicant can certainly contact the EQB staff in advance of giving any notice to ensure that the notice is satisfactory but such review is not a requirement of the rules.

Subpart 7. Failure to Give Notice. This rule repeats the statutory language that failure to give a particular notice will not invalidate any ongoing permit proceedings, as long as the applicant has made a bona fide attempt to comply. Minnesota Statutes section 116C.57, subdivision 2b. The EQB is proposing to add language that recognizes that failure to give notice may extend the time to process a permit application to give the public an adequate opportunity to participate. The Chair will be the person to make decisions regarding the efforts to give notice and the ramifications of any failure to give the proper notice.

4400.1450. PUBLIC ADVISOR

The concept of a public advisor has been in the Power Plant Siting Act since its creation in 1973. Minnesota Statutes section 116C.59, subdivision 3. It has been a part of the EQB rules for a long time also. Minnesota Rules parts 4400.0900 and 4400.2900. This rule continues the long-standing procedure of appointing an EQB staff member to serve as the public advisor on each project for which a permit application has been submitted.

The one change in the rules is to specifically recognize that it is the Chair who appoints the public advisor. This merely codifies past practice. The Chair is likely to make this decision at the same time as the decision is made to accept the application. This will allow the public to be notified early on of the identity of the staff person who is serving as the public advisor.

4400.1550. PUBLIC MEETING

Subpart 1. Scheduling Public Meeting. Shortly after acceptance of an application, the Chair, with the consultation of the staff, will schedule a public meeting. This public meeting will be the first opportunity for the public to hear from the applicant about the proposed project. As is explained under Part 4400.1700, subpart 2 and Part 4400.2750, subpart 2, this public meeting is also likely to serve as the scoping meeting for the EIS or the EA.

This public meeting has to be held within sixty days after acceptance of the application. For the alternative review process, it will probably have to be held even sooner. In order to keep a project on schedule, this public meeting has to be held relatively soon after the application is accepted. It is also a good idea to hold this hearing within a short time, because the public may be anxious to hear from the applicant about the project. This is also the time when the EQB staff can explain the process to the public and explain what procedural steps will be upcoming.

This public meeting will be held in the area where the project is proposed to be constructed.

Subpart 2. Notice of Public Meeting. Soon after the first notice of the project is sent to persons on the General List and to local officials and published in a local newspaper, interested persons should begin to get their names on the Project Contact List. This Project Contact List will be used to mail future notices about the project. However, because the public meeting will be held soon after the application is accepted and interested persons may not have had an opportunity to put their names on the Contact List, the rule also requires the EQB to publish notice in a local newspaper.

In some cases the EQB may be able to schedule this hearing at the same time the Chair accepts the application. In such event it should be possible to notify people of the time and place of the public meeting when the first notice (required under Part 4400.1350) is mailed out and published. If possible, the EQB will ask the applicant to include specifics about the public meeting in its notice about the project. Also, the EQB will make every effort to publish notice on the EQB webpage about the public meeting.

Subpart 3. Conduct of Public Meeting. The public meeting will be conducted in an informal way. The meeting will be conducted by EQB staff. The main purposes of the meeting are to explain the project to the public, explain the process that will be followed, with emphasis on opportunities for public involvement, and answer questions. In most cases the staff will use this public meeting as the meeting in which the public can participate in the scoping of the EIS or EA.

Subpart 4. Applicant Role. This rule emphasizes that the applicant is expected to be present at the public meeting to explain the project and answer questions. The applicant can decide which of its people need to be in attendance to address the matters that may arise.

Subpart 5. EIS Scoping. In most situations this public meeting will also serve as the scoping meeting. It makes sense to use this first meeting as a scoping opportunity in order to keep the process moving expeditiously. Even if a separate public meeting were scheduled specifically for scoping, however, comments received at this first public meeting can be used for scoping purposes.

4400.1600. CITIZEN ADVISORY TASK FORCE

Subpart 1. Chair Authority. Minnesota Statutes section 116C.59, subdivision 1 provides that the Board may appoint a citizen advisory task force to assist the EQB in its review of a proposed project. By this rule the EQB is proposing to delegate to the Chair the right to make the initial decision whether to appoint such a task force. Delegation to the Chair will again allow the process to move more expeditiously. If a task force is to be appointed, it needs to be compiled very quickly so it can begin its work.

The rule directs the Chair to determine early in the process whether to appoint a citizen advisory task force, because there will be a limited amount of time for the task force to complete its business. This is especially true if the project falls under the six month

alternative process. There is no prohibition against the Chair appointing a task force even before the time a permit application is submitted to the EQB.

Subpart 2. Board Decision. Since the ultimate authority to appoint a citizen advisory task force rests with the Board, this rule provides that if the Chair decides not to appoint a task force, any person who would like a task force appointed may ask the Chair to bring the matter to the Board, which the Chair will do. The Board will have to consider the matter quickly in order to give the task force an opportunity to conduct is business and still keep the project on schedule.

Subpart 3. Task Force Responsibilities. The Legislature made some changes in the statute relating to citizen task forces in the energy legislation passed in 2001. Minnesota Statutes section 116C.59, subdivision 1. The statute now provides that when appointing a task force, the appointing authority shall specify the charge to the group. This requirement is repeated in this rule. In order to avoid any confusion over the role of the task force, the Chair or the Board, depending on who appoints it, will state in writing what the EQB expects the task force to do. Many times what the EQB expects of the task force is to evaluate various alternatives and make a recommendation on a site or a route to the agency.

Subpart 4. Termination of Task Force. Another change in the statute provides that the task force will terminate upon the occurrence of a certain event. The rule repeats the language from the statute. The task force will have a very limited life. The task force is likely to be in existence for no more than 75 days from the time of its appointment, because the latest it will expire is upon issuance of the scoping decision identifying the alternatives to be evaluated in the EIS. For the smaller projects, the life of a task force will be even shorter, since the EA will be scoped in 50 days or so. However, the need for a citizen advisory task force for the smaller projects under the alternative review process is highly unlikely since the proposer need not even propose alternative sites or routes.

Once an EQB citizen advisory task force terminates upon the occurrence of the triggering event, it will cease to exist. It will no longer be an EQB task force. However, there certainly is no prohibition against a group of citizens assuming a name and intervening in an EQB permitting process. In fact, a local unit of government, like a county or city, could appoint its own task force to participate in the process.

4400.1700. PREPARATION OF ENVIRONMENTAL IMPACT STATEMENT

Subpart 1. Environmental Impact Statement Required Minnesota Statutes section 116C.57, subdivision 2c requires the EQB to prepare an EIS on LEPGPs and HVTLs, unless the project qualifies for alternative review or local review. This rule incorporates the statutory requirement.

By statute an "environmental impact statement shall be an analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed

action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated." Minnesota Statutes section 116D.04, subdivision 2a. The statute continues, "The environmental impact statement shall also analyze those economic, employment and sociological effects that cannot be avoided should the action be implemented. To ensure its use in the decision making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action." *Id.*

Subpart 2. Scoping Process. Whenever an EIS is prepared, the first step in preparing the document is to determine its scope. This rule addresses that issue. The public must be afforded an opportunity to participate in the scoping of the EIS. The rule requires the EQB to hold a public meeting at which the public can submit comments on the proposed scope of the EIS. In addition, the public will have an opportunity after the public meeting to submit written comments regarding the scope of the EIS. The rule recognizes that the public meeting required shortly after the permit application is accepted to explain the project to the public can be the same public meeting at which scoping is addressed. The reason for combining these two tasks into one public meeting is to keep the process moving and on schedule. A separate scoping meeting can be arranged if the EQB so desires, but in most cases, it is anticipated that the meetings will be combined.

The scope of the EIS will be determined by the Chair, although the Chair could elect to bring the matter to the Board. Again, this provision is intended to keep the process moving, so the statutory deadline can be achieved. The Chair will prepare a scoping order as quickly after the public meeting as possible, and send the order to those persons whose names are on either the General List or the Project Contact List. It still may be a little early to rely only on the Project Contact List so the notice will go to persons whose names are on either list.

The rule provides that once the Chair has issued a scoping decision, the scope of the EIS will not be changed unless the Chair or the Board finds that substantial changes have been made in the project or substantial new information has come forward that affects the original decision on potential environmental effects or the availability of reasonable alternatives. This is the same standard applied to Environmental Impact Statements under the scoping language of Minnesota Rules part 4410.2100, subpart 8. It is important for interested members of the public to participate in the early scoping process because the Chair will not readily amend the scope of an EIS. The rule does allow a person to ask the full Board to change the scope, however.

Subpart 3. Alternative Sites or Routes.

Item A. This is the language from existing rules Parts 4400.1000 and 4400.3100 that any sites or route proposed by one of the member agencies of the EQB or by a citizen advisory task force will be included in the EIS. EQB staff can also suggest alternatives. The applicant will have identified a preferred site or route and an alternative

site or route in the application, so there will always be at least two alternative sites and routes included in the EIS.

Item B. This language recognizes that any person can suggest an alternative site or route to consider. Not every alternative site or route that is identified will automatically become part of the EIS, however. There must be good reason for including a suggested alternative site or route within the scope of the EIS, and persons advocating that a certain alternative be investigated must present information to the Chair supporting inclusion of the alternative in the EIS. Such information might include data about potential environmental impacts associated with the proposed site or route, or facts about the feasibility of the proposed alternative, or impacts that could be avoided if the alternative site or route were ultimately chosen. The Chair will determine in the scoping order whether to include the alternatives suggested.

Before the Chair decides whether to include a suggested alternative site or route in the EIS, the Chair will ask the applicant what the applicant's position is on including the suggestion. Because the applicant may be asked to provide a substantial portion of the information relating to each alternative to be evaluated, it is important to know what information the applicant has readily available and what information may have to be collected. The applicant may also have an opinion to offer regarding the feasibility of a particular alternative.

Subpart 4. Scope of the EIS. The intent of the scoping process is to identify the significant potential impacts involved with the proposed project and the legitimate alternatives that are worthy of analysis. The rule lays out the matters that are to be determined during the scoping process: the issues to be addressed, the alternative site or routes to be considered, and the schedule. It is necessary to deliberately establish just what is going to be covered in the EIS so all participants will know from the start what is going to be included in the EIS. And the fact that the EIS has to be prepared in a relatively short period of time, about three months, means the Chair has to be very deliberate in deciding the scope of the EIS.

Many of the issues to be addressed are readily identified from the list of environmental information that an applicant is required to submit under Part 4400.1150, subpart 3. Two of the alternative sites or routes to be considered will be those the applicant is required to identify in the application. The schedule will depend on just what has to be evaluated in the EIS. With big projects, such as large coal-fired power plants or long 345 kV or 500 kV transmission lines, it must be admitted that it will be difficult to complete an EIS in the time allowed to complete the entire process in one year.

Subpart 5. Matters Excluded. There are certain matters that will not be included in the scope of the EIS when the Public Utilities Commission has issued a Certificate of Need or placed a high voltage transmission line on the Certified HVTL List because the Legislature determined that once these matters are decided by the Public Utilities Commission, they will not be reconsidered during the EQB permitting process. This rule reiterates these statutory restrictions.

One alternative the EQB will not consider in an EIS is the no-build alternative. The Legislature provided in the 2001 legislation that the no-build alternative shall be considered by the Public Utilities Commission in deciding whether the project is needed, and not by the EQB during the siting or routing process. Minnesota Statutes section 116C.57, subdivision 2c ("For any project that has obtained a certificate of need from the public utilities commission, the board shall not consider whether or not the project is needed.") Thus, the EQB will not evaluate the no-build alternative as part of the EIS, when a Certificate of Need is issued for the project.

Nor will the EQB consider alternatives that relate to the size, type, or timing of the facility. Also, with regard to transmission lines, alternative system configurations and changes in voltage will not be considered. Minnesota Statutes section 116C.53, subdivision 2 ("When the public utilities commission has determined the need for the project under section 216B.243 or 216B.2425, questions of need, including size, type, and timing; alternative system configurations; and voltage are not within the board's siting and routing authority and must not be included in the scope of environmental review conducted under sections 116C.50 to 116C.69.") Minnesota Statutes section 216B.2425 is a new statute that allows a utility to satisfy the Certificate of Need obligation through a new transmission planning and certification process that went into effect on August 1, 2001.

Subpart 6. Draft EIS. This rule repeats the existing requirements for all EISs found in Minnesota Rules part 4410.2300 for the content of the Draft EIS.

Subpart 7. Public Review. Once the Draft EIS is prepared, the public must be advised of the availability of the document. This rule sets forth the procedures to follow to notify the public. The rule repeats the traditional methods of notifying interested persons about the existence of a Draft EIS – send notice to people who have requested notice and place the notice in the *EQB Monitor*.

The Draft EIS must also be conveniently available for people who want to review the document. The rule requires the EQB to place a hard copy of the Draft EIS in a public library or other governmental office in each county where the proposed project may be located. The EQB will also certainly make a copy available to persons specifically requesting a copy. However, today many people prefer to have access to documents like these via the internet. The EQB will post the notice and the document on the EQB webpage, unless for some reason that cannot be done, but generally there is no reason why a Draft EIS cannot be available on the web.

Subpart 8. Informational Meeting. As with any other EIS, a public information meeting is required to provide the public with an opportunity to comment on the Draft. The rule provides that the meeting shall not be held sooner than 20 days after the Draft EIS becomes available. This is not a great deal of time, but it should be sufficient to give those persons who are interested in the project and have followed developments throughout the course of the proceeding an adequate opportunity to review

the issues of interest. In some instances more than 20 days notice may be given, but in order to keep the process on schedule, the public meeting will have to be held soon after the Draft EIS is available. Also, the public will have at least ten days after close of the public meeting to submit written comments.

The rule requires the EQB to give at least ten days notice of the holding of the public meeting. Again, this is not a long period of time, but interested parties know from the outset that once the Draft EIS is prepared, there will be a public meeting and there may only be ten days notice of the actual date.

The rule provides that the EQB can decide to hold the public meeting on the Draft EIS on the same day as the public hearing on the permit begins. The EQB has usually done this in the past and will continue to do so in the future if appropriate. Again, this helps to keep the process moving in an expeditious fashion.

Subpart 9. Final EIS. As with any other EIS, the EQB will respond to the timely comments that are filed with the agency and attach the comments and the response to the Draft EIS to compile the Final EIS. As with the Draft EIS, the EQB will also provide notice of the availability of the Final EIS. The rule does not require it but posting notice on the EQB webpage will also serve to disseminate the notice.

Subpart 10. Adequacy Determination. This rule sets forth requirements that are based on how an adequacy decision is made on any other EIS. Minnesota Rules part 4410.2850. Adequacy is essentially a determination that the EIS addresses the issues and the alternatives that were determined during the scoping process, it addresses the issues and alternatives in a reasonable manner, and the agency followed the procedures for completing an EIS.

The rule provides that the EQB shall not make an adequacy decision until at least ten days after notice of the availability of the document is published in the *EQB Monitor*. In most situations, what the EQB envisions is that the adequacy decision will be made at the same Board meeting that a decision on the permit is made. In such event, it is likely the public will receive more than ten days notice of the proposed action. If the Board should determine that the EIS is inadequate, it will be imperative for the staff to address the deficiencies and present a revised EIS to the Board as soon as possible in order to bring the matter to final resolution on the permit.

Subpart 11. Cost. This rule recognizes that the costs involved with the preparation of the EIS will be borne by the project proposer. These costs will be assessed as part of the overall project costs. In every situation where an EIS is prepared, the project proposer pays the costs of the EIS, so this provision is not unusual.

Subpart 12. Environmental Review Requirements. This rule provides that the preparation of an EIS on a power plant or high voltage transmission line shall be prepared under these rules in chapter 4400 rather than under the general environmental review rules in chapter 4410, unless these rules reference specific requirements of chapter 4410.

This rule is helpful to clarify that the process and requirements of these rules can stand alone, and the agency and the public and the applicant need not attempt to follow every requirement of chapter 4410 in addition to those included in this chapter.

4400.1800. CONTESTED CASE HEARING

Subpart 1. Hearing. Minnesota Statutes section 116C.57, subdivision 2d requires the EQB to hold a contested case hearing on each LEPGP and HVTL for which a permit has been applied for. The requirements in this rule are all found in the statute.

A contested case hearing is a formal proceeding presided over by an administrative law judge. Minnesota Statutes section 14.02, subdivision 3. The Office of Administrative Hearings has promulgated specific rules for power plant siting hearings. Minnesota Rules chapter 1405. These rules were adopted in accordance with Minnesota Statutes section 116C.66. At the end of the hearing, the ALJ compiles the evidence and writes a report and makes a recommendation on final action by the agency.

Subpart 2. Issues. This rule is intended to clarify that just as certain issues will not be included in the Environmental Impact Statement when a Certificate of Need has been issued for the project, so too will these same issues not be addressed in the contested case hearing. See the discussion for Part 4400.1700, subpart 5.

Subpart 3. Joint Hearing. Minnesota Statutes section 216B.243, subdivision 4 provides that if the Public Utilities Commission and the Environmental Quality Board determine that it is feasible, more efficient, and in furtherance of the public interest to combine a Certificate of Need proceeding and a site or route permitting proceeding, the two agencies may decide to hold a joint hearing. This rule is a recognition of the statutory right to combine the proceedings.

Both agencies – the PUC and the EQB – must decide that a joint hearing is the preferred way to go before the proceedings will be combined. If the EQB should decide that a joint hearing is appropriate, it would make that decision and advise the PUC of that fact and request the PUC to determine whether it wants to combine the proceedings. The issue could also come before the Board in the opposite fashion, where the PUC makes the decision first and requests the Board's concurrence.

The last sentence of this rule is a recognition that the EQB could also decide to hold a joint hearing with a neighboring state over an interstate transmission line. Minnesota Statutes section 116C.53, subdivision 3.

4400.1900. FINAL DECISION

Subpart 1. Timing. Minnesota Statutes section 116C.57, subdivision 7 provides that the EQB has one year from the day a permit application is accepted to make a final decision on a permit. The statute allows the EQB to extend the time for up to three

months for just cause or upon agreement of the applicant. These requirements are incorporated in this rule.

This rule also provides that the Board must make a final decision on a permit within 60 days after receipt of the report of the administrative law judge. Given all the process that must be afforded prior to the time the Board can make a final decision, including preparation of an EIS, the holding of several public meetings, and the holding of a contested case hearing, there will not be much of the one year time period remaining by the time the matter is ready for a final decision. So the matter has to be brought to the Board quickly after receipt of the ALJ's report. On the other hand, there are a number of tasks involved with bringing a matter like this to the Board at one of its monthly meetings. Time has to be provided for parties to submit exceptions to the ALJ report, the staff has to prepare briefing papers for the Board members, and notice of the Board meeting has to be provided. The EQB's procedural rules in Minnesota Rules chapter 4405 will have to be followed to properly bring the matter to the Board for action. All that takes time. It is reasonable to recognize that it may take 60 days to complete all these tasks.

The fact is that sometimes controversial projects take longer than one year to complete. The rules as proposed are designed to complete the proceeding within the one year deadline. However, in the event that certain tasks take longer to complete than the rules provide, a delay is going to result. Many of the tasks that must be fulfilled are not within the control of the EQB or the EQB staff. For example, once the administrative law judge takes jurisdiction over the contested case hearing, the EQB does not control how long the hearing will take. If all witnesses who want to testify cannot be heard in the anticipated time, the ALJ will have to decide to extend the hearing. If the applicant is required to provide certain information as part of the EIS, and the applicant is not prompt in providing the information, delay will result. The EQB has designed its rules to allow a permit decision to be made within the one year period, and the applicant will surely act in an expeditious fashion, and the public will have to act within defined time periods, but if a project is highly controversial, it is likely that the matter will take more than one year to complete.

Subpart 2. EIS Adequacy. This rule simply states that the Board will not make a decision on a permit until the EIS on the project is found to be adequate. It is likely to be just a few minutes between decisions if the adequacy of the EIS and the decision on the permit are on the same Board agenda.

Subpart 3. Certificate of Need Decision. The statute provides that an applicant must submit an application for a certificate of need with the Public Utilities Commission before applying for a site permit or a route permit. Minnesota Statutes section 216B.243, subdivision 4. The statutes does not actually say that the EQB cannot issue a permit before the PUC issues a certificate of need, but it makes sense that the need decision be made before the EQB makes a final decision on a permit. This has been the past practice of the EQB.

The EQB can process a permit application during the time a certificate of need proceeding is underway at the Public Utilities Commission. All this rule requires is that the EQB not make a final decision until the need decision is final.

Subpart 3. Notice. This rule describes the manner in which the EQB will notify interested persons of the Board's final decision on the permit. Minnesota Statutes section 116C.57, subdivision 8 requires the EQB to publish notice in the *State Register* within 30 days after issuance of a site permit. Even if a permit were to be denied, the EQB would publish notice in the State Register. The reason for publishing in the *State Register* is because this is the official publication of state government and publication triggers the appeal time. An aggrieved person has thirty days after publication in the *State Register* to appeal the Board's decision. Minnesota Statutes section 116C.65.

The other methods of publication spelled out in the rule – notification to persons on the project contact list, publication in the *EQB Monitor*, and posting on the webpage – will actually be better methods to notify persons who are interested in the project than publication in the *State Register*.

ALTERNATIVE PERMITTING PROCESS FOR CERTAIN FACILITIES

In the energy bill passed by the Legislature in 2001, Minnesota Laws 2001, chapter 212, the Legislature created an alternative, streamlined method of processing permit applications for certain smaller projects. The major differences between the full process and the alternative process are: an EIS is required for the full process, an Environmental Assessment is required for the alternative process; a contested case hearing is required for the full process, a more informal hearing is required for the alternative process; the full process must be completed in one year, the alternative process must be completed in six months.

Parts 4400.2000 to 4400.2900 contain the requirements for the alternative process that correspond to Parts 4400.1000 to 4400.1900 for the full process. A schematic of the process for consideration of a permit application for a proposed project under the full process is shown in Exhibit 7.

4400.2000 Qualifying Projects.

Subpart 1. Qualifying Projects. This rule simply describes the various projects that qualify for review under the alternative review process. The projects are all described in the statute. Minnesota Statutes section 116C.575, subdivision 2. That statute reads:

> The requirements and procedures in this section apply to the following projects:
>
> (1) large electric power generating plants with a capacity of less than 80 megawatts;

(2) large electric power generating plants that are fueled by natural gas;

(3) high voltage transmission lines of between 100 and 200 kilovolts;

(4) high voltage transmission lines in excess of 200 kilovolts and less than five miles in length in Minnesota;

(5) high voltage transmission lines in excess of 200 kilovolts if at least 80 percent of the distance of the line in Minnesota will be located along existing high voltage transmission line right-of-way;

(6) a high voltage transmission line service extension to a single customer between 200 and 300 kilovolts and less than ten miles in length; and

(7) a high voltage transmission line rerouting to serve the demand of a single customer when the rerouted line will be located at least 80 percent on property owned or controlled by the customer or the owner of the transmission line.

Items A – G in Part 4400.2000, subpart 1 are taken verbatim from the statute.

Item A. LEPGPs under 80 megawatts. Any power plant under 80 MW qualifies for review under the alternative process. It does not matter what fuel is proposed to be used if the plant is under 80 MW. A 79 MW coal-fired plant would qualify for alternative review. If a plant of exactly 80 megawatts is proposed, it does not qualify under this language and would have to undergo review in the full permitting process.

The EQB also intends to interpret the statute to allow for review under the alternative process when an existing plant is proposed to be expanded by less than 80 MW and the expansion is not exempt from review and is not a minor alteration. It makes sense to apply the same tests regardless of whether it is a new plant that is proposed or the expansion of an existing plant.

Item B. Natural gas plants. This provision applies to a natural gas plant of any size. The two most recently permitted natural gas peaking plants – the 550 MW Lakefield Junction plant in Martin County and the 434 MW Pleasant Valley plant in Mower County – would have qualified for review under the alternative process if this provision were in effect a few years ago. (In fact, as explained under Part 4400.5000, these plants could have qualified for review by local officials because they are peaking plants.)

Natural gas plants always have a backup source of fuel. It is common for such plants to have a supply of fuel oil available as backup. Relying on another source of fuel as a

backup will not disqualify a proposed natural gas plant from review under the alternative form of review.

Item C. HVTL between 100 and 200 kilovolts. Lines of this size were not within the EQB's jurisdiction until the new law went into effect on August 1, 2001. Such lines, probably either 115 kV or 161 kV lines, will be reviewed under the shorter, alternative process.

Item D. HVTL Over 200 kV and Less Than Five Miles Long. Large transmission lines - a 230 kV, a 345 kV, or even a 500 kV - can be permitted under the alternative process if the line is less than five miles in length. Lines of this size, however, tend to be much longer than five miles, at least if it is an entirely new line. If the line crossed the state border, regardless of length, it would not be eligible for review under the alternative process.

It is possible that a line of less than five miles could be proposed, but one or more system configurations to be considered could be longer than five miles. The EQB interprets the statute to allow these projects to still be reviewed under the alternative process. The statute is simply establishing the jurisdictional criteria for determining which process is applicable, not creating any priorities for which project to permit. Using the applicant's proposal to establish the qualifications for the review mechanism does not mean that system configurations will not be adequately analyzed and considered during the review if appropriate.

Item E. HVTL Over 200 kV Along Existing Right-of-Way. These larger high voltage transmission lines also qualify for review in the alternative process if at least 80% of the distance will be located along existing HVTL right-of way. This provision does not apply if the line is to be located along an existing highway right-of-way or pipeline right-of-way.

It is possible that an alternative to a proposed project utilizing existing right-of-way does not use existing right-of-way. Again, the EQB does not interpret the statute to require disqualification of such a project from the alternative review process.

Item F. Single Customer Under 300 kV HVTL. This situation is likely to apply only in situations such as providing power to a taconite plant or other large user of power. If Minnesota Power needs to build a new line to serve one of the taconite plants, and the line is under 300 kilovolts and less than ten miles in length, the alternative process would apply. Also, these projects do qualify for review by local units of government under Part 4400.5000.

Item G. Single Customer's Own Property HVTL. This provision has limited application too. If Minnesota Power, for example, intends to build a HVTL on property owned by Minnesota Power or the taconite company, the alternative review process would be applied. This type of project also qualifies for review by the local units of government.

The statute and the rule recognize that the option to go under the alternative review process belongs to the applicant. It is hard to imagine that an applicant would prefer to go under the one-year full process rather than the six-month alternative process, but nonetheless the choice does belong to the applicant.

Subpart 2. Notice to EQB. This rule requests a project proposer to give the EQB at least ten days notice of an intent to file a permit application under this alternative procedure. This notice will create a written record of the choice to follow the alternative process. The EQB anticipates that project proposers will work with the staff in advance of submitting an actual application, even with these smaller projects that qualify for this alternative review, so compliance with this requirement should not be a problem, and the EQB will have notice of such projects well in advance of the application being submitted.

4400.2010. PERMIT APPLICATION FOR ALTERNATIVE PERMITTING PROCESS

This rule incorporates the requirements of part 4400.1025. Regardless of which process an applicant will follow, the format for the application remains the same.

4400.2050. PERMIT FEES

This rule incorporates the requirements of part 4400.1050. The requirement to pay the costs of processing a permit application are the same regardless of which process is followed. The EQB would expect that most noncontroversial small projects can be processed for several thousand dollars. Because the fees will likely be much less under the alternative process than under the full process, calculation of an estimated fee under Minnesota Statutes section 116C.69 will probably indicate a larger fee than is necessary. Therefore, the Chair will consider reducing the amount of the initial fee that is required to be paid upfront.

4400.2100. CONTENTS OF APPLICATION

This rule incorporates the requirements of part 4400.1150. The same kind of information about a proposed project must be included in the application regardless of which process is followed. The application for one of these smaller projects under the alternative process is likely to be much shorter than for a bigger project, but all the categories of required information are the same.

A significant difference between an application for a small project and one for a big project is that under the alternative process, a second alternative site or route need not be identified by the applicant in the application. However, the proposed rule does require an applicant to identify sites or routes that have been rejected if such action has occurred and to explain the reasons for rejecting these sites or routes. The reason the EQB wants to know this information is so the EQB can review the reasons for rejecting a site or route and determine for itself whether an alternative should be evaluated during the course of

the permit proceeding. It will be helpful for the EQB to understand why an applicant has rejected certain alternatives.

4400.2200. REVIEW OF APPLICATION

This rule incorporates the requirements of part 4400.1250. The same procedure for the Chair's review of the application applies to projects in the alternative process.

4400.2300. NOTICE OF THE PROJECT

This rule incorporates the requirements of part 4400.1350. The public wants to receive notice of these projects the same as the bigger projects, and the procedures in part 4400.1350 must be followed under the alternative process as well.

4400.2400. PUBLIC ADVISOR

This rule incorporates the requirements of part 4400.1450. The smaller projects in the alternative process will still require an EQB staff person to act as the public advisor, and the procedures for appointing such a person are the same in either process.

4400.2500. PUBLIC MEETING

Subpart 1. Public Meeting. This rule incorporates the requirements of part 4400.1550, except for subpart 5. The reason for excluding subpart 5 is because subpart 5 refers to the EIS, and with the smaller projects in the alternative process, an Environmental Assessment rather than an EIS is required. Otherwise the necessity to schedule a public meeting to inform the public about the project and to provide an opportunity to participate in the scoping of the Environmental Assessment is the same.

Subpart 2. Environmental Assessment. This subpart replaces part 4400.1550, subpart 5, by referencing an EA rather than an EIS.

4400.2650. CITIZEN ADVISORY TASK FORCE

This rule incorporates the requirements of part 4400.1600. The Chair has the same option to appoint a citizen advisory task force to consider alternatives to a proposed project under the alternative process as the Chair does under the full process. However, given the fact that projects qualifying for review under the alternative process are smaller and presumably less controversial, the likelihood of appointing a citizen advisory task force for such projects is less. Also, the fact that the EQB has a shorter time period to act on a permit request under the alternative process means that any citizen advisory task force appointed to consider one of these smaller projects will have to act very quickly, perhaps in less than three months.

4400.2750. PREPARATION OF ENVIRONMENTAL ASSESSMENT

This rule is similar to part 4400.1700 for the bigger projects, which requires the preparation of an Environmental Impact Statement, but because it is an Environmental Assessment, and not an EIS that is required by statute to be prepared on projects in the alternative process, the EQB is not incorporating the 4400.1700 requirements into this rule. *See* Exhibits 17 and 18.

Subpart 1. Environmental Assessment Required This rule reiterates the statutory requirement to prepare an Environmental Assessment on projects that fall within the alternative review category. Minnesota Statutes section 116C.575, subdivision 5. An Environmental Assessment must contain information on the human and environmental impacts of the proposed project and of alternative sites or routes and must address possible mitigating measures. The content of an EA is described more fully in the discussion for Part 4400.2750, subpart 4.

An Environmental Assessment is not an Environmental Impact Statement, and it is not an Environmental Assessment Worksheet. Because projects in this alternative review category requiring an EA will often be smaller projects than those in the full review process, there will often be less potential impacts to evaluate and the extent of the impacts may be less. Also, since an applicant for a permit under the alternative process need not propose any alternative sites or routes, the list of alternatives to be evaluated is likely to be less, and in some cases, no alternative sites or routes will be evaluated. However, it should be quickly added that if one of these smaller projects is projected to have a significant environmental impact, that project will be analyzed in whatever detail is required to adequately inform the EQB and other decisionmakers of the potential environmental impacts of the proposed project. For example, a small coal-fired power plant will still have to undergo the same kind of review as a larger plant for emissions of mercury, sulfur dioxide, and other air pollutants.

An EA is also different from an EIS with respect to the process that is involved. There will not be a draft EA and then a final EA, as there is with EISs. The public will be afforded an opportunity to comment on the EA, and the EQB and the applicant will want to ensure that the record contains evidence in responses to the substantial comments that are made, but this will be done in the hearing process rather than in preparation of a supplemental document. This process is explained more fully below.

An Environmental Assessment is different from an Environmental Assessment Worksheet (EAW). An EA will consider alternatives and mitigation. An EAW does not. An EAW is designed to allow the Responsible Governmental Unit to decide whether to do a full-blown EIS. An EA on these smaller projects is the only environmental document that will be prepared. There is no requirement that the EQB use the EA to decide whether to prepare an EIS. The statute indicates that an EA on these smaller projects in the alternative process is the only document that will be prepared by the EQB. Minnesota Statutes section 116.575, subdivision 5 ("The environmental assessment shall be the only state environmental review document required to be prepared on the

project.") Because a decision on a permit application for a project of the qualifying size must be made in six months from the date the application is accepted, there simply is not enough time to revise an EA or to prepare an EIS.

An Environmental Assessment is like an Environmental Impact Statement in the sense that an EA is an information gathering tool only. It is not a decisionmaking document. No decisions and no recommendations are included in an EA.

Subpart 2. Scoping Process.

Item A. Similar to the EIS scoping process, the EQB will provide the public with an opportunity to participate in the scoping of the EA. The scoping process involves a public meeting and public comment period. The EQB will give at least ten days notice of the holding of the public meeting to those persons on the general list or the project contact list. The EQB will attempt to provide more than ten days notice, but because the clock is running on the six month deadline, longer notice may not be possible. Notice will likely be posted on the webpage as well but it is not required. Because this public meeting may be the first time the public will have an opportunity to ask questions of the applicant and the staff, the EQB will provide a period of time (at least seven days) for members of the public to submit comments on the scope of the EA after the meeting ends.

Item B. An important task of the scoping process is to identify what alternatives and impacts are to be addressed in the EA. As with scoping of EISs for the larger projects, any alternative sites or routes proposed by member agencies of the EQB or by a citizen advisory task force will be included in the EA. This provision is part of the existing rules. Minnesota Rules parts 4400.1000 and 4400.3100.

The public can also suggest both alternatives and impacts to include in the EA. Suggestion of an alternative or impact by a member of the public will not automatically result in inclusion of those issues. The Chair still has to decide whether to include them. The Chair will ask the applicant to respond regarding the suggested alternatives and impacts. See the discussion for part 4400.1700, subpart 3.

Subpart 3. Scoping Decision. The Chair will make the decision on the scope of the Environmental Assessment within ten days after the public comment period closes. The Chair can elect to bring the matter to the Board for a decision on the scope of the EA. The Chair will depend on the assistance of the EQB staff, who will attend the public scoping meeting and be familiar with the application, to develop the scope of the EA. Once the scoping decision is made, the Chair will mail a copy of the scoping decision to those persons on the Project Contact List.

This rule sets forth the matters that are to be included in the scoping decision. There are three items that will be included in every scoping decision and one that will be included in appropriate circumstances. The three items that will be included in every scoping decision are (1) the alternatives to be addressed, (2) the potential significant impacts to be

addressed, and (3) the schedule for completion of the document. The fourth item is simply a discretionary item identified as other matters.

The scoping decision will identify whether any alternatives to the proposed project will be evaluated. Since a permit applicant for one of the projects subject to review in the alternative process is not required to identify any alternative sites or routes, any alternatives to a proposed project to be considered must be developed during the scoping process. It will be the case that with certain small projects, no alternatives to the project will be considered. For example, with the St. Bonifacius project which was recently scoped, no alternatives to the proposed project were included. Exhibit 17. Similarly, no alternatives to the route proposed by the utility for the new Solway 115 kilovolt transmission line were investigated. Exhibit 18.

With regard to the specific potential impacts to be evaluated, the factors in Part 4400.1150, subpart 3 will provide the starting point for identifying the potential impacts of a proposed project. Part 4400.1150, subpart 3 is a list of environmental factors to consider in putting together a permit application. Not all of these categories of possible impacts will be included in the scope of the EA for many projects. With the St. Bonifacius project, the Scoping Decision identified only air impacts, noise, visual impacts, and a water drainage issue as the impacts that would be addressed in the EA. Exhibit 17. It makes sense to have a more narrow scope with a project like the expansion of the St. Bonifacius peaking plant, because a power plant was already on the site and the proposed expansion was relatively minor. A brand new 60 MW coal-fired power plant, however, will likely have more issues to be evaluated in the Environmental Assessment.

Similarly, only a few impacts were identified for inclusion in the EA on the 1200 foot long Solway transmission line. On the other hand, a 50 mile long 161 kilovolt HVTL along new right-of-way would undoubtedly have more environmental impacts to include in the EA than a project like the Solway transmission line.

The Chair will also determine a schedule for preparation of the EA as part of the scoping process. This is important to give the public and the applicant an idea of when the EA will be available and also to ensure that the project remains on schedule. The schedule will set forth the date by which the Environmental Assessment document will be available for public review. The St. Bonifacius and Solway scoping decisions provided about a two month time period for completion of the EA. It is not anticipated that the scoping decision will determine the day for the public hearing or any other deadlines, but the deadline for completion of the EA will give a general indication of when other events will occur.

If there are any other matters to be included in the EA, the scoping decision will also state what those matters are. By way of example, perhaps if the project involved federal funds, the EA might contain some discussion of the status of these funds or the preparation of permits or environmental review documents by the federal government. It is difficult to predict what might fit within this category, and it is included to simply recognize that in some instances, there may be issues identified that need to be included.

The rule provides that once the Chair has issued a scoping decision, the scope of the EA will not be changed unless the Chair or the Board finds that substantial changes have been made in the project or substantial new information has come forward that affects the decision on potential environmental effects or the availability of reasonable alternatives. This is the same standard applied to Environmental Impact Statements under the scoping language of Minnesota Rules part 4410.2100, subpart 8. Consequently, it is important for interested members of the public to participate in the early scoping process. The rule does allow a person to ask the full Board to change the scope, however.

Subpart 4. Contents of the EA. This rule is a broad description of what will be included in the Environmental Assessment.

Item A. Project Description. The EA will contain a brief description of the facility that is proposed, whether it is a LEPGP or a HVTL. It will be helpful to the public to know what it is that is being proposed.

Item B. Alternatives. The EA will specifically list the alternatives that are included in the analysis. This should essentially just be a reiteration of what is in the scoping decision.

Item C. Potential Significant Impacts. An EA must address the potential significant impacts of each alternative analyzed. These impacts, of course, will be the impacts identified during the scoping process and included in the Chair's scoping decision.

Item D. Mitigative Measures. The EA must address the reasonable measures that might be implemented to eliminate or minimize the adverse impacts associated with the project.

Item E. Availability and Appropriateness of Alternatives. Item B is simply a list of the alternatives. This requirement states that the EQB will include in the EA an analysis of the feasibility of each alternative.

Item F. Other permits. It is helpful to include in the EA a list of other permits that the project proposer is required to obtain so the public is aware of what other agencies have jurisdiction over the project. Issuance of a site permit or route permit by the EQB will eliminate the need to obtain any zoning, building, or land use authorizations from local units of government, Minnesota Statutes section 116C.61, subdivision 1, but there may be other local approvals that are required, such as approval to exceed road weight restrictions. In addition, there are likely to be state agencies with jurisdiction over the project. A Large Electric Power Generating Plant will undoubtedly require an air permit and a wastewater discharge permit from the Pollution Control Agency. A water appropriation permit may likely be required from the Department of Natural Resources. A High Voltage Transmission Line may also require approvals from the DNR to cross wetlands or streams. There could be federal approvals that are required as well, perhaps

authorization from the Federal Energy Regulatory Commission or the Federal Aviation Administration if an airport is close by. In any event, the EA will identify the other permits that are required. The applicant is also required to provide this information in the application under Part 4400.1150.

Item G. Other Matters. This is a catchall category for any matter that does not fit conveniently into any of the other categories. In most cases, there will be nothing to include in this category.

Subpart 5. Timeframe for completion of environmental assessment. This rule incorporates factors that the Chair should consider in deciding the appropriate schedule for completion of the EA. Obviously, an important factor is the six month statutory deadline. The Chair will always consider what is required to allow the project to be completed within the six month period. However, other realities can come into play and have to be considered as well. For example, a small project proposed for an environmentally sensitive area will likely require more analysis than a similar project in another area. Projects raising significant environmental concerns, like a 75 megawatt coal-fired plant, will require more analysis than projects burning cleaner fuels. If a project is tied up in federal decisionmaking that may take months to resolve, the applicant may very well agree to additional time to complete the Environmental Assessment. All these factors must be taken into account.

The EQB believes that it is better to be realistic at the outset regarding just how much time is required to complete an adequate Environmental Assessment and to plan accordingly, than to establish an unachievable deadline that will only have to be extended at a later date. In some cases it is not going to be possible to complete an EA in less than six months, and that fact may as well be stated at the outset than at a time when the deadline has expired and the document is not complete. Such decisions, however, will be made openly, with participation by the applicant and interested persons.

Subpart 6. Notification of Availability of Environmental Assessment. Once the EA is completed, it is important to advise the applicant and the public of that fact immediately. This rule is designed to do that. Notice will be mailed to persons on the project contact list and to the applicant. Notice will be placed in the next available *EQB Monitor*. The EQB will provide a copy of the EA to any agency with jurisdiction over the project, relying on the identification in the EA of those public agencies that require a permit before the project can proceed. The EQB will post notice on its webpage.

Subpart 7. Matters Excluded. This rule repeats the statutory language prohibiting the EQB from considering certain matters that were considered by the Public Utilities Commission at the Certificate of Need stage. Minnesota Statutes section 116C.53, subdivision 2, and section 116C.57, subdivision 2c. These matters include the no-build alternative, size, type, and timing factors, and system configurations and voltage for HVTLs. The discussion under Part 4400.1700, subpart 5 addresses this same issue in more detail.

Subpart 8. No Additional Environmental Review. The purpose of this rule is to include the statutory mandate that an Environmental Assessment is the only environmental document that will be required to be prepared by the Environmental Quality Board. Minnesota Statutes section 116C.575, subdivision 5. The rule does clarify, however, that environmental review is still required at the Certificate of Need stage before the Public Utilities Commission. Environmental review on a project at the Certificate of Need stage is determined pursuant to Minnesota Rules parts 4410.7000 to 4410.7500. Parts 4410.7000 to 4410.7500 are presently under review by the EQB and may be amended in the upcoming months. Any amendments to those provisions will direct how environmental review is to be conducted at the Certificate of Need stage before the PUC.

Subpart 9. Costs. The applicant must pay the reasonable costs of the EQB incurred in preparation of the Environmental Assessment. These costs will be included with the other costs incurred in processing the application.

4400.2850. PUBLIC HEARING

Subpart 1. Public Hearing. Minnesota Statutes section 116C.575, subdivision 6 requires the EQB to hold a public hearing on a permit application under the alternative review process. This rule repeats the statutory requirements.

The rule also adds some detail on how and where the public hearing will be held. The hearing will not be held until the Environmental Assessment is available for review. This makes sense because the EA will contain a lot of information to be reviewed and commented upon at the hearing. The EQB could, however, elect to notice the hearing in advance of completion of the EA, in order to provide more notice to the public, as long as the EA was available when the hearing began. Also, at least a portion of the hearing must be held in the area where the project would be located.

Subpart 2. Hearing Examiner. The public hearing required to be held under the alternative review process is different from the hearing required under the full process. The hearing under the full process is a contested case hearing; the hearing under the alternative process is not a contested case hearing. Because there are no other rules to apply in the kind of hearing envisioned under this procedure, this rule is designed to provide some specifics on how the hearing will proceed.

The Chair has authority to appoint the hearing examiner who will preside at the hearing. Because the hearing is not a contested case hearing, the hearing examiner could be a person other than an administrative law judge from the Office of Administrative Hearings, and the rule recognizes that. However, the EQB expects that in many cases, the Office of Administrative Hearings will be asked to conduct the hearing held under this provision. That will surely be the case with any controversial project.

The hearing examiner, regardless of who it is, must have authority to preside at the hearing. The rule recognizes that the hearing examiner is empowered to conduct the

hearing and to do everything necessary to complete the process, including performing those tasks spelled out in the rule, from ruling on motions to scheduling additional hearing dates. The hearing examiner must have the authority to rule on the admission of evidence, in order to avoid having the hearing stray from relevant issues and to complete the hearing in an expeditious fashion. Of course, the examiner must also be able to schedule additional days of hearing in order to accommodate legitimate requests for more time to present witnesses and evidence.

The main task of the hearing examiner is to compile a complete record and forward the record to the Board for decision. The hearing examiner will determine what documents constitute the record and will ensure that an audio recording of the proceedings is made. In some situations, the Chair could elect to arrange for a court reporter to transcribe the proceedings but that will be infrequent. The hearing examiner will not be required to write a report and make a recommendation, unless the Chair specifically requests that the examiner perform those duties. In a controversial matter, the Chair may very well request that the hearing examiner prepare a report and recommendation. In those situations, it is likely that the hearing examiner will be an administrative law judge from the Office of Administrative Hearings.

Subpart 3. Hearing Procedure. Minnesota Statutes section 116C.575, subdivision 6 provides that the hearing shall be conducted under procedures established by the Board. The language in this rule sets forth the procedures for conducting hearings under the alternative method of review.

This rule sets out the basic procedures to follow in the public hearing. The hearing examiner, of course, must have discretion to determine what is appropriate at the time the actual hearing is underway, and the rule recognizes that. The basic hearing procedure is described in the following items.

Item A. The hearing should begin with the EQB staff, which will have prepared the Environmental Assessment, describing the project and introducing various documents, like the application, the EA, and other procedural documents such as the notice of hearing and affidavits of mailing. The staff is not an advocate of the project, and the purpose of this presentation is to introduce procedural documents and the EA and to provide basic background information for the public, not to advocate in support of or in opposition to the granting of a permit.

Item B. After the staff makes its presentation and introduces the basic documents, the applicant is given an opportunity to make a presentation in support of its proposed project. This could include oral testimony and written evidence like reports and data. This is the time when advocacy is legitimate.

Item C. The public must be afforded an opportunity to make oral presentations and to introduce documents into the record. The public must also be given an opportunity to ask questions of other witnesses. The public has a right to ask questions of the EQB staff and of the representatives of the applicant and of other

members of the public. The hearing examiner is likely to allow the public to ask their questions of EQB staff and the applicant immediately after these people present their statements.

Item D. This rule requires the hearing examiner to allow at least ten days for interested persons to submit written comments into the record after the close of the last day of hearing. The hearing examiner can decide whether more time is appropriate and available when the hearing closes.

Because the hearing examiner will not be issuing a report or recommendation unless requested to do so by the Chair, the EQB does not envision that this comment period after the close of the hearing will be used for submitting briefs. Nor will there be an opportunity to submit rebuttal comments. Instead interested persons will have an opportunity under the EQB's procedural rules, Minnesota Rules chapter 4405, to submit briefs and exceptions and rebuttal comments to the Board directly when the matter comes to the Board for decision. In the event the Chair does request the hearing examiner to submit a report and recommendation, the examiner (an administrative law judge most likely) can decide at the time whether briefs are appropriate.

Item E. If the hearing examiner's only task once the public comment period closes is to submit the record to the Chair, the hearing examiner should be able to complete that task within three days. If the hearing examiner has been asked by the Chair to prepare a report, it is reasonable to allow the examiner thirty days to complete the report after briefs are submitted.

Subpart 4. Issues. Just as certain issues have been removed from consideration in the EA by statutory direction, so too should these issues not be included in the hearing. See discussion for Part 4400.1700, subpart 5.

Subpart 5. Environmental Assessment. As explained earlier, because of the short timeframe for completing review of a project, there is not time to prepare both a draft and a final EA. However, the public has to be afforded an opportunity to submit comments on the EA. The public hearing is the time and the place to do that. In the event a member of the public should submit a comment that indicates an inadequacy in the EA, the EQB staff may elect to respond if there is information readily available. More importantly, the applicant may have to respond to the issue if the record does not support the issuance of a permit for the project. There is no requirement to make an adequacy decision on an EA, like there is with an EIS, but there is an obligation to ensure that the record supports the final decision made by the Board. See discussion of Part 4400.2950, subpart 2, below.

4400.2950. FINAL DECISION

Subpart 1. Timing. The sixty day time limit for the Board to make a final decision after receipt of the record from the hearing examiner recognizes that a certain amount of time is required to bring the matter to the Board once the staff has the

complete record. The staff will bring the matter to the Board in less than sixty days if possible, but when the Board only meets once per month, and several steps must be completed in advance of any Board meeting, including affording the public and the applicant an opportunity to comment and providing notice to the public of the Board agenda, it can easily take sixty days to complete everything.

The rule also sets forth the statutory deadline of six months, with the possibility of a three month extension. Any decision to extend the deadline will be made by the Board.

Subpart 2. Completeness of Environmental Assessment. There is no requirement for the Board to determine the adequacy of the Environmental Assessment. However, it is important that the Board make a final decision based on good information. This rule requires the Board to consider whether the issues identified in the scoping decision have been addressed. If the Board should determine that information on a particular alternative or impact is lacking, the Board will remand the matter to gather the missing information. This will undoubtedly result in a delay in the Board's final decision. It is the task of the EQB staff, the applicant, and the public to help ensure that the record brought to the Board addresses the issues the Chair determined should be addressed in the scoping decision.

Subpart 3. Certificate of Need Decision. As with the larger projects, the EQB will not make a decision on a permit application for a project requiring a certificate of need from the Public Utilities Commission until the PUC has made that decision. It is reasonable to expect that a permit applicant obtain the necessary certificate of need before the EQB makes a decision with regard to a specific site or route.

Subpart 4. Notice. It is important to advise the public of the Board's final decision on a permit request. Many interested persons, including the applicant, will know immediately of the Board's final decision because they will be in attendance at the Board meeting when the decision is made. However, the EQB must still provide notice in other ways for a couple of reasons. Notice must be published in the *State Register* because this is the method by which the time for seeking judicial review of the decision is triggered. Minnesota Statutes section 116C.65. Notification by publication in the *EQB Monitor* and by mail to those on the Project Contact List is important because not all interested persons will attend the Board meeting. Finally, as with a lot of other notices, the EQB will continue to expand its use of the internet to provide notice to persons of all kinds of developments, including final permit decisions.

GENERAL PERMIT REQUIREMENTS

4400.3050. STANDARDS AND CRITERIA

The EQB has been issuing permits under the Power Plant Siting Act since 1973, and the factors the EQB has considered in making these decisions have been set forth in Minnesota Statutes section 116C.57, subdivision 4 since then. The Legislature added some language to this statute in the 2001 amendments. Minnesota Laws 2001, chapter

212, article 7, section 11. It is appropriate to include a new part in the rules to incorporate those considerations and set forth the standards the Board will apply in making a decision on a request for a site permit for a LEPGP or a route permit for a HVTL.

This rule addresses the EQB's major task in implementing its duties under the Power Plant Siting Act to locate Large Electric Power Generating Plants and High Voltage Transmission Lines in areas that minimize the impacts such facilities have on the environment and on human settlement and yet ensure a reliable and economic electric energy infrastructure. Many LEPGPs and HVTLs are controversial, and reasonable people often disagree on where and whether to build such facilities. The legislative goals spelled out in this rule, however, are ones that can guide the EQB, the industry, and the public in deciding on Minnesota's energy future.

Minnesota Statues section 116C.57, subdivision 8, and section 116C.575, subdivision 9, both state that the EQB cannot issue a site permit or a route permit in violation of the site selection standards set forth in the statute and in EQB rules. This rule recognizes the same prohibition.

4400.3150. FACTORS CONSIDERED

This rule is mostly a repeat of the factors listed in the existing rules. Minnesota Rules parts 4400.1310 and 4400.3310. There are a few changes in the existing rules, which are explained below.

Item E. A reference to impacts on air and water quality resources and flora and fauna is being added to be consistent with the information that must be included in an application pursuant to Part 4400.1150, subp. 3.E.

Item G. This rule provides that in considering a particular project the EQB should consider whether the transmission capacity of the project could be expanded in the future. It makes sense to also consider whether a particular power plant could be expanded in the future to expand generating capacity.

Item I. This is a new provision that may apply to LEPGPs that corresponds with the requirement to consider using existing rights-of-way and other existing boundaries for HVTLs. It makes sense to also consider the use of existing LEPGP sites when a proposal for a new power plant is submitted. This consideration is similar to the one in Item G to consider whether an existing plant could be expanded in the future.

Item J. This rule clarifies that it is not just transmission line rights-of-way that should be considered, but really any kind of right-of-way when routing a new transmission line. All kinds of right-of-way, whether for a transmission line or a pipeline or a highway, should be considered during the permitting process.

Item K. Item K is electrical system reliability. This is not a new provision; it is in the existing rules at Parts 4400.1310 and 4400.3310. However, it is helpful to discuss the intent of this provision here to clarify that this factor does not relate to the various size, type, and timing issues and system configurations that will be decided by the PUC in a certificate of need proceeding. Instead, electrical system reliability refers to the ability of a particular project or alternative to add to the reliability of the entire transmission system. This factor is intended to take into account the impacts a particular project would have on the system depending on which site or route is chosen.

Item L. This change from the acronym HVTL to "facility" simply recognizes that costs should be considered for LEPGPs as well.

Item N. This provision to consider irreversible and irretrievable commitments of resources is important to emphasize that with any LEPGP or HVTL, the EQB wants to be informed about what resources will be irretrievably used up if a certain project goes forward, as compared with various alternatives.

4400.3250. FACTORS EXCLUDED

This rule is at least the third time that the rules repeat the statutory prohibition against the EQB considering certain issues that have been determined by the Public Utilities Commission. The EQB does not read the statutory language from prohibiting the EQB from considering any of the considerations or factors listed in parts 4400.3000 or 4400.3100.

4400.3350. PROHIBITED ROUTES

Subpart 1. Wilderness Areas. The requirements of this subpart are already included in the existing rules, part 4400.1310, subpart 2. The language is simply broken out into a separate rule for clarity. It is helpful to have one rule for prohibited routes (4400.3350) and one rule for prohibited sites (4400.3450).

Subpart 2. Parks and Natural Areas. The requirements of this subpart are already included in the existing rules, part 4400.1310, subpart 2. The language is simply broken out into a separate rule for clarity.

4400.3450. PROHIBITED SITES

Subpart 1. Prohibited Sites. The requirements of this subpart are already included in the existing rules, part 4400.3310, subpart 2. The language is simply broken out into a separate rule for clarity.

Subpart 2. Water Use. The requirements of this subpart are already included in the existing rules, part 4400.3310, subpart 2. The language is broken out into a separate rule for clarity, with some minor changes to recognize that the EQB now issues site permits, not certificates of site compatibility.

Subpart 3. Site Exclusions When Alternative Sites Exist. As with several of the previous subparts, the requirements of this subpart are already included in the existing rules, part 4400.3310, subpart 3. The language is broken out into a separate rule for clarity. However, some editing is proposed to shorten unnecessary language. The Minnesota Environmental Policy Act applies to all of the EQB siting decisions, so inclusion of language essentially incorporating the Act's requirements to not allow material adverse effect on natural resources unless there is no feasible and prudent alternative is redundant. Also, reference to Minnesota Statutes section 116C.53, subdivision 1 is also unnecessary.

Subpart 4. Prime Farmland Exclusion. The requirements of this subpart are already included in the existing rules, part 4400.3310, subpart 4. The language is simply broken out into a separate rule for clarity. Some editing of the language is proposed but there is no change in the content.

In the existing rules there is a definition of prime farmland in part 4400.0200, subpart 13. Because this rule is the only place that phrase is used, the EQB is proposing to move the definition to this rule. No change in the definition is being proposed, however.

Subpart 5. Sufficient Water Supply Required The requirements of this subpart are already included in the existing rules, part 4400.3310, subpart 5. The language is broken out into a separate rule for clarity. Some editing is proposed to eliminate redundancies.

4400.3550. PERMIT APPLICATION REJECTION

Since part 4400.3350 identifies areas through which a High Voltage Transmission Line may not be constructed, and part 4400.3450 identifies sites on which a Large Electric Power Generating Plant may not be constructed, it makes sense to recognize that the Chair will reject a permit application for a route or site that intrudes on one of these restricted areas. If it is one of the areas where a route or site could be improved if there is no feasible and prudent alternative, the Chair will not reject the application if the applicant explains why there is no feasible and prudent alternative. That does not mean the EQB will ultimately approve the project, but at least the Chair will not reject the application if there is an explanation.

4400.3650. PERMIT CONDITIONS

Subpart 1. Generally. The statutes provide that when the Board issues a site permit or route permit, it shall attach appropriate conditions. Minnesota Statutes section 116C.57, subdivision 1(a) ("When the Board designates a site, it shall issue a site permit to the applicant with any appropriate conditions.") The same language is found in subdivision 1(b) and in section 116C.575, subdivisions 1(a) and 1(b). This rule merely recognizes the authority of the Board to include conditions in any site permit or route

permit it issues. The existing rules already recognize the authority of the EQB to impose reasonable conditions. Minnesota Rules parts 4400.1400 and 4400.3400.

What conditions are appropriate will depend on the particular project and on what the record supports. The permit will assuredly require the applicant to construct the project in accordance with the plans and specifications submitted to the EQB to describe the project. The permit could require implementation of certain mitigative measures identified in the Environmental Impact Statement or Environmental Assessment. The permit could require the applicant to conduct certain monitoring during construction if certain issues, like noise, were raised during the permitting process. No conditions will be imposed without affording the applicant and the public an opportunity to comment upon a proposed condition.

Subpart 2. HVTL Permits. This language is probably unnecessary since subpart 1 is broad enough to include these requirements. However, this language is specifically spelled out in the rules because it is found in the statutes. Minnesota Statutes section 116C.57, subdivision 8(b).

4400.3750. DELAY IN ROUTE OR SITE CONDITIONS

This language has been edited slightly to update its use of terms, but this requirement is found in the existing rules. Minnesota Rules part 4400.4050. The EQB intends to continue the requirement that if a permit is issued, and the permittee has not commenced construction within four years after the permit is issued, the permit is suspended until the permittee contacts the Board and establishes that there have been no significant changes in the project. It is reasonable to expect that if a permittee has not even commenced construction within four years, that the permittee provide an explanation to the Board for the delay. It is likely that other agencies with permitting authority may wonder why the project has not begun also, although in some cases it may be the failure to obtain other permits that has caused the delay.

Members of the public may be interested in a matter involving a delay in the construction of a new facility that was permitted several years earlier, so the rule provides for the giving of notice of the Board's consideration of such matters. There will always be a general notification list that the EQB can use to notify interested persons. There may not always be a project contact list available, but if there is it is reasonable to notify these people as well. In addition, notification of any Board meeting at which the matter will be considered will be given in the manner that notice is always given.

4400.3820. MINOR ALTERATION OF LEPGP OR HVTL

Subpart 1. Applicability. This rule establishes the requirement that even minor changes in existing LEPGPs and HVTLs require approval from the EQB. This has been a requirement of the existing rules for many years. Part 4400.4100. This rule applies to those changes that can be called a "minor alteration," and establishes a speedy and easy process for obtaining EQB approval of such changes.

The term "minor alteration" is subjective and requires a decision each time under the specified criteria. Defining "minor alteration" as one that does not result in significant human or environmental impact is appropriate because there is less reason to go through the siting or routing process if the proposed action does not have such impacts. As the EQB has more opportunities to determine what is a "minor alteration," the agency, the utilities, and the public will have a broader universe of cases to look to for guidance.

The EQB has handled a number of requests for approval of minor alterations over the years, all but one for HVTLs. Several of these involved tower realignments. One recent request was to increase the voltage of the 400 kV DC line running across central Minnesota. The only minor alteration for a LEPGP was a small expansion of the boundaries of the Sherco plant in Sherburne County.

Given the change in EQB jurisdiction from HVTLs over 200 kV to lines over 100 kV is likely to result in more minor alteration applications coming to the EQB. Thus, it is important to clarify what is a minor alteration and the process that is to be followed. Also, creating an exception category for certain changes is also necessary, as explained in the discussion for proposed rule Part 4400.0650.

The rule applies to both permitted facilities and to facilities that were not permitted at the time they were built but fall within EQB jurisdiction now. There has to be some baseline to which a change in an existing unpermitted facility can be compared, and the baseline established by the rule is the facility as it exists on the day these rules go into effect.

Subpart 2. Application. This rule provides that any person who is proposing to change an existing LEPGP or HVTL shall apply to the Chair for authorization to make the change. If the person believes that the change constitutes a minor alteration in the facility, the person shall explain the reasons for that conclusion. While it is likely that no one is going to object to a change in a facility that is indeed minor, the EQB cannot know that unless some effort is made to notify interested persons of the proposed change. Therefore, when the application for approval of a minor alteration comes in, the Chair will notify those persons who are on the general list. Those persons may not be the persons who are really interested in the facility, but it may be the only list the agency has. If the EQB has other lists that are more pertinent, including a project contact list, the Chair will surely notify those persons as well. A project contact list may not exist because the facility could have been permitted years ago, or may not have been within EQB authority at the time it was constructed. Hopefully, the EQB webpage can be used to provide notification also but the rule does not impose that on the agency. The rule requires the Chair to provide at least ten days for the public to comment on the application.

Subpart 3. Chair Decision. Under the existing rules, minor alterations must be brought to the Board. Minnesota Rules part 4400.4100. The Board would prefer not to have to deal with changes that are indeed minor. The proposed rule allows the Chair to

make decisions on minor alterations. If indeed the proposed change is a minor one, it makes sense to allow the Chair to approve it.

In making a decision on a request for approval of a minor alteration, the Chair has three options: (1) find that the change is minor and approve it; (2) bring the matter to the Board for consideration; or (3) determine that the alteration is really a major change that requires an independent permitting decision. The third option would result in requiring the applicant to submit a new application and seek a separate permit under the appropriate permitting process. The rule requires the Chair to make a final decision within ten days after close of the public comment period established in the notice, which comment period has to be at least ten days long, so it will be approximately one month from the time an application is submitted until the Chair makes a decision in a routine situation. This is not an inordinate amount of time.

The Chair may impose conditions on the approval to implement the minor alteration. This will depend on what the record supports. The Chair shall notify the applicant immediately of the decision and notify also any persons who had requested notification or submitted comments.

Subpart 4. Local Review. This subpart is necessary to cover those situations where the facility is small enough to warrant local review and for which there is no outstanding EQB permit. If there is an outstanding EQB permit, the permittee must come to the EQB for approval to change the facility since such changes would be in violation of the permit. Allowing local units of government to deal with minor alterations in an existing project that has not been permitted by the EQB is consistent with the statute and is the most expeditious manner in which to address these requests.

4400.3840. AMENDMENT OF PERMIT CONDITIONS

Subpart 1. Authority. This rule recognizes the authority of the EQB to amend a permit it has issued. The rule delegates the authority to make the initial decision on whether to approve an amendment to the Chair. This will ensure an expeditious resolution of requests to amend a permit. The permit amendment request will likely come from the permittee, but it is also possible that EQB staff or a member of the public could request an amendment.

Subpart 2. Process. This rule describes how the Chair will administer a permit amendment request. The process begins when the person requesting the amendment submits a request in writing to the Chair. Obviously, the person must describe the reasons for the amendment. Again, the Chair will make an effort to identify interested persons and notify them of the request by using the general notification list and a project contact list if one is available. A minimum of ten days will be provided for the public to submit comments on the request.

This process is essentially the same as the one set forth for minor alterations in the facility. However, the minor alteration rule applies to actual changes in the facility; this

rule applies when a person wants the wording of the permit changed. Perhaps the permittee wants certain reporting or monitoring requirements changed. Perhaps the public wants new monitoring requirements.

Subpart 3. Decision. The Chair can decide to act on the amendment request or to bring the matter to the full Board. Regardless of whether the Chair or the Board acts, the due process rights of the permittee must be accommodated, and will be. The permittee will certainly be advised of any requests by other persons to change the permit. Any controversy associated with a requested amendment will be a factor for the Chair to consider in deciding how to proceed. Once the decision is made, the EQB will certainly notify the permittee and any other interested persons.

4400.3850. TRANSFER OF PERMIT

While there is no existing rule on the transfer of a site permit or route permit, this situation has always been recognized. The actual permits the EQB has issued in the past have contained language recognizing the right of the permittee to request a transfer of the permit. The EQB has transferred permits in the past, such as when Northern States Power Company became Xcel Energy, Inc. It is helpful, however, to have a specific rule establishing the procedure for handling requests to transfer permits. The EQB recently included such language in new wind rules, Minnesota Rules part 4401.0710, and this language is essentially identical to that.

Subpart 1. Application. This rule sets forth the procedure whereby a permittee can request the transfer of a particular permit. The permittee must submit an application to the agency and explain the reason for the transfer and provide the specifics of the requested transfer. The rule allows the EQB to ask the intended transferee to submit information to show that this person will be capable of complying with the permit conditions. The EQB will provide notice in the same fashion it provides notice of other permit amendment requests.

Subpart 2. Approval of Transfer. The decision to approve a transfer of an entire permit will remain with the Board. The Board is not delegating this decision to the Chair.

If the Board determines that the new party can comply with the conditions of the permit, the Board will approve the transfer. If there is doubt or controversy over the transfer, the Board may elect to hold a public meeting or other forum to afford the public an opportunity to enter comments. The Board can determine that it is appropriate to attach conditions to the transfer.

4400.3950. REVOCATION OR SUSPENSION OF PERMIT

Subpart 1. Initiation of Action to Revoke or Suspend. This rule already exists in Minnesota Rules part 4400.4200. The changes in this subpart are intended to update the language.

Subpart 2. Hearing. The changes here are merely intended to clarify that a permittee must be given the opportunity for a hearing before a permit can be revoked or suspended. In the event the permittee requested a hearing, the hearing would be a contested case hearing presided over by an administrative law judge. Persons other than the permittee could request a hearing also.

Subpart 3. Finding of Violation. This provision is a combination of the existing subparts 2 and 3 of Part 4400.4200. The language has been reorganized, but it is not really anything new. Item A is proposed to be deleted because this rule describes the factors to consider in deciding what sanctions to impose, and Item A describes the violation itself. Item A is unnecessary given the fact that the rule applies only if the EQB finds that a violation of the permit or some other violation has been established.

EMERGENCY PERMITS

4400.4050. EMERGENCY PERMIT

The statute recognizes that the EQB may issue emergency permits. Minnesota Statutes section 116C.577. The EQB has had an existing rule addressing the concept of emergency permits for many years. Minnesota Rules part 4400.3800. This proposed language in Part 4400.4050 replaces the existing Part 4400.3800, and provides more clarity regarding the applicable procedures, but the requirements remain essentially the same because the statute has not changed.

The statute provides that a decision on a request for an emergency permit must be made within 195 days after the board accepts the application for an emergency permit. This is longer than the six month time period under the alternative review process. The difference is that the utility or other person applying for the emergency permit will not have much time to prepare an application for the emergency permit so the data will likely be less complete than an application under the alternative process. A utility will usually take several years to complete an application for a regular permit and has the time to compile all the necessary information. So while an emergency decision may actually take longer than a decision in the alternative process, the amount of information known on the starting date is likely to be much less for the emergency project.

It should be mentioned that in the nearly thirty years of the Power Plant Siting Act, only one emergency permit has ever been issued by the EQB under the Power Plant Siting Act. That decision was in 1974 for a new 230 kilovolt transmission line from Manitoba, Canada, to Hibbing, Minnesota, to bring in additional power for proposed expansion of the taconite plants. The permit was issued to Minnesota Power Company and Minnkota Power Cooperative. No emergency permit has been issued since, and no emergency permit has ever been issued for a LEPGP.

Subpart 1. Application for Emergency Permit. This rule establishes the information that an applicant for an emergency permit must submit to the EQB. The

EQB wants to know about the proposed facility, of course, but the agency also wants to know what is the emergency situation that exists. The rule asks for both kinds of information.

Subpart 2. Public Hearing. This rule incorporates the statutory requirement to hold a public hearing within 90 days after the application is submitted. The old rule states that the hearing shall be held as a contested case hearing under the rules of the Office of Administrative Hearings, Minnesota Rules Chapter 1405. The new rule changes this to reference the public hearing requirements of proposed rule Part 4400.2850. Under this rule, it is likely that the Office of Administrative Hearings will conduct the hearing, but it is not mandatory. The reason for this change is to provide the EQB with flexibility to determine how much time is available to address the emergency situation. A noncontested case hearing will allow the matter to be brought to the Board for a final decision more quickly.

Subpart 3. Final Decision. This rule clarifies the requirements for issuing an emergency permit. This rule is based on the existing rule, Part 4400.3800, subpart 2.

Item A. It makes sense that the Board not issue an emergency permit unless the Board finds that an emergency exists.

Item B. This language is taken directly from the statute. Not only must the Board find that an emergency exists, but the Board must also determine that the emergency situation requires immediate construction of the new facility.

Item C. This language is taken directly from the statute.

Item D. This provision recognizes that even in an emergency, if steps can be taken to minimize the human and environmental impacts of the project, such steps should be implemented.

Item E. Obviously, if the EQB is going to authorize construction of a new facility on an emergency basis, the applicant must be prepared to go forward without delay.

Subpart 4. Permit Conditions. This rule provides that the Board may impose reasonable conditions in an emergency permit. This is essentially just an incorporation into the permit of the mitigating measures found in Item D. What is reasonable will depend on the facts of each case.

Subpart 5. Permit Fee. Costs incurred by the EQB in administering an application for an emergency permit will come either from the general assessment or the fees charged for processing the application. The EQB believes it is preferable to charge the applicant directly. The fees will cover the reasonable expenses incurred in processing the application.

LOCAL REVIEW

4400.5000 LOCAL REVIEW OF PROPOSED FACILITIES

This rule is necessary to address the situation provided for in Minnesota Statutes section 116C.576, which allows project proposers to seek approval from local units of government rather than the EQB for certain projects.

Subpart 1. Local Review. This subpart summarizes the general requirements for local review. It recognizes that the choice whether to apply locally or to the EQB belongs to the project proposer. Neither the EQB nor the local units of government get to make the initial choice. An applicant is not entitled to switch back and forth, however. Once a decision is made to apply to the EQB, the option to apply locally is lost.

Subpart 2. Qualifying Facilities. The decision on what facilities qualify for local review was made by the 2001 Legislature when it passed section 116C.576. This rule simply repeats the statutory language. No further explanation is necessary but the EQB offers the following views about the various facilities that qualify for local review.

Item A. LEPGPs under 80 megawatts. Any power plant under 80 MW qualifies for local review at the developers option. It does not matter what fuel is proposed to be used if the plant is under 80 MW. A 79 MW coal-fired plant would qualify for local review. If a plant of exactly 80 megawatts is proposed, it does not qualify for local review.

Item B. Natural gas peaking plants. This provision applies to a natural gas plant of any size that is a peaking plant. The two most recently permitted natural gas peaking plants – the 550 MW Lakefield Junction plant in Martin County and the 434 MW Pleasant Valley plant in Mower County – would have qualified for local review if this provision were in effect a few years ago. The statute does not define what a peaking plant is. Peaking plants are ones that come online for only a few hours at a time, primarily in the hot summer months during afternoon and early evening hours, when demand for air conditioning increases. Normally, peaking plants operate for only a few hundred hours per year but can operate up to 2000 hours or more.

What happens if a facility is permitted by the local unit of government as a natural gas-fired peaking plant and then the owner wants to change the fuel or increase the number of hours the plant is operated to make it a baseload plant. In that event, the EQB believes that a permit from the EQB is required.

Item C. HVTL between 100 and 200 kilovolts. Lines of this size were not within the EQB's jurisdiction until the new law went into effect on August 1, 2001. Such lines, probably either 115 kV or 161 kV, can continue to be permitted by local units of government if the applicant decides to apply locally.

Item D. Substations. Any size substation can be permitted by the local unit of government. However, there is always a transmission line required with a new substation, and if the line is over 200 kV, the line will have to come to the EQB for permitting. If the substation is a 115 kV or 161 kV facility, both the substation and the line can be permitted locally.

Item E. Single Customer Under 300 kV HVTL. This situation is likely to apply only in situations such as providing power to a taconite plant or other large user of power. If Minnesota Power needs to build a new line to serve one of the taconite plants, and the line is under 300 kilovolts and less than ten miles in length, the local units of government can handle the permitting.

Item F. Single Customer's Own Property HVTL. This provision has limited application too. If Minnesota Power, for example, intends to build a HVTL on property owned by Minnesota Power or the taconite company, local review is an option.

Subpart 2. Notice to EQB. Even if the proposer of a project elects to seek approval from local units of government, the EQB still wants to know about the project and the fact that the proposer has opted to go locally. This rule requires the proposer to notify the EQB in writing of its decision. The notice need not be filed until after the proposer has actually filed an application with the appropriate local units of government because the EQB does not want to be notified until the proposer has made a final decision on which level of government to pursue. The EQB anticipates that upon notification, the staff will write to the local units of government and acknowledge that these officials will be handling the permitting of the project. The EQB would like to receive a copy of the permit or permits the local officials issue at the end of the process.

Subpart 3. Referral to EQB. The statute provides that just because an applicant has applied to a local unit of government for a permit for a proposed project does not mean that the local unit of government must keep jurisdiction over the project. If the local unit of government does not want to process the permit application, local officials can refer the matter to the EQB, and the local option is no longer available.

The rule establishes a 60 day period for local units of government to decide whether they will keep a particular project once the application is filed with the local government. It is reasonable to establish this time period because it is important to process these permit applications expeditiously, and any time spent at the local level will be lost if the project subsequently gets referred to the EQB. It is better to put a limit on the time a local unit of government can deliberate over whether it even wants the project, and 60 days is a reasonable period of time.

In order to refer a matter, the local unit of government simply needs to write a letter to the Chair referring the matter to the EQB. The applicant will then have to file an application with the EQB in accordance with these rules to continue with the project. The EQB's time period for acting on permit applications does not start to run until a complete application has been filed with the agency.

Some projects, particularly transmission lines, will cross jurisdictional boundaries of local units of government. A 25 mile long HVTL could involve several local units of government, including counties and cities and townships. If the project proposer elects to seek approval from the local units of government, a permit from several may be required. The statute provides, and the rule recognizes, that if any one local unit of government with jurisdiction over the project does not want to handle the project, and refers the matter to the EQB, the entire matter comes to the EQB. This requirement is intended to avoid the situation where both the state and the locals are permitting the same project. Either the locals handle the project, or the state does, but not both.

Subpart 5. Environmental Review. This rule does a couple of things. One, it emphasizes that environmental review must be conducted on proposed LEPGPs and HVTLs regardless of what governmental body issues the permit. Even if a proposer elects to seek authorization from local units of government, environmental review is still required. The Legislature declared in Minnesota Statutes section 116C.575, subdivision 5, that an Environmental Assessment is required for projects of the size that qualify for local review. It makes sense to state in the rule that an Environmental Assessment is required regardless of which level of government is handling the permit. To interpret the law otherwise would create the situation where certain projects would undergo no environmental review if the local ordinances did not require it, and even smaller projects not included in the Power Plant Siting Act would have an Environmental Assessment Worksheet prepared under the general environmental review requirements in Minnesota Rules part 4410.4300. For example, a 75 MW coal-fired plant could be permitted locally without first preparing an EA, and a 49 MW natural-gas fired plant would undergo analysis through preparation of an EAW. Minnesota Rules part 4410.4300, subpart 3.

Environmental review by local officials constitutes preparation of an Environmental Assessment, because the projects of a size that qualify for local review are those that also fall within the EQB's alternative review process. The EA must be prepared in accordance with how the EQB prepares one under Part 4400.2750, including opportunities for the public to participate in the development of the scope of the EA.

The second thing this rule does is provide a mechanism for selecting the local unit of government to prepare the EA if there is any dispute or question about it. If only one local unit of government has jurisdiction over a proposed project, that unit of government is obviously the Responsible Governmental Unit required to prepare the Environmental Assessment. There may only be one local unit of government if the project is a power plant on an area of ground in the county. However, with transmission lines, there is likely to be more than one local unit of government with jurisdiction. In such situations, the local officials must decide who will be the RGU and prepare the EA. If the local officials cannot agree, any local unit of government or the applicant can ask the EQB to select the RGU. This is a role the EQB often plays with other projects under the environmental review rules. Minnesota Rules Part 4410.0500. If the parties agree, no decision is required from the EQB.

Subpart 6. No Local Authority. The question arises whether a local unit of government can maintain jurisdiction over power plants and transmission lines if the governmental unit has no ordinances or other enforceable code provisions requiring advance approval of such projects. The proposed rule provides that unless the local unit of government has established some kind of review and approval mechanism over such projects, the local option is not available in such situations. The EQB does not insist that counties and other local units of government promulgate identical ordinances for such projects. It is entirely up to the local units of government whether they require conditional use permits or special use permits or some other authorization. All the EQB insists on is that the local unit of government legitimately regulate the project so an honest review of the project is made and the public is given an opportunity to participate.

If the rule provided otherwise, a project proposer could simply obtain a resolution from a county board declaring support for the project, and there would be no environmental review and no permit establishing conditions on construction and operation. This is not what the Legislature intended when it amended the Power Plant Siting Act in 2001.

It is possible that a high voltage transmission line could be regulated by one county and not by another. In this situation, also, the EQB believes that the matter must come to the EQB for review. However, if a township did not regulate a line, but the county did, that would be acceptable because the county jurisdiction would suffice.

Subpart 7. Matters Excluded. This provision repeats the same restriction that appears several times in these rules – that those matters within the jurisdiction of the Public Utilities Commission are not to be relitigated by the local units of government. Some projects that qualify for local review will still have to obtain a certificate of need from the PUC. Issuance of the certificate of need will constitute a final resolution of certain issues related to the size, type, and timing of the project and system configurations.

ANNUAL HEARING

4400.6050. ANNUAL HEARING

Since the Power Plant Siting Act was passed in 1973, the EQB has been required to hold an annual hearing to allow the public to be heard on matters of interest related to power plants and transmission lines. Minnesota Statutes section 116C.58. There is an existing rule setting forth requirements for the holding of the annual hearing. Minnesota Rules part 4400.4300. The EQB is proposing to amend this existing rule on the Power Plant Siting Annual Hearing to make the rule consistent with the changes in the statute and to reflect how the hearing can best serve the public interest.

Subpart 1. Public Hearing. The existing rule says that the hearing shall be held on a Saturday in November. The agency proposes to delete the requirement to hold the hearing on a Saturday and to recognize that it might be held in December. It is reasonable to not restrict the EQB to a Saturday for the hearing. Members of the public

may prefer an evening to a Saturday morning. Changing the rule will allow the EQB to schedule the hearing at a time that is convenient for many of those who plan to attend. Also, the last few years the EQB has actually held the hearing in December. It makes sense to hold the hearing toward the end of the calendar year, but whether it's November or December is not critical.

These annual hearings have always been held by the EQB staff. Staff of other agencies like the Department of Commerce, the Pollution Control Agency, and the Department of Health, often attend. An audio recording of the proceedings is created. The language in the rule codifies the past practice.

Subpart 2. Notice. The notice requirements in the rule are taken from the new language in Minnesota Statutes section 116C.58. The rule also requires the EQB to prepare a tentative agenda. The tentative agenda helps to focus the discussion but members of the public may raise any additional issues they would like to discuss. Publication in the *EQB Monitor* is the only notice the statute requires the EQB to give about the annual hearing, but the agency has created its own list of persons who want to be notified of the annual hearing, and they are sent notice in advance. Also, the web will be used to post the notice of the annual hearing, even though it is not required.

Subpart 3. Report. The EQB staff traditionally prepares a report of the annual hearing summarizing the discussion that occurred. Because the purpose of the annual hearing is to provide an opportunity for the public to be informed and to raise issues of concern, there is no action for the Board to take. The report is submitted to the Board for the members' information. That will continue to be the practice under the amended rule.

ANNUAL ASSESSMENT ON UTILITIES

4400.7050. ANNUAL ASSESSMENT ON UTILITIES.

The language in this proposed rule is identical to the language in existing rule Part 4400.4400. The only change is the number.

4400.8000 PROGRAM ADVISORY TASK FORCE

This language is the existing part 4400.3600, subpart 2. This rule recognizes that the Board has the authority to appoint a citizen advisory task force to assist the Board with any of its tasks or programs. It is proposed to be renumbered simply to fit the new chapter. The amendment would eliminate the reference to "inventory" since development of a study area inventory is no longer a part of the Power Plant Siting Act, having been repealed in the 2001 legislation. The only other change is to properly identify all the rules in chapter 4400.

VI. REPEAL OF CERTAIN RULES

A large number of the existing provisions in chapter 4400 are being repealed. However, in many cases, the language in the existing rule will actually be retained but is simply being moved to a new provision with a different number. These changes are explained in the body of this document under the appropriate provision. For example, the language on the public advisor found in existing rules parts 4400.0900 and 4400.2900 is now found in the new part 4400.1450. So while the existing rules will no longer exist, the substantive requirements of those rules will be found in a new provision. The following summary will aid the reader in understanding whether a particular rule is actually being repealed or just moved to a new part of the rules.

4400.0200, subparts 4, 5, 6, 7, 11, 13, 14, and 19. DEFINITIONS

These definitions will no longer appear in the definitional section of chapter 4400. In some cases the word or term is actually being eliminated. In other cases the word or term is simply being defined in one of the substantive provisions of the rules. The explanation for these proposed changes is described in this document in the discussion on the language in Part 4400.0200.

ROUTE DESIGNATION AND CONSTRUCTION PERMIT

4400.0600 APPLICATION FOR ROUTE DESIGNATION AND CONSTRUCTION PERMIT.

The requirements of this rule are now found in Part 4400.1150, subpart 2.

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

The Board will no longer take action regarding acceptance of a permit application. The Chair will decide whether the application is complete. Parts 4400.1250 and 4400.2010.

4400.0720. BOARD ACTION UPON ACCEPTANCE.

This rule provides that upon acceptance of an application, the Board will appoint an EQB staff person to act as the project leader, and the rule describes certain duties of the project leader. Since applications will be acted upon by the Chair, rather than the Board, under the new rules, this particular rule is no longer applicable. Also, the new rules do not specifically address the role of the project leader. Although there will still be an EQB staff person who will act as project leader on each proposed project, the role of the staff will be guided by these rules in general and direction from the Chair or Board.

4400.0800. ROUTE ADVISORY TASK FORCE.

The requirements of this rule are now found in Parts 4400.1600 and 4400.2650.

4400.0900. PUBLIC ADVISOR.

The requirements of this rule are now found in Parts 4400.1450 AND 4400.2400.

4400.1000. INFORMATION MEETINGS.

The requirements of this rule are now found in Parts 4400.1550 and 4400.2500.

4400.1100. ROUTE PROPOSALS.

The requirements of this rule are now found in several of the new rules including Parts 4400.4400.1150, subpart 2 and 4400.1700, subpart 3.

4400.1200. PUBLIC HEARINGS.

The requirements of this rule are now found in Parts 4400.1800 and 4400.2850.

4400.1210. ENVIRONMENTAL IMPACT ASSESSMENT FOR HVTL.

The requirements on environmental review are now found in Parts 4400.1700 and 4400.2750.

4400.1310. ROUTING CONSIDERATIONS.

The requirements on routing considerations are now found in Parts 4400.3150 and 4400.3350.

4400.1400. ROUTE DESIGNATIONS AND ISSUANCE OF CONSTRUCTION PERMIT.

The requirements regarding the Board's final decision on a permit application for a route permit are now found in Parts 4400.1900 and 4400.2950 and 4400.3050. Language regarding the EQB's authority to impose conditions in a route permit is found in Part 4400.3650. It is unnecessary to specify any particular conditions that the Board might include in a permit. That decision was be based on the record for each project.

4400.1500. CONSTRUCTION PERMIT COMPLIANCE.

This rule presently provides that a permittee shall provide the EQB with a preliminary construction plan before construction of a high voltage transmission line. It is being eliminated because the EQB prefers to decide with each particular project what permit conditions are appropriate. Since the EQB now has jurisdiction over lines down to 100 kilovolts, some conditions that are appropriate for larger lines may not be necessary for smaller, shorter lines. That decision can be made when a final decision on the route permit is made.

SITE DESIGNATION AND CERTIFICATE OF SITE COMPATIBILITY

Existing Parts 4400.2600 to 4400.3500 apply to new power plant projects and correspond to Parts 4400.0600 to 4400.1500, which apply to new high voltage transmission lines. The same explanation given above for HVTLs applies to these rules for power plants.

4400.2600. APPLICATIONS FOR SITE DESIGNATION AND CERTIFICATE OF SITE COMPABILITY.

The requirements of this rule are now found in Part 4400.1150, subpart 1. Also, there no longer is a certificate of site compatibility. When the EQB approves the site for a new large electric power generating plant, the EQB will issue a site permit, not a certificate of site compatibility.

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

See discussion for Part 4400.0710.

4400.2720. BOARD ACTION UPON ACCEPTANCE.

See discussion for Part 4400.0720.

4400.2800. SITE ADVISORY TASK FORCE.

See discussion for Part 4400.0800.

4400.2900. PUBLIC ADVISER.

See discussion for Part 4400.0900.

4400.3000. INFORMATION MEETINGS.

See discussion for Part 4400.1000.

4400.3100. SITE PROPOSALS.

The requirements of this rule are now found in several of the new rules including Parts 4400.1150, subpart 4400.1700, subpart 3.

4400.3200. PUBLIC HEARINGS.

See discussion for Part 4400.1200.

4400.3210. ENVIRONMENTAL IMPACT ASSESSMENT FOR LEPGP.

See discussion for Part 4400.1210.

4400.3310. SITING CONSIDERATIONS.

The requirements on siting considerations are now found in Parts 4400.3150 and 4400.3450.

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

The requirements regarding the Board's final decision on a permit application for a site permit for a LEPGP are now found in Parts 4400.1900 and 4400.2950 and 4400.3050.

4400.3500. CERTIFICATE COMPLIANCE.

The present rule recognizes the EQB's authority to impose conditions in a certificate of site compatibility. That authority is now addressed in Part 4400.3650.

OTHER EXISTING RULES

4400.3600. PROGRAM ADVISORY TASK FORCE.

The requirements of this rule are now found in Part 4400.8000.

4400.3710. NOTICES

This rule is being repealed because a separate rule on notices is not required. The various rules covering notice requirements provide the details necessary.

4400.3800. EMERGENCY CERTIFICATION AND PERMITS.

The rules that apply to emergency situations is now found in Parts 400.4050.

4400.3900. EXEMPTION OF CERTAIN TRANSMISSION LINE ROUTES

This rule is being repealed in its entirety because the Legislature eliminated the concept of an Exemption in the 2001 legislation by repealing Minnesota Statutes section 116C.55, subdivision 5. Minnesota Laws 2001, chapter 212, article 7, section 36. An Exemption is no longer available so no rule is necessary.

4400.3910. EXEMPTION OF CERTAIN LEPGP SITES

For the same reason that part 4400.3900 is being repealed for routes, this rule is being repealed for sites – there is no exemption possible any longer.

4400.4000. DELAY IN ROUTE OR SITE CONSTRUCTION.

The requirements of this rule are now found in new Part 4400.3750.

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

The requirements of this rule are now found in new Part 4400.3820.

4400.4200. REVOCATION OR SUSPENSION OF CERTIFICATE OR PERMIT.

The requirements of this rule are now found in new Part 4400.3950.

4400.4300. ANNUAL PUBLIC HEARING.

The requirements for the annual hearing are now found in new Part 4400.6050.

4400.4400. ANNUAL ASSESSMENT ON UTILITY.

The requirements regarding the annual assessment on utilities are now found in Part 4400.7050.

44**4400.4500. IDENTIFICATION OF LARGE ELECTRIC POWER GENERATING PLANT STUDY AREAS**

This rule is proposed to be repealed because the Legislature repealed the statute that originally required the EQB to develop an inventory of power plant study areas. Minnesota Statutes section 116C.55, subdivisions 2 and 3 were repealed by the 2001 legislation. Minnesota Laws 2001, chapter 212, article 7, section 36. The rule is no longer necessary.

4400.4900. APPLICATION FEES.

The requirements regarding application fees that persons seeking a site permit or a route permit must pay are covered in new Part 4400.1050.

VII. CONCLUSION

As explained in this document, these amendments to chapter 4400 are necessitated primarily by the fact that the Legislature significantly changed the Power Plant Siting Act in 2001. In addition, the rules have not been amended since 1990 and in a number of ways discussed in this document, amendment of the rules is appropriate to address certain issues that have arisen with past projects. The EQB believes that these rules will provide for an expeditious consideration of proposed projects and yet afford the public an opportunity to participate in the review of new large electric facilities and ensure that the

human and environmental consequences of proposed projects and of alternatives to proposed projects are evaluated and considered before any projects go forward.

DATED: _____

_____
GENE HUGOSON
Chair
Minnesota Environmental Quality Board