

final payment has been received. Other laws notwithstanding, a state agency shall not issue any governmental permits for the construction or operation of an action for which an EIS is prepared until the required cash payments of the EIS assessed cost for that action or that portion of a related actions EIS have been paid in full.

DISCUSSION: Only an editing change is being proposed for this rule.

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- G. ~~Except as provided in 6 MCAR § 3.046 E, all~~ All time periods included in 6 MCAR §§ 3.050 - 3.054 ~~3.042 - 3.046~~ may be extended by the ~~EQB Council~~ chairperson only for good cause upon written request by the proposer or the RGU Responsible Agency.

DISCUSSION: Beyond the editing changes proposed for this rule the only proposed change is the deletion of the reference to the time period in E. above which is also being proposed for deletion.

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#### Introduction to Chapter Eighteen: Special Rules for Certain Large Energy Facilities

This chapter is added to incorporate special rules for two classes of large energy facilities, i.e., large electric power generating plants (LEPGPs) and high voltage transmission lines (HVTLS). The need for special rules relating to these facilities is basically due to the highly complex permitting processes and high degree of public concern relating to their need and construction. Primary jurisdiction relating to the environmental review of these facilities is contained in three separate laws, i.e., The Minnesota Environmental Policy Act (Minn. Stat. ch. 116D), the Power Plant Siting Act (Minn. Stat. §§ 116C.51 - 116C.69), and the Energy Act (Minn. Stat. ch. 116H). In addition, many federal state and local governments may have jurisdiction relating to construction or siting permits or approvals.

During the public meetings held in 1975 to receive comments on the current rules, substantial testimony was presented which demonstrated the need to develop a process that was nonduplicative and time efficient but that would include maximum public participation. Pursuant to this testimony, special rules were developed for the environmental review of LEPGPs and HVTLS and these rules became part of the current environmental review rules. The rules as proposed modify the current special rules for these facilities. The major modifications relate to the timing of the EIS and content requirements.

Approval of LEPGPs and HVTLS follows four basic stages:

1. The Certificate of Need process under the authority of Minn. Stat. § 116H.13 and implemented via 6 MCAR § EA 500 and 6 MCAR § 2.0601. This process defines the Energy Agency review of an application by a utility detailing the need for and description of a proposed facility.
2. The Siting process under authority of Minn. Stat. §§ 116C.51-116C.69 and implemented via 6 MCAR §§ 3.071-3.082. This process defines the Environmental Quality Board authority to select a general study area and eventually a specific site or route for a facility for which the need has been established by the Energy Agency.
3. The Environmental review process under authority of Minn. Stat. ch. 116D and implemented via 6 MCAR §§ 3.021-3.047. This represents the current environmental review process.

4. The permit stage. At this stage, governmental units must decide whether or not specific design features of the proposal meet the regulatory standards which the governmental unit is required to enforce.

The primary changes in the proposed rules as compared to the current rules include:

1. A change in the information required relating to identification of environmental impacts at the certificate of need stage;
2. A clarification in the scope of discussion relating to conservation and load-management alternatives; and
3. Preparation of the EIS at the siting stage.

The rules in this chapter were developed in consultation with the Energy Agency, the Power Plant Siting division of the EQB and a special task force of representatives from utilities and citizen groups, in addition to the public review processes for the entire set of proposed rules.

#### Introduction to 6 MCAR § 3.055 Special rules for LEPGPs.

The term large energy facility is defined at Minn. Stat. § 116H.02, subd. 5 and 6 MCAR § EA 501 (f). Two types of large electric facilities have been selected from this list for the establishment of special rules relating to their environmental review because of the complexity of permitting processes. The processes relating to environmental review of LEPGPs and HVTLS are set forth in separate rules. In the current rules, the review procedures were presented together in the context of the same rule. The separate rule format of the proposed rules was selected because a separation of the processes facilitates a more definitive presentation of the rules for easier public comprehension.

#### 6 MCAR § 3.055 A. Applicability.

Environmental review for LEPGPs as defined in Minn. Stat. § 116C.52, subd. 4 shall be conducted according to the procedures set forth in this rule. Environmental review shall consist of an environmental report at the certificate of need stage and an EIS at the site certificate stage. Energy facilities subject to Minn. Stat. § 116H.13, but excluded under Minn. Stat. § 116C.52, subd. 4, shall not be subject to this rule. Except as expressly provided in this rule, 6 MCAR §§ 3.024 - 3.036 shall not apply to facilities subject to this rule. No EAW need be prepared for any facilities subject to this rule.

DISCUSSION: This paragraph is provided to outline the basic environmental review procedure for LEPGPs prior to the presentation of the substantive process. This paragraph notes a basic change in the process, i.e., that now only two environmental documents need be prepared, the environmental report and the EIS. In the current rules the EIS is prepared at the siting stage.

This paragraph further clarifies that this rule applies only to LEPGPs. Under Minn. Stat. § 116H.13, all large energy facilities must have a certificate of need. However, this rule establishes substitute environmental review requirements for those large energy facilities that are LEPGPs. 6 MCAR § 3.056 establishes substitute environmental review requirements for those large energy facilities that are HVTLS. All other energy facilities are subject to the environmental review procedures set forth in 6 MCAR §§ 3.024 - 3.036.

A certificate of need is required for electric power generating plants that exceed the large energy facility threshold as set forth at Minn. Stat. § 116H.02, subd. 5 (a): "Any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more, or any facility of 5,000 kilowatts or more

which requires oil, natural gas, or natural gas liquids as a fuel and for which an installation permit has not been applied for by May 19, 1977 pursuant to Minn. Reg. APC 3 (a);"

This rule applies to those large energy facilities that also exceed the LEPGP threshold as set forth at 6 MCAR § 3.072 G: "electric power generating equipment and associated facilities designed for or capable of operating at a capacity of 50,000 kilowatts or more."

The reason LEPGPs have special review procedures is that LEPGPs tend to be highly controversial and subject to a spectrum of regulatory requirements and review procedures. These special rules allow a more relevant and more direct review for this type of facility. The requirement for the preparation of an EAW has been eliminated because the certificate of need application accomplishes the major goals of the EAW in bringing the proposal into a public review procedure.

6 MCAR § 3.055 B. Environmental report at certificate of need stage.

1. The MEA shall be responsible for preparation of an environmental report on a LEPGP subject to this rule.
2. The environmental report shall be prepared for inclusion in the record of certificate of need hearings conducted under Minn. Stat. § 116H.13. The report and comments thereon shall be included in the record of the hearings.
3. The environmental report on the certificate of need application shall include:
  - a. A brief description of the proposed facility;
  - b. An identification of reasonable alternative facilities including, as appropriate, the alternatives of different sized facilities, facilities using different fuels, different facility types, and combinations of alternatives;
  - c. A general evaluation, including the availability, estimated reliability, and economic, employment and environmental impacts, of the proposal and alternatives; and
  - d. A general analysis of the alternatives of no facility, different levels of capacity, and delayed construction of the facility. The analysis shall include consideration of conservation and load management measures that could be used to reduce the need for the proposed facility.
4. The environmental report need not be as exhaustive or detailed as an EIS nor need it consider site-differentiating factors.
5. Upon completion of the draft environmental report, the report shall be circulated as provided in 6 MCAR § 3.031 E. 3. In addition, one copy shall go to each regional development commission in the state. At least one copy shall be available for public review during the hearings conducted under Minn. Stat. § 116H.13.
6. The MEA shall provide notice of the date and locations at which the draft environmental report shall be available for public review. Notice shall be provided in the manner used to provide notice of public hearings conducted under Minn. Stat. § 116H.13 and may be provided in the notice of the hearings.
7. Comments on the draft environmental report shall be received during and entered into the record of hearing conducted under Minn. Stat. § 116H.13.
8. The draft environmental report and any comments received during the hearings shall constitute the final environmental report.

9. Preparation and review of the report, including submission and distribution of comments, shall be completed in sufficient time to enable the Director of the MEA to take final action pursuant to Minn. Stat. § 116H.13 within the time limits set by that statute.
10. Upon completion of a final environmental report, notice thereof shall be published in the EQB Monitor. Copies of the final environmental report shall be distributed as provided in paragraph B. 5. of this rule.
11. The MEA shall not make a final determination of need for the project until the final environmental report has been completed.
12. A supplement to an environmental report may be required pursuant to 6 MCAR § 3.031 I. if a Minn. Stat. § 116H.13 determination is pending before the MEA.

DISCUSSION: This paragraph presents the substantive process relating to the preparation of environmental documents for the certificate of need process. Subparagraph one establishes the Energy Agency as the RGU for the preparation of the environmental report. The Energy Agency is responsible for the implementation of certificate of need procedures as set forth in Minn. Stat. § 116H.13 and implemented through 6 MCAR § EA 500 and 6 MCAR § 2.0601. The environmental report is a document summarizing the certificate of need application and reasons supporting the decision. This document serves as the initial basis for environmental review relating to the project.

Minn. Stat. § 116H.13, subd. 4 mandates a public hearing for certificate of need proceedings. Subparagraph two consolidates the need hearing with an initial consideration of environmental impacts. The merging of the review of need and the environmental report helps assure that the potential impacts of the proposal and alternatives will be considered in making the certificate of need decision. The hearing record, which is incorporated into further review processes, must reflect such consideration. This procedure is the same as under the current rules.

Subparagraph three establishes the content requirements of the environmental report. It is necessary that the report adequately describe the scope of the facility, including a summary of the need for the facility as presented in the need application. This is necessary to adequately define a base consideration from which the range of alternatives can be evaluated. Alternatives considered must be identified and contrasted to the proposal. This subparagraph includes examples of classes of alternatives that are necessary to be considered for adequate comparison as well as the basic parameters of consideration that must be made. The analysis required is consistent with the factors specified in the criteria for assessment of need in 6 MCAR § 2.0611. The assessment of alternatives is of primary importance in the determination of need; i.e., once need is established, relatively little can be done to alleviate impacts other than minor mitigation measures. A major reduction in impact is achieved if alternatives can be established which eliminate the need for the project or to establish facilities and methods of addressing need that result in less adverse environmental effects. The environmental report must define the impacts of those alternatives to enable selection of the method of fulfilling need that is least damaging to the environment.

Subparagraph four modifies the depth to which the analysis of certain alternatives must be presented. The rule does not mandate forecasting for the applicant's service area in the environmental report. The limited time available for completion of the environmental report after submission of a need application is not sufficient for an evaluation of alternative forecasts. The evaluation of alternative forecasts is developed during the course of the public hearings. The evaluation of the effects of alternative facilities in the environmental report will complement detailed information on the applicant's forecasts in the hearing record.

Detailed information on alternative sites and alternative facility designs is not always available at the certificate of need stage due to the sequential nature of the regulatory process for these facilities. The limited time available for preparation of an environmental report at the certificate of need stage precludes development of detailed site specific studies.

Subparagraph five establishes the distribution requirements for the environmental report. The proposed distribution requirements for the EIS as set forth at 6 MCAR § 3.031 E. 3. are used as the base with the additional requirement of one copy to each regional development commission (RDC) in the state. There are 13 RDCs in the state. This additional requirement was added because LEPGPs tie into the state grid system and may affect electric energy need and supply in areas other than the immediate area of construction. Submission of the report to the RDC offices provides regional locations where the copy is available without entailing an undue distribution cost. The alternative of distribution to the EAW distribution list as set forth at 6 MCAR § 3.027 D.1. was considered and rejected. Use of the EAW list would add the U.S. Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service and Minnesota Historical Society while deleting governmental units with permitting authority. The EIS list was considered more directly relevant to assure that parties with primary interest receive copies. If these agencies are involved with actual approval authority, they would be notified pursuant to the EIS list. If they are interested parties without approval authority they are free to request a copy of the report. These agencies will be notified pursuant to the notice requirements of this rule.

A copy is required to be available at the hearing to facilitate public comment and reference on a timely basis.

Subparagraph six establishes notification requirements. The notice procedures for the certificate of need hearing are deemed to provide adequate notice to interested persons. These notice requirements are incorporated into this rule to avoid duplication and confusion of the processes. The notice provisions for the certificate of need proceedings are set forth at 6 MCAR § EA 504 (a) and (b). These provisions state:

"6 MCAR § EA 504 (a) Hearing Date. Within ten days after an application is received by the Agency, the hearing examiner shall set a time and place for a public hearing on the application. The hearing shall commence within eighty days after the receipt of an application."

"6 MCAR § EA 504 (b) Hearing Examiner to Issue Notice. Within ten days after an application is received by the Agency, the hearing examiner shall issue a notice of application and hearing. Such notice shall contain a brief description of the substance of the application, the name of the hearing examiner, and the time and place of hearing, and shall be published in the state register. The notice shall also be published in newspapers of general circulation throughout the state, and shall be publicized in such other manner as the director may deem appropriate. Copies of the notice shall be mailed to appropriate state, federal and local agencies."

Notice of the application for a certificate of need for any large energy facility must be printed in the EQB Monitor pursuant to 6 MCAR § 3.044 A. 14.

Subparagraph seven establishes the period of time during which comments on the draft environmental report may be submitted to the Energy Agency for inclusion into the record of the hearing. Pursuant to 6 MCAR § EA 504 (a), the hearing must commence within 80 days of receipt of an application. The hearing must be noticed within ten days of receipt of an application as provided at 6 MCAR § EA 504 (b). The date of closing of the record is established by the hearing examiner at the close of the hearing.

Special rules relating to the submission of comments are found at 6 MCAR § EA 514 (c) (1):

"Statement by Any Person. Any person may submit a written statement, under oath, relevant to the subject matter of the hearing prior to or at the hearing. In the absence of special circumstances, any person submitting such a statement shall be subject to cross-examination by any party. If such person is not available for cross-examination upon timely request, the written statement may be stricken from the record, in whole or in part, or may be given such weight as the hearing examiner deems appropriate."

And 6 MCAR § EA 514 (c) (4):

"After the Close of the Hearing. All statements or information submitted after the close of the hearing during the period in which the record is open shall become a part of the record only if submitted under oath or by affirmation. Such statements or information shall be provided to all parties and proof of service shall be filed with the hearing officer at the time such statements or information is submitted. Upon request of a party, the hearing examiner may reconvene the hearing for the purpose of cross-examination of the statement or information submitted after the close of the hearing."

It should be noted that 6 MCAR § EA 507 establishes additional rights to persons that formally intervene in the proceedings.

The comment procedures of the certificate of need proceedings are incorporated into this rule to avoid duplication and confusion of the processes.

Subparagraph eight provides for the preparation of a final report. Under the current rules a special final report was not prepared but rather the comments were available for public review. These comments were then considered and, where relevant, addressed in the EIS. The proposed rule requires consideration of these comments prior to the decision on need for the facility. This is necessary to make sure the decision on need gives proper consideration of the comments.

Subparagraph nine establishes a time guide for the preparation of these documents. Minn. Stat. § 116H.13, subd. 5 requires a decision on the need for the facility within six months of submission of the application. Subparagraph nine allows for a flexible schedule to complete the final report; however, it mandates completion by the end of the six month period. This provision, in essence, requires the establishment of time deadlines on a project-by-project basis to assure timely compliance. The Energy Agency, as RGU, is responsible for the establishment of a time effective schedule.

Subparagraph ten establishes a requirement for publication of notice of availability of the final environmental report in the EQB Monitor. In addition, copies of the report must be submitted to those persons that received copies of the draft report. Adequate notice is essential to facilitate timely comment and participation in the preparation of the EIS. Interested persons and parties providing comment on the draft should have adequate opportunity to evaluate the manner in which their comments have been addressed.

Subparagraph eleven is needed to assure that decisions relating to need are made on the basis of all information available and to help prevent prejudgement of need. Minn. Stat. § 116H.13, subd. 5 requires the decision to be accompanied by a statement of reasons for the decision. The decision and the statement should be compatible with the final environmental report.

Subparagraph twelve provides for supplementing the original report if it is later deemed to be inadequate. This provision is limited by the requirement that no decision on need shall have been made. This limitation is self apparent because the purpose of the

environmental report is to assist in making the need determination. If that determination has already been made, there is no basis for adding to the report. The proper approach in those cases is to incorporate the additional information in the EIS at the siting stage or in a supplement to the EIS.

6 MCAR § 3.055 C. EIS at certificate of site compatibility stage.

1. The EQB shall be responsible for preparation of the EIS on a LEPPG subject to this rule.
2. The draft of the EIS shall be prepared for inclusion in the record of the hearings to designate a site for a LEPPG under Minn. Stat. § 116C.58. The draft EIS and final EIS shall be included in the record of the hearing.
3. The draft EIS shall conform to 6 MCAR § 3.031 B. It shall contain a brief summary of the environmental report and the certificate of need decision relating to the project, if available. Alternatives shall include those sites designated for public hearings pursuant to Minn. Stat. § 116C.57, subd. 1 and rules promulgated thereunder. Significant issues to be considered in the EIS shall be identified by the EQB in light of the citizen evaluation process established in Minn. Stat. § 116C.59 rather than through a formal scoping process.

The EIS need not consider need for the facility and other issues determined by the MEA nor contain detailed data which are pertinent to the specific conditions of subsequent construction and operating permits and which may be reasonably obtained only after a specific site is designated.

4. Upon completion, the draft EIS shall be distributed as provided in 6 MCAR § 3.031 E. 3. In addition, one copy shall go to each regional development commission representing a county in which a site under consideration is located. At least one copy shall be available for public review during the hearings conducted under Minn. Stat. § 116C.58.
5. The EQB shall provide notice of the date and location at which the draft EIS shall be available for public review. Such notice shall be provided in the manner used to provide notice of the public hearings conducted under Minn. Stat. § 116C.58 and may be provided in the notice of the hearings.
6. The EQB or a designee shall conduct a meeting to receive comments on the draft EIS. The meeting may but need not be conducted in conjunction with hearings conducted under Minn. Stat. § 116C.58. Notice of the meeting shall be given at least ten days before the meeting in the manner provided above and may be given with the notice of hearing.
7. The EQB shall establish a final date for submission of written comments after the meeting. After that date comments need not be accepted.
8. Within 60 days after the last day for comments, the EQB shall prepare responses to the comments and shall make necessary revisions in the draft. The draft EIS as revised shall constitute the final EIS. The final EIS shall conform to 6 MCAR § 3.031 F.
9. Upon completion of a final EIS, notice thereof shall be published in the EQB Monitor. Copies of the final EIS shall be distributed as provided in paragraph C. 4. of this rule.
10. Prior to submission of the final EIS into the record of a hearing under Minn. Stat. § 116C.58, the EQB shall determine the EIS to be adequate pursuant to 6 MCAR § 3.031 G.

11. A supplement to an EIS may be required pursuant to 6 MCAR § 3.031 I.

12. The EQB shall make no final decision designating a site until the final EIS has been found adequate. No governmental unit having authority to grant approvals subsequent to a site designation shall grant any final approval for the construction or operation of a facility subject to this rule until the final EIS has been found adequate.

DISCUSSION: This paragraph presents the substantive process relating to the preparation of environmental documents for the site selection process. This paragraph represents a significant change from the current rules. Under the Power Plant Siting rules the site selection process resulted in a "certificate of site compatibility" which designated the most feasible site for construction of the LEPGP. Following this process current rules required the preparation of an EIS.

This paragraph proposes the merging of these two processes, i.e., preparation of the EIS as a part of the site selection process. The advantages of this proposed process include a saving in total preparation time and the ability to identify the most feasible site on the basis of the complete environmental data.

Subparagraph one establishes the EQB as the RGU for the preparation of the EIS. The EQB is responsible for the implementation of siting regulations pursuant to 6 MCAR § 3.071. The alternative of designating the PCA as RGU was considered but rejected. The PCA was responsible for the preparation of the EIS under the current rules, whereas the EQB was responsible for the site selection process under the current rules. The alternative of PCA as RGU was rejected because the EQB has a more central coordinative role whereas the PCA has primarily a regulatory role. It is anticipated that the EQB and PCA will work closely together in the preparation of the document.

Minn. Stat. § 116C.58 mandates public hearings for site designation proceedings. Subparagraph two incorporates the draft and final EIS into the record of such hearings. The inclusion of the EIS is necessary to assure the selection of the site most compatible with available environmental data. The hearing record must reflect consideration of these documents.

Subparagraph three establishes the content requirements of the EIS. This rule incorporates the basic EIS requirements plus a summary of the environmental report and certificate of need decision. Although these documents are available for review, the incorporation of a summary facilitates public review of the documents. If the summary raises issues that are challenged, the interested party should consult the complete documents.

Minn. Stat. § 116C.57, subd. 1, mandates a process for the designation of potential sites. The procedures for designation are set forth at 6 MCAR § 3.074. Through this process the utility must propose a site from the inventory and may propose other sites for consideration at public meetings. As a result of those public meetings the specific site alternatives are defined. The EIS need consider only those sites designated pursuant to that process.

Minn. Stat. § 116C.59 mandates a public participation process relating to the selection of sites. This process is further defined at 6 MCAR § 3.075. Pursuant to that rule, the EQB has appointed a "power plant siting advisory committee". This subparagraph combines the role of that committee with the need for scoping the EIS. This combination maximizes the opportunity for public involvement and provides for more timely review by eliminating potentially duplicative processes.

Subparagraph three allows for a further reduction in the potential scope of the EIS by permitting the omission of information relating to need for the facility and detailed site specific information if that information is more relevant to mitigation of the impacts. The infor-



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mation relating to need is most properly considered during the certificate of need process. If a party wishes to challenge that determination, the proper appeal is to district court. Detailed site specific information is most likely of primary relevance to specific mitigation measures that may be imposed via the permitting process. If such information is not of value in helping to differentiate between potential sites, the scope of the EIS should exclude the collection of that data until after the site has been selected. This will help reduce costs relating to the collection of data that will not be relevant to the actual project.

Subparagraph four establishes the distribution requirements for the draft EIS. These requirements are identical to the distribution requirements for the environmental report with the exception of a reduced requirement for the regional development commissions (RDCs). This requirement is reduced to include only those RDCs representing counties in which a designated site is located. This reduction is made because the need determination has been completed and the issues to be addressed in the EIS are of primary concern in the region of proposed construction. Other RDCs may receive copies upon request. The remaining governmental units on the distribution list are likely to be interested in the project through all stages.

Subparagraph six establishes notification requirements. The current notice procedures provided in Minn. Stat. § 116C.58 for the public hearing process for siting are deemed to provide adequate notice to interested persons for the proposed joint process. Minn. Stat. § 116C.58 requires at least one public hearing in each county in which a site is being considered. Notice of the hearing must be published in a legal newspaper of general circulation in the county where the hearing will be held and by certified mail to chief executives of all governmental units representing the area in which the site is proposed. This notice must be issued at least ten days in advance but not more than 45 days in advance pursuant to the statute.

Subparagraph seven allows for the extension of the comment period for comments relating to the draft EIS. The actual period of time for the extension will be determined pursuant to the hearing. The standard of reasonableness relating to the specific project should be used. Interested parties are responsible for complying with that time deadline.

Subparagraph eight establishes a maximum time deadline for the EQB to complete the final EIS. Sixty days after availability of all comments is deemed adequate to verify and research issues raised by the comments and to incorporate responses to the comments. The basic final EIS content requirements are incorporated into this rule. It should be noted that this also establishes the flexibility to modify those requirements pursuant to the scoping decision.

Subparagraph nine establishes the distribution and notice requirements for the final EIS. At this stage of the proceeding, the identity of interested parties should be well established and reflected in the interested person mailing list for the proposed project. Incorporation of the distribution requirements for the draft EIS establishes a requirement to provide the final EIS to these persons. The EQB Monitor is used to provide notice because it is the primary publication for monitoring environmental review for the state.

Subparagraph ten requires a formal adequacy determination by the EQB. The standards and procedures of the state environmental review process are incorporated into these special rules. This provides a uniform standard for state EISs and provides an additional opportunity for interested persons to provide comment for the record relating to the degree to which their concerns were addressed in the final EIS.

Subparagraph eleven incorporates the state environmental review procedures relating to the preparation of supplemental EISs. These procedures are deemed adequate to address additional informational needs that may arise via this process.

Subparagraph twelve establishes a prohibition on final governmental actions relating to the proposal until after the EIS has been found adequate by the EQB. This is necessary to help prevent decisions from being made on the basis of false or inadequate information.

6 MCAR § 3.055 D. Cooperative Processes.

6 MCAR §§ 3.028 E., 3.032 D. and E., 3.036 and 3.037 shall apply to energy facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

DISCUSSION: This paragraph is necessary because this rule is a substitute environmental review procedure and, pursuant to paragraph A of this rule, other provisions of the environmental review procedures do not apply unless specifically stated. Inclusion of this paragraph incorporates provisions related to phased actions, variance, emergency actions, generic EISs and joint federal/state EISs. Incorporation of these provisions provides needed flexibility to adapt these procedures to specific projects for most efficient and effective environmental review.

Introduction to 6 MCAR § 3.056 Special Rules for HVTLs

The term large energy facility is defined at 6 MCAR § EA 501 (f). Two types of large energy facilities have been selected from this list for the establishment of special rules relating to their environmental review because of the complexity of permitting processes and public controversy related to them. The processes relating to environmental review of LEPGPs and HVTLs are set forth in separate rules. In the current rules the review procedures were presented together in the context of the same rule. The separate rule format of the proposed rules was selected because a separation of the processes facilitates a more definitive presentation of the rules for easier public comprehension.

6 MCAR § 3.056 A. Applicability.

Environmental review for HVTLs as defined in Minn. Stat. § 116C.52, subd. 3, unless exempted pursuant to Minn. Stat. § 116C.57, subd. 5, shall be conducted according to the procedures set forth in this rule. Environmental review shall consist of an environmental report at the certificate of need stage and an EIS at the route designation and construction permit stage. Energy facilities subject to Minn. Stat. § 116H.13 but excluded under Minn. Stat. § 116C.52, subd. 3, or exempted under Minn. Stat. § 116C.57, subd. 5 shall not be subject to this rule. Except as expressly provided in this rule, 6 MCAR §§ 3.024 - 3.036 shall not apply to facilities subject to this rule. No EAW need be prepared for any facilities subject to this rule.

DISCUSSION: This paragraph is provided to outline the basic environmental review procedure for HVTLs prior to the presentation of the substantive process. This paragraph notes a basic change in the process, i.e. that now only two environmental documents need be prepared - the environmental report and the EIS. Under the current rules the EIS is prepared at the route designation stage.

This paragraph further clarifies that this rule applies only to certain HVTLs. Under Minn. Stat. § 116H.13, all large energy facilities must have a certificate of need. However, this rule establishes substitute environmental review requirements for some of the HVTLs that are included in the definition of large energy facilities. 6 MCAR § 3.056 establishes substitute environmental review requirements for those large energy facilities that are HVTLs. All other energy facilities are subject to the environmental review procedures set forth in 6 MCAR §§ 3.024 - 3.036.

A certificate of need is required for those high voltage transmission lines that exceed the large energy facility threshold as set forth at Minn. Stat. § 116H.02, subd. 5 (b):

"Any high voltage transmission line with a capacity of 200 kilovolts or more and with more than 50 miles of its length in Minnesota; or, any high voltage transmission line with a capacity of 300 kilovolts or more with more than 25 miles of its length in Minnesota;"

This rule applies to those high voltage transmission lines that exceed the HVTL threshold as set forth at 6 MCAR § 3.072 E.:

"a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more."

Minn. Stat. § 115C.57 subd. 5 allows an exemption process for certain HVTL routes. The procedures relating to the implementation of this exemption process are set forth at 6 MCAR § 3.078. In essence, the process allows a utility to apply for an exemption and establishes notice requirements relating to that application and procedures by which interested parties may submit comments. Based on comments received, the EQB may exempt that route from the routing selection process. This exemption is intended to allow an abbreviated process for noncontroversial projects. It should be noted that such exempted projects are exempt from the provisions of this rule; however, they may still be subject to the certificate of need proceedings of the Energy Agency and, to the environmental review procedures set forth at 6 MCAR §§ 3.024 - 3.036 if they are brought into environmental review via a discretionary process as delineated at 6 MCAR § 3.025 C.

The reason HVTLs have special review procedures is that HVTLs tend to be highly controversial and subject to a spectrum of regulatory requirements and review procedures. These special rules allow a more relevant and more direct review for this type of facility. The requirement for the preparation of an EAW has been eliminated because the certificate of need application accomplishes the major goals of the EAW in bringing the proposal into a public review procedure.

6 MCAR § 3.056 B. Environmental Report at Certificate of Need Stage.

1. The MEA shall be responsible for preparation of an environmental report on an HVTL subject to this rule.
2. The environmental report shall be prepared for inclusion in the record of certificate of need hearings conducted under Minn. Stat. § 116H.13. The report and comments thereon shall be included in the record of the hearings.
3. The environmental report on the certificate of need application shall include:
  - a. A brief description of the proposed facility;
  - b. An identification of reasonable alternatives of a different sized facility, a transmission line with different endpoints, upgrading existing transmission lines, and additional generating facilities;
  - c. A general evaluation, including the availability, estimated reliability, and economic, employment and environmental impacts, of the proposal and alternatives; and
  - d. A general analysis of the alternatives of no facility and delayed construction of the facility. The analysis shall include consideration of conservation and load management measures that could be used to reduce the need for the proposed facility.
  - e. The environmental report need not be as exhaustive or detailed as an EIS nor need it consider factors that depend upon specific routes or facility designs.

f. The report shall be reviewed in the manner provided in 6 MCAR §§ 3.055 B. 5. - 12.

DISCUSSION: This paragraph presents the substantive process relating to the preparation of environmental documents for the certificate of need process. Subparagraph one establishes the Energy Agency as the RGU for the preparation of the environmental report. The Energy Agency is responsible for the implementation of certificate of need procedures as set forth in 6 MCAR § EA 500 and 6 MCAR § 2.0601. The environmental report is a document summarizing the certificate of need application and reasons supporting the decision. This document serves as the initial basis for environmental review relating to the project.

Minn. Stat. § 116H.13, subd. 4, mandates a public hearing for certificate of need proceedings. Subparagraph two consolidates the need hearing with an initial consideration of environmental impacts. The merging of the review of need and the environmental report helps assure that the potential impacts of the proposal and alternatives will be considered when making the certificate of need decision. The hearing record, which is incorporated into further review processes, must reflect such consideration. This procedure is the same as under the current rules.

Subparagraph three establishes the content requirements of the environmental report. It is necessary that the report adequately describe the scope of the facility, including a summary of the need for the facility as presented in the need application. This is necessary to adequately define a base consideration from which the range of alternatives can be evaluated. Alternatives considered must be identified and contrasted to the proposal. This subparagraph includes examples of classes of alternatives that are necessary to be considered for adequate comparison as well as the basic parameters of consideration that must be made. The analysis required is consistent with the factors specified in the criteria for assessment of need in 6 MCAR § 2.0611.

The assessment of alternatives is of primary importance in the determination of need, i.e. once need is established, relatively little can be done to alleviate impacts other than mitigation measures. A major reduction in impact is achieved if alternatives can be established which eliminate the need for the project or if facilities and methods of addressing need that result in less adverse environmental effects are identified. The environmental report must define the impacts of those alternatives to enable selection of the method of fulfilling need that is least damaging to the environment.

Subparagraph 3.e. modifies the depth to which the analysis of the alternatives must be presented. The analysis does not mandate forecasting for the applicant's service area. The limited time available for completion of the environmental report after submission of a need application is not sufficient for an evaluation of alternative forecasts. The evaluation of alternative forecasts is developed during the course of the public hearings. The evaluation of the effects of alternative facilities in the environmental report will complement detailed information on the applicant's forecasts in the hearing record.

Detailed information on routes and route alternatives is not always available at the certificate of need stage due to the sequential nature of the regulatory process for these facilities. The limited time available for preparation of an environmental report at the certificate of need stage precludes development of detailed site specific studies.

Subparagraph 3.f. incorporates the same preparation, distribution, notice, comment and review procedures that apply to the special review procedures for LEPPs. The need and reasonableness of those procedures is analogous to the need and reasonableness for the procedures for the special review of HVTLS. Please refer to the discussion relating to 6 MCAR §§ 3.055 B. 5-12 in this document for an analysis of need and reasonableness.

6 MCAR § 3.056 C. EIS at Route Designation and Construction Permit Stage

1. The EQB shall be responsible for preparation of an EIS on an HVTL subject to this rule.
2. The draft of the EIS shall be prepared for inclusion in the record of the hearings to designate a route for a HVTL under Minn. Stat. § 116C.58. The draft EIS and final EIS shall be included in the record of the hearing.
3. The draft shall conform to 6 MCAR § 3.031 B. It shall contain a brief summary of the environmental report and the certificate of need decision relating to the project, if applicable. Alternatives shall include those routes designated for public hearing pursuant to Minn. Stat. § 116C.57, subd. 2 and rules promulgated thereunder. Significant issues to be considered in the EIS shall be identified by the EQB in light of the citizen evaluation process established pursuant to Minn. Stat. § 116C.59 rather than through a formal scoping process. Need for the facility and other issues determined by the MEA need not be considered in the EIS.
4. Review of draft EIS. The draft EIS shall be reviewed in the manner provided in 6 MCAR §§ 3.055 C.4. - 11.
5. The EQB shall make no final decision designating a route until the final EIS has been found adequate. No governmental unit having authority to grant approvals subsequent to a route designation shall grant any final approval for the construction or operation of a facility subject to this rule until the final EIS has been found adequate.

DISCUSSION: This paragraph presents the substantive process relating to the preparation of environmental documents for the route designation process. This paragraph represents a significant change from the current rules. Under the Power Plant Siting rules the route designation process resulted in a "construction permit" which designated the most feasible route for construction of the HVTL. Following this process the EIS was prepared.

This paragraph proposes the merging of these two processes, i.e. preparation of the EIS as a part of the route designation process. The advantages of this proposed process include a saving in total preparation time and the ability to identify the most feasible route on the basis of the complete environmental data.

Subparagraph one establishes the EQB as the RGU for the preparation of the EIS. The EQB is responsible for route designation pursuant to Minn. Stat. § 116C.57. Under the current rules the EQB is also responsible for the preparation of an EIS on any HVTLs for which the EQB determines an EIS is necessary. This rule alters this process in that preparation of an EIS would be mandatory for any HVTL which is subject to route designation proceedings. This is necessary to assure that complete environmental data is available to enable selection of the most feasible route.

Minn. Stat. § 116C.58 mandates public hearings for route designation proceedings. Subparagraph two incorporates the draft and final EIS into the record of such hearings. The inclusion of the EIS is necessary to assure the designation of the route most compatible with available environmental data. The hearing record must reflect consideration of these documents.

Subparagraph three establishes the content requirements of the EIS. This rule incorporates the basic EIS requirements plus a summary of the environmental report and certificate of need decision. Although these documents are available for review, the incorporation of a summary facilitates public review of the documents. If the summary raises issues that are challenged, the interested party should consult the complete documents.

Minn. Stat. § 116C.57 subd. 2 mandates a process for the designation of potential routes. The procedures for designation are set forth at 6 MCAR § 3.073. Through this process alternative routes are delineated and reviewed by a citizens route evaluation committee. The alternative routes must be identified and noticed prior to the public hearing process. The EIS need consider only those routes identified.

Minn. Stat. § 116C.59 mandates a public participation process relating to the designation of routes. This process is further defined at 6 MCAR § 3.073 and 6 MCAR § 3.075 A. Pursuant to those rules, the EQB appoints a citizens route evaluation committee. This subparagraph combines the role of that committee with the need for scoping the EIS. This combination maximizes the opportunity for public involvement and provides for more timely review by eliminating potentially duplicative processes.

Subparagraph three allows for further reduction in the potential scope of the EIS by allowing the omission of information relating to need for the facility. The information relating to need most properly is considered during the certificate of need process. If a party wishes to challenge that determination, the proper appeal is to district court.

Subparagraph four incorporates the same preparation, distribution, notice comment and review procedures that apply to the special review procedures for LEPGs. The need and reasonableness of those procedures is analogous to the need and reasonableness for the procedures for the special review of HVTLS. Please refer to the discussion relating to 6 MCAR §§ 3.055 C.4-11 in this document for an analysis of need and reasonableness.

Subparagraph five establishes a prohibition on final governmental actions relating to the proposal until after the EIS has been found adequate by the EQB. This is necessary to help prevent decisions from being made on the basis of false or inadequate information or as a result of undue political influence.

#### 6 MCAR § 3.056 D. Review of HVTLS Requiring No Certificate of Need.

An EIS for HVTLS subject to Minn. Stat. §§ 116C.51 - 116C.69 but not subject to Minn. Stat. § 116H.13 shall consist of an EIS to be prepared as provided in paragraph C. of this rule. The alternative of no action shall be considered.

DISCUSSION: This paragraph is needed to clarify the proper environmental review procedures for facilities that are subject to route designation procedures but not to certificate of need proceedings.

Minn. Stat. § 116H.13 applies to large energy facilities. 6 MCAR § EA 501 (8) states that high voltage transmission lines with a capacity of 200 kilovolts or more having more than 100 miles of its length in Minnesota are large energy facilities and, therefore, are subject to certificate of need proceedings.

Minn. Stat. § 116C.52, subd. 3 defines a high voltage transmission line as a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more unless exempted by the EQB. Minn. Stat. § 116C.57 mandates route designation procedures for high voltage transmission lines.

Therefore, any high voltage transmission lines that are less than 100 miles long are subject to route designation procedures, unless exempted by the EQB, but are not subject to certificate of need procedures. This paragraph requires an EIS to be prepared for those high voltage transmission lines. The relevant procedures for EIS preparation are the same as for HVTLS over 100 miles in length, i.e. as set forth in paragraph C.

Several relevant points should be noted relating to this provision:

1. An EAW need not be prepared. In the normal process, the environmental report serves an analogous function. Since no environmental report is prepared in these situations, it is advisable but not necessary to prepare an EAW. The public participation process may be adequate to dispense with the need for an EAW.

2. The scoping function of the EAW is completed by the use of the public participation process for the determination of scope.

3. Subparagraph C.3. states the need for the facility and other issues determined by the MEA need not be addressed in the EIS. In these cases, since there were no certificate of need proceedings, the MEA did not make any determinations. Therefore, if there are any issues that are relevant to the project that would normally be addressed via certificate of need proceedings, these issues should receive special attention in the scoping process to assure they are addressed in the EIS.

6 MCAR § 3.056 E. Cooperative Processes.

6 MCAR §§ 3.028 E., 3.032 D. and E., 3.036 and 3.037 shall apply to facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

DISCUSSION: This paragraph is necessary because this rule is a substitute environmental review procedure and, pursuant to paragraph A of this rule, other provisions of the environmental review procedures do not apply unless specifically stated. Inclusion of this paragraph incorporates provisions related to phased actions, variance, emergency actions, generic EISs and joint federal/state EISs. Incorporation of these provisions provides needed flexibility to adapt these procedures to specific projects for the most efficient and effective environmental review.

