

CHAPTER 1405
OFFICE OF ADMINISTRATIVE HEARINGS
ELECTRIC LINE AND PLANT SITING HEARINGS
AND REVENUE RECAPTURE HEARINGS

HEARINGS ON SITING OF POWER LINES AND ELECTRICAL GENERATING PLANTS		1405.2700 EMERGENCY PROCEDURES.	
1405.0200 DEFINITIONS.		1405.2800 SEVERABILITY.	
1405.0300 SCOPE AND PURPOSE.		REVENUE RECAPTURE ACT HEARINGS	
1405.0400 HEARING EXAMINERS.		1405.5100 DEFINITIONS.	
1405.0500 NOTICE OF HEARING.		1405.5200 SCOPE.	
1405.0600 RIGHT TO COUNSEL.		1405.5300 WAIVER.	
1405.0700 TIME.		1405.5400 HEARING EXAMINER ASSIGNMENT.	
1405.0800 PUBLIC PARTICIPATION.		1405.5500 NOTICE OF HEARING.	
1405.0900 INTERVENTION AS PARTY.		1405.5600 DEFAULT.	
1405.1000 DISQUALIFICATION OF HEARING EXAMINER.		1405.5700 INTERVENTION AS PARTY.	
1405.1100 PREHEARING CONFERENCE.		1405.5800 PREHEARING CONFERENCE.	
1405.1200 DEPOSITIONS TO PRESERVE TESTIMONY.		1405.5900 PREHEARING MOTIONS.	
1405.1300 SUBPOENAS.		1405.6000 PREHEARING DISCOVERY.	
1405.1400 CONDUCT OF HEARING.		1405.6100 SUBPOENAS.	
1405.1500 SEQUENCE OF PROCEEDINGS.		1405.6200 CHANGES IN DATE, TIME, OR PLACE OF HEARING.	
1405.1600 REPRESENTATION OF STATE AGENCIES.		1405.6300 CONDUCT OF HEARING.	
1405.1700 RULES OF EVIDENCE.		1405.6400 RESPONSIBILITIES AND RIGHTS OF PARTIES.	
1405.1800 HEARING RECORD.		1405.6500 RESPONSIBILITIES AND RIGHTS OF NONPARTIES.	
1405.1900 PREFILED TESTIMONY.		1405.6600 HEARING EXAMINERS.	
1405.2000 AVAILABILITY OF WITNESSES.		1405.6700 RULES OF EVIDENCE.	
1405.2100 CONTINUANCES.		1405.6800 BURDEN OF PROOF.	
1405.2200 MOTIONS.		1405.6900 HEARING RECORD.	
1405.2300 DISRUPTION OF HEARING.		1405.7000 HEARING EXAMINER'S REPORT.	
1405.2400 HEARING EXAMINER'S REPORT.		1405.7100 DISRUPTION OF HEARING.	
1405.2500 BOARD DECISION.		1405.7200 REHEARING.	
1405.2600 REHEARING.		1405.7300 SEVERABILITY.	

HEARINGS ON SITING OF POWER LINES AND ELECTRICAL GENERATING PLANTS

1405.0200 DEFINITIONS.

Subpart 1. **Board.** "Board" means the Environmental Quality Board.

Subp. 2. **Intervenor.** "Intervenor" means any person granted permission to intervene in any proceeding pursuant to these rules.

Subp. 3. **Party.** "Party" means the applicant, persons proposing routes or sites which the board orders to be considered pursuant to Minnesota Statutes, chapter 116C and rules adopted thereunder, and persons granted permission to intervene pursuant to part 1405.0900. State agencies or participating department staff, citizen committees appointed by the board, shall intervene if they are to formally advocate one route or site in preference to another. Notice is given that, pursuant to Minnesota Statutes, section 14.61, only parties who could be adversely affected by the report of the hearing examiner can be legally assured of the opportunity to present argument to the board prior to its decision.

Subp. 4. **Person.** "Person" means an individual, partnership, joint venture, private or public corporation, association or society, firm, public service company, cooperative, political subdivision, municipal corporation, governmental unit or agency, public utility district, or any other entity, public or private, however organized.

Subp. 5. **Proceeding.** As used herein, "proceeding" or "proceedings" means all events including prehearings, hearings, orders, and reports issued necessary to the completion of this hearing process on any application by a utility for the siting of a power plant, the routing of a transmission line, or exemptions.

Subp. 6. **Service; serve.** Unless otherwise provided by law, "service" or "serve" means service by first class United States mail, postage prepaid, and addressed to the person to be served at his last known address. An affidavit of service shall be made by the person making such service. Service by mail is complete upon the placing of the item to be served in the mail. Service may also be made personally.

Statutory Authority: *MS s 116C.66*

1405.0300 SCOPE AND PURPOSE.

The procedures contained herein shall govern the conduct of all hearings conducted for the Environmental Quality Board involving the siting of large electric power generating plants, the routing of high voltage transmission lines, and to the route exemption process contained in Minnesota Statutes, section 116C.57, subdivision 5, provided, however, that the procedures for hearing concerning the revocation or suspension of a site certificate or construction permit shall be those contained in parts 1400.5100 to 1400.8500, as are the hearings conducted pursuant to Minnesota Statutes, section 116C.57, subdivision 3, relating to the determination of emergencies. See part 1405.2700.

Statutory Authority: *MS s 116C.66*

1405.0400 HEARING EXAMINERS.

Subpart 1. **Request for assignment.** When the board desires to order a hearing under parts 1405.0200 to 1405.2800, it shall first file with the chief hearing examiner a request for assignment of a hearing examiner, together with a draft of the notice of hearing proposed to be published and served.

Subp. 2. **Assignment.** Within ten days of receipt of a request pursuant to subpart 1, the chief hearing examiner shall assign a hearing examiner to hear the case, and the hearing examiner shall advise the board as to the location at which and time during which a hearing should be held so as to allow for participation by all affected persons.

Subp. 3. **Duties.** Consistent with law, the hearing examiner shall perform the following duties:

A. grant or deny motions for discovery or for the taking of depositions;

B. receive and act upon requests for subpoenas;

C. hear and rule on motions;

D. preside at the hearing;

E. administer oaths and affirmations;

F. grant or deny continuances;

G. examine witnesses where he deems it necessary;

H. prepare findings of fact, conclusions, and recommendations;

I. make preliminary, interlocutory, or other orders as he deems appropriate; and

J. do all things necessary and proper to the performance of the foregoing.

Statutory Authority: *MS s 116C.66*

1405.0500 NOTICE OF HEARING.

Subpart 1. **Contents.** Proceedings under parts 1405.0200 to 1405.2800 are commenced by the board issuing a notice of hearing pursuant to the requirements of Minnesota Statutes, chapter 116C. The notice of hearing shall contain, but not be limited to, the following:

A. the date, time, and place for each hearing;

B. name and address and telephone number of the hearing examiner;

MINNESOTA RULES 1983

515

ELECTRIC LINE AND PLANT SITING HEARINGS 1405.0600

C. a citation to the board's statutory authority to hold the hearing and to take the action proposed;

D. a description of the proposed project together with a citation to the relevant statutes or rules;

E. notification that all persons may be represented by legal counsel, but that such representation is not required;

F. a citation to these rules and to any applicable procedural rules of the board and where they may be obtained;

G. the name, address, phone number, and function of the public advisor designated by the board pursuant to Minnesota Statutes, section 116C.59, subdivision 3;

H. the name, address, and telephone number of the appropriate member of the power plant siting staff who will be representing the board and the name, address, and telephone number of the member of the attorney general's staff who may be contacted for advice on matters dealing with board procedures;

I. a statement advising all persons of the right to intervene, the procedures which must be complied with, and a summary description of the rights and responsibilities intervening parties have as opposed to other persons wishing to participate;

J. the date, time, and place of any prehearing conference;

K. the place where all interested persons may review all materials including all prefiled testimony, and the date when such will be available;

L. a listing of the existing parties giving the name and address of the person designated to receive all notices;

M. a statement of the commencement times and places of the public hearings where cross-examination by parties will occur, where questioning by interested persons will occur, and where direct testimony or comments from the public will occur;

N. a statement indicating that hearings may be recessed and reset by the hearing examiner pursuant to parts 1405.1400 to 1405.2300; and

O. a listing of witnesses exempted from appearing throughout the hearing process pursuant to part 1405.2000, and a listing of the dates and places such witnesses will be in attendance.

Subp. 2. Subsequent notices. The hearing examiner may order subsequent notices to be issued by the board as he deems appropriate containing corrections of earlier notices and additional information available after issuance of earlier notices. Such subsequent notices shall be disseminated in the same manner as the original notice, unless the hearing examiner, for good cause shown, orders some other method of dissemination.

Subp. 3. Defects. Defects in the notices shall not invalidate the proceedings, provided a bona fide attempt to comply with this part has been made.

Statutory Authority: *MS s 116C.66*

1405.0600 RIGHT TO COUNSEL.

All persons may be represented by legal counsel, or by a person of their choice, or they may represent themselves.

Statutory Authority: *MS s 116C.66*

1405.0700 TIME.

Subpart 1. **Computation of time.** In computing any period of time prescribed by these rules or the procedural rules of the board, the day of the last act, event, or default from which the designated period of time begins to run shall not be included. The last calendar day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the next working day shall be deemed the last day of the period.

Subp. 2. **Extra time after service by mail.** Whenever a person has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him, or whenever such service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period.

Statutory Authority: *MS s 116C.66*

1405.0800 PUBLIC PARTICIPATION.

At all hearings conducted pursuant to parts 1405.0200 to 1405.2800, all persons will be allowed and encouraged to participate without the necessity of intervening as parties. Such participation shall include, but not be limited to:

A. Offering direct testimony with or without benefit of oath or affirmation and without the necessity of prefilng as required by part 1405.1900.

B. Offering direct testimony or other material in written form at or following the hearing. However, testimony which is offered without benefit of oath or affirmation, or written testimony which is not subject to cross-examination, shall be given such weight as the hearing examiner deems appropriate.

C. Questioning all persons testifying. Any person who wishes to cross-examine a witness but who does not want to ask questions orally, may submit questions in writing to the hearing examiner, who will then ask the questions of the witness. Questions may be submitted before or during the hearings.

Statutory Authority: *MS s 116C.66*

1405.0900 INTERVENTION AS PARTY.

Subpart 1. **Petition.** Any person desiring to intervene in the hearings as a party shall submit a timely petition to intervene to the hearing examiner and shall serve the petition upon all existing parties. Timeliness will be determined by the hearing examiner in each case based on circumstances at the time of filing. The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceedings, how his rights, duties, and privileges are not otherwise represented, and shall set forth the grounds and purposes for which intervention is sought and shall indicate petitioner's statutory or legal right to intervene, if one should exist. The hearing examiner, with the consent of all parties, may waive the requirement that the petition be in writing.

Subp. 2. **Objection.** Any party may object to the petition for intervention by filing a notice of objection with the hearing examiner within seven days of service of the petition. The notice shall state the party's reasons for objecting and shall be served upon all parties and the person petitioning to intervene.

Subp. 3. **Order.** The hearing examiner shall allow intervention upon a proper showing pursuant to subpart 1 unless the hearing examiner finds that the petitioner's interest is adequately represented by one or more parties participating in the case. In the event the hearing examiner finds that one or more petitions are similar, he may order the petitions to be consolidated as one, allowing all such petitioners intervention but only as one party.

MINNESOTA RULES 1983

517

ELECTRIC LINE AND PLANT SITING HEARINGS 1405.1300

Subp. 4. **Responsibilities of intervenors.** Once a petition to intervene has been granted, an intervenor shall have all of the rights and responsibilities of a party.

Statutory Authority: *MS s 116C.66*

1405.1000 DISQUALIFICATION OF HEARING EXAMINER.

The hearing examiner shall withdraw from participating in the proceedings at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a person of an affidavit of prejudice, the chief hearing examiner shall determine the matter as a part of the record provided the affidavit shall be filed no later than five days prior to the date set for the first hearing date.

Statutory Authority: *MS s 116C.66*

1405.1100 PREHEARING CONFERENCE.

Subpart 1. **Purpose.** The purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations to foundation for testimony or exhibits, to discuss schedules for hearings and other procedural events, and to resolve other matters that may be necessary or appropriate. Potential intervenors, and other interested persons, may attend the prehearing conference.

Subp. 2. **Procedure.** Upon the request of any party or upon his own motion, the hearing examiner may, in his discretion, hold a prehearing conference which shall be held at a time, date, and place to be determined by the hearing examiner to best maximize the ability of all interested persons to attend. Notice of any prehearing conference shall be given in the notice of hearing, if possible. Otherwise, notice shall be given pursuant to part 1405.0500, subpart 2. The hearing examiner may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the hearing examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing examiner. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the hearing examiner.

Statutory Authority: *MS s 116C.66*

1405.1200 DEPOSITIONS TO PRESERVE TESTIMONY.

Upon the request of any person, the hearing examiner may order that the testimony of any witness be taken by deposition to preserve his testimony in the manner prescribed by law for depositions in civil actions. The request shall indicate the relevance of the testimony and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause.

Statutory Authority: *MS s 116C.66*

1405.1300 SUBPOENAS.

Subpart 1. **Written request for subpoena.** Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the hearing examiner and shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought and shall identify any documents sought with specificity. The hearing examiner will grant the request for subpoenas only upon a finding of such relevance.

Subp. 2. **Service.** A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the District Court of the state of Minnesota unless otherwise provided by law. The cost of service, fees, and expenses of any

witness subpoenaed shall be paid by the person at whose request the witness appears. The person serving the subpoena shall make proof of service by filing the subpoena with the hearing examiner, together with his affidavit of service.

Subp. 3. **Motion to quash.** Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, the hearing examiner may quash or modify the subpoena if he finds that it is unreasonable or oppressive.

Statutory Authority: *MS s 116C.66*

1405.1400 CONDUCT OF HEARING.

The proceedings shall be conducted substantially in the following manner. After opening the hearing, the hearing examiner shall indicate the procedural rules for the hearing including, but not limited to, the following:

A. all persons may present evidence and argument with respect to the issues and cross-examine witnesses;

B. all persons may be represented by legal counsel, but such representation is not required; and

C. the rules of evidence as set forth in part 1405.1700, subparts 3 to 8.

Cross-examination shall be conducted in a sequence determined by the hearing examiner. The record of the hearing shall be closed at a date to be set by the hearing examiner. Such date will correspond to a specific number of calendar days beyond the close of the last hearing date, computed pursuant to part 1405.0700, subpart 1. Written comment will be accepted if postmarked no later than the date set by the hearing examiner. However, the record shall remain open beyond that date for the sole purpose of receiving the final environmental impact statement.

Statutory Authority: *MS s 116C.66*

1405.1500 SEQUENCE OF PROCEEDINGS.

Subpart 1. **Recess.** All hearings shall recess at 11:00 p.m. unless the hearing examiner determines that the public interest will best be served in any given hearing by continuing the hearing beyond 11:00 p.m. The hearing examiner may, in his discretion, order a time and place for a continuance of that hearing.

Subp. 2. **Two-stage hearing.** The hearing may be scheduled in two stages. The first stage shall be for the purpose of introducing into evidence all of the prefiled direct testimony of the parties, and the cross-examination of each witness by all other parties. The subsequent stage shall be for the purpose of allowing all other interested persons to present their direct testimony and to question witnesses that offered testimony during the first stage of the hearing process.

Nothing contained herein shall be interpreted so as to prevent the public from being present during the first stage of the proceedings or to question witnesses at an appropriate time during the first stage of the proceedings, should time allow. The hearing examiner may give priority to those members of the public desiring to ask questions which would enable them to better prepare for cross-examination during subsequent stages. It is the intended purpose of the two-stage process to establish specific hearing dates for the primary purpose of public participation in order to avoid inconveniencing the general public by requiring them to wait until late at each hearing before having opportunity to offer direct testimony and ask questions. However, at the discretion of the hearing examiner, the applicant and other parties may present a brief summary of the prefiled direct testimony at the beginning of each session.

Subp. 3. **Additional hearing dates.** Nothing contained herein shall be interpreted so as to prevent the hearing examiner from establishing additional

MINNESOTA RULES 1983

519

ELECTRIC LINE AND PLANT SITING HEARINGS 1405.1800

hearing dates on motion or at his discretion.

Statutory Authority: *MS s 116C.66*

1405.1600 REPRESENTATION OF STATE AGENCIES.

Any state agency which participates in the proceedings as a party may only participate through its designated representative or counsel. Exceptions to this rule may be allowed at the discretion of the hearing examiner for good cause shown.

Statutory Authority: *MS s 116C.66*

1405.1700 RULES OF EVIDENCE.

Subpart 1. Right to present evidence. All persons shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues and to cross-examine witnesses.

Subp. 2. Witnesses. Any person may be a witness or present witnesses on his behalf at the hearings. Direct testimony shall be admitted as allowed by part 1405.0800.

Subp. 3. Admissible evidence. The hearing examiner may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which prudent persons are accustomed to rely in the conduct of their serious affairs. The hearing examiner shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious may be excluded.

Subp. 4. Submission of evidence. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents (except tax returns and tax reports) in the possession of the board or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence (except tax returns and tax reports) shall be considered in the determination of the case.

Subp. 5. Documentary evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing examiner.

Subp. 6. Administrative notice of facts. The hearing examiner may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any person to rebut.

Subp. 7. Burden of proof. Any route or site proposer must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden.

Subp. 8. Weight of testimony. Oral testimony received without benefit of oath or affirmation and written submissions that are not subject to cross-examination shall be given such weight as the hearing examiner deems appropriate.

Statutory Authority: *MS s 116C.66*

1405.1800 HEARING RECORD.

Subpart 1. Preparation. Pursuant to Minnesota Statutes, section 15.0418, the Office of Administrative Hearings, upon certification of the official record of the case by the board to it, shall prepare and maintain the official record in each proceeding.

Subp. 2. Contents. The record in a hearing shall contain: all pleadings, motions, and orders; evidence received or considered; offers of proof, objections, and rulings thereon; the hearing examiner's findings of fact, conclusions, and recommendations; all memoranda or data submitted by any person and considered by the hearing examiner in connection with the case; and the transcript of each hearing, if any.

Subp. 3. **Recorder or reporter.** Unless the chief hearing examiner determines that the use of a court reporter is more appropriate, an audiomagnetic recording device shall be used to keep a record at any hearing which takes place under parts 1405.0200 to 1405.2800.

Subp. 4. **Transcript.** The verbatim record shall be transcribed if requested by a person or in the discretion of the chief hearing examiner. If a transcription is made, the chief hearing examiner may require the requesting person and other persons who request copies of the transcript from him to pay a reasonable charge therefor. The charge shall be set by the chief hearing examiner, and all moneys received for transcripts shall be payable to the state treasurer and shall be deposited in the state Office of Administrative Hearings account in the state treasury.

Subp. 5. **Environmental documents.** Any draft environmental impact statement (in the case of routes) or any draft environmental report (in the case of sites) required to be prepared by rules of the board shall be entered into the record at a point during the hearing process which will allow all persons an opportunity to review and comment on the material. In addition, all comments and responses to comments which the board desires to consider shall be entered into the record promptly after they are received.

Statutory Authority: *MS s 116C.66*

1405.1900 PREFILED TESTIMONY.

Subpart 1. **Preparing and filing.** All direct testimony to be offered by any party proposing a route or site shall be prepared in advance in question and answer form and shall be filed 14 days prior to the first hearing date in the following manner:

- A. the original and one copy with the hearing examiner;
- B. one copy with the board;
- C. one copy with each party; and
- D. one copy at a place in each county where a hearing is to be held pursuant to statute at a location designated by the board for public review.

Subp. 2. **Procedure.** Prefiled testimony will be part of the record in each proceeding as if read, but all of the witnesses shall be available for cross-examination and questioning at each and every hearing subject to the provisions of part 1405.2000. Objections to such direct testimony may be made by any person, any time during the hearings conducted pursuant to parts 1405.0200 to 1405.2800. Five copies of the prefiled testimony of each witness shall be made available for the review by the public at each hearing.

At the hearing, the party presenting the testimony may, if it deems appropriate, briefly summarize the prefiled testimony prior to start of cross-examination.

Subp. 3. **Rebuttal testimony.** Nothing contained herein shall be deemed to foreclose any party from presenting rebuttal testimony or from presenting testimony in response to reasonably unforeseen areas, both without the necessity of prefiling.

Statutory Authority: *MS s 116C.66*

1405.2000 AVAILABILITY OF WITNESSES.

All witnesses who offer prefiled direct testimony in compliance with part 1405.1900 shall be available for questioning by interested persons at each hearing date and place. In the event a witness cannot be available throughout the hearing process, the party on whose behalf the witness testified shall request an exemption from this rule of the hearing examiner prior to the publication of the notice of hearing. The request shall state the reasons why the witness cannot be present at each hearing, and the date, or dates, on which the witness can be available. For good cause shown, the hearing examiner shall grant the

MINNESOTA RULES 1983

521

ELECTRIC LINE AND PLANT SITING HEARINGS 1405.2400

exemption and shall immediately notify the board. The board shall then include in the notice of hearing a statement indicating the name of the witness, the nature of his testimony, and the dates and places where the witness will be available for questioning by all parties and persons. The party requesting the exemption shall do so in writing and shall serve a copy of the request on all other parties. Any party may object to the exemption by filing his written objection with the hearing examiner and serving a copy on all parties within five working days of the date of the request. In the event an objection is made, the hearing examiner shall immediately notify all parties of the date, time, and place where he will hear arguments on the request, subsequent to which he shall issue an order granting or denying the request for exemption. The hearing examiner may also grant exemptions, at any time, upon a showing of need due to unforeseeable circumstances. The same notice and objection procedure may be followed if circumstances permit, or the hearing examiner may utilize any other procedure if he deems it more appropriate. A subsequent notice of hearing shall issue reflecting any such exemption granted by the hearing examiner.

In the event a witness has prefiled testimony and fails to present himself for questioning, such prefiled testimony shall be given such weight as the hearing examiner deems appropriate.

Statutory Authority: *MS s 116C.66*

1405.2100 CONTINUANCES.

During a hearing, if it appears in the interest of justice that further testimony should be received, the hearing examiner, in his discretion, may continue the hearing to a future date and such oral notice on the record may be sufficient.

Statutory Authority: *MS s 116C.66*

1405.2200 MOTIONS.

No motions shall be made directly to or be decided by the board subsequent to the appointment of a hearing examiner and prior to the completion and filing of the hearing examiner's report unless the motion is certified to the board by the hearing examiner. Uncertified motions shall be made to the hearing examiner and considered by the board in its consideration of the record as a whole subsequent to the filing of the hearing examiner's report.

Statutory Authority: *MS s 116C.66*

1405.2300 DISRUPTION OF HEARING.

Subpart 1. **Cameras.** Television, newsreel, motion picture, still, or other cameras shall be operated in a manner as not to disrupt the hearing. The hearing examiner may limit operation if disruption occurs.

Subp. 2. **Other conduct.** Pursuant to and in accordance with the provisions of Minnesota Statutes, section 624.72, no person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the hearing examiner shall read this part to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

Statutory Authority: *MS s 116C.66*

1405.2400 HEARING EXAMINER'S REPORT.

Subpart 1. **Basis for determination.** No factual information or evidence, except tax returns and tax reports, which is not a part of the record shall be considered by the hearing examiner or the board in the determination of a hearing. The hearing examiner or the board may take administrative notice of general, technical, or scientific facts within their specialized knowledge in

MINNESOTA RULES 1983

1405.2400 ELECTRIC LINE AND PLANT SITING HEARINGS

522

conformance with the requirements of Minnesota Statutes, section 14.60, subdivision 4.

Subp. 2. **Completion and filing.** Following the close of the record and the completion of the transcript, the hearing examiner shall make his report pursuant to Minnesota Statutes, section 14.50, and, upon completion, a copy of said report shall be served upon all parties by first class mail. A copy of the report shall also be filed at places designated for public review pursuant to part 1405.1900, subpart 1, item D.

Statutory Authority: *MS s 116C.66*

1405.2500 BOARD DECISION.

Following receipt of the hearing examiner's report, the board shall proceed to make its final decision in accordance with Minnesota Statutes, chapters 14 and 116C.

Statutory Authority: *MS s 116C.66*

1405.2600 REHEARING.

A rehearing pursuant to board order shall be commenced in the same manner as set forth for commencement of proceeding in part 1405.0500. The rehearing shall be conducted in the same manner prescribed for a hearing.

Statutory Authority: *MS s 116C.66*

1405.2700 EMERGENCY PROCEDURES.

Any hearings held pursuant to Minnesota Statutes, section 116C.57, subdivision 3, to determine if an emergency exists shall be governed by the contested case procedures contained in parts 1400.5100 to 1400.8500. If the board finds that an emergency does exist, then any hearings on the designation of a site or route shall be governed by the rules contained in parts 1405.0200 to 1405.2800, provided, however, that the hearing examiner, in his discretion, may modify any time limits contained herein if he finds that such modification is needed to expedite the hearings.

Statutory Authority: *MS s 116C.66*

1405.2800 SEVERABILITY.

If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end, the provisions of these rules are declared to be severable.

Statutory Authority: *MS s 116C.66*

REVENUE RECAPTURE ACT HEARINGS

1405.5100 DEFINITIONS.

Subpart 1. **Agency, claimant agency.** "Agency" or "claimant agency" means the state or public agency asserting a claim to a tax refund.

Subp. 2. **Debtor.** "Debtor" means a natural person whose tax refund is the subject of a claim by the claimant agency.

Subp. 3. **Party.** "Party" means the claimant agency, the debtor, and any other persons granted permission to intervene pursuant to part 1405.5700.

Subp. 4. **Service, serve.** "Service" or "serve" may be accomplished by either delivering a document to an individual in person, or by leaving a document at his/her home with some person of suitable age and discretion who resides in the same house, or by mailing the document to the person by first class United States mail.

If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution.

MINNESOTA RULES 1983

523

ELECTRIC LINE AND PLANT SITING HEARINGS 1405.5500

Postage shall be prepaid. Mail to a person other than a state agency shall be addressed to the last known address of the person. Agencies of the state of Minnesota may also deposit the document with the Central Mailing Section, Publications Division, Department of Administration, addressed as above.

Statutory Authority: *MS s 14.51*

1405.5200 SCOPE.

These rules govern hearings between state agencies and taxpayers based on the Revenue Recapture Act, Laws of Minnesota 1980, chapter 607, article XII, codified as Minnesota Statutes 1980, sections 270A.01 to 270A.12. In addition, these rules may be used for any other hearings conducted by the state Office of Administrative Hearings if all parties to a particular hearing agree to use them. In the event that these rules are used for a proceeding other than one arising under the Revenue Recapture Act, the parties shall agree upon appropriate substitutions for terms in the rules which are peculiar to the Revenue Recapture Act (example: claimant agency, debtor, etc.).

Statutory Authority: *MS s 14.51*

1405.5300 WAIVER.

Upon request of all parties, the hearing examiner shall waive or modify any of these rules, provided that such waiver or modification does not conflict with any provision of Minnesota Statutes 1980, sections 14.48 to 14.70 or 270A.01 to 270A.12.

Statutory Authority: *MS s 14.51*

1405.5400 HEARING EXAMINER ASSIGNMENT.

Subpart 1. Request for assignment. Any agency desiring to order a hearing shall first contact the chief hearing examiner or his designee and request the assignment of an examiner. The request shall include a proposed date, time, and place for the hearing. If requested by the chief hearing examiner or his designee, the agency shall file a copy of the notice of hearing proposed to be issued.

Subp. 2. Assignment. Within ten days of the receipt of a request, the chief hearing examiner or his designee shall assign an examiner to hear the case. Unless the chief hearing examiner or his designee has already agreed with the agency, the examiner shall advise the agency as to the location, date, and time for the hearing. In offering such advice, the examiner shall consider the location of known parties, witnesses, and other participants so as to maximize convenience and minimize cost. After reaching agreement with the chief hearing examiner or his designee or upon receiving advice from the examiner, the agency shall issue the notice of hearing.

Statutory Authority: *MS s 14.51*

1405.5500 NOTICE OF HEARING.

The notice of hearing shall be served at least 20 days before the hearing. The notice of hearing shall be served upon all parties. The notice shall be worded in clear, nontechnical language and shall contain, at a minimum, the following:

- A. the time, date, and place for the hearing;
- B. the name, address, and telephone number of the hearing examiner;
- C. a statement of the allegations or issues to be determined at the hearing, together with a citation to any relevant statutes and rules. If the debt arises from more than one event or transaction, each event or transaction shall be noted.
- D. a citation to the statutory authority to hold the hearing and to take the action proposed;

MINNESOTA RULES 1983

1405.5500 ELECTRIC LINE AND PLANT SITING HEARINGS

524

E. a citation to these rules, and notification of how copies may be obtained;

F. a brief description of the procedure to be followed at the hearing;

G. the name, address, and telephone number of the agency representative to be contacted to discuss informal disposition of the dispute, along with an explanation of the types of informal disposition which the agency might consider;

H. notification that a party need not be represented by an attorney but may choose to be represented by an attorney or any other person of his choice;

I. a statement advising the parties to bring to the hearing all documents, records, and witnesses they need to present their position; in addition, a statement that subpoenas may be available to compel the attendance of witnesses or the production of documents and a reference to part 1405.6100 relating to subpoenas; and

J. a statement advising parties that failure to appear at the hearing will result in the allegations of the notice being taken as true, and a statement which explains the possible results if the allegations are taken as true.

Statutory Authority: *MS s 14.51*

1405.5600 DEFAULT.

A default occurs when a party fails to appear at a hearing. If the claimant agency appears at a hearing but the debtor does not, the allegations in the notice of hearing shall be taken as true and deemed proved without further evidence. If the debtor appears at a hearing, but the claimant agency fails to appear, the examiner shall recommend that the hearing be dismissed with prejudice. If neither the claimant party nor the debtor appear at a hearing, the examiner shall recommend that the case be dismissed with prejudice.

Statutory Authority: *MS s 14.51*

1405.5700 INTERVENTION AS PARTY.

Subpart 1. Petition. Any person not named in the notice of hearing who desires to participate as a party shall submit a written petition to intervene to the examiner and shall serve a copy of the petition upon all existing parties and the agency. The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceeding; shall set forth the grounds and purposes for which intervention is sought; and shall indicate petitioner's statutory right to intervene if one should exist.

Subp. 2. Objection. Any party may object to the petition for intervention by filing a written notice of objection with the examiner within seven days of service of the petition if there is sufficient time before the hearing. The notice shall state the party's reasons for objection, and a copy shall be served upon all parties, the person petitioning to intervene, and the agency. If there is insufficient time before the hearing for such written objection, the objection may be made orally at the hearing.

Subp. 3. Order. The examiner shall allow intervention upon a proper showing pursuant to subpart 1 unless the examiner finds that the petitioner's interest is adequately represented by one or more other parties participating in the case.

Statutory Authority: *MS s 14.51*

MINNESOTA RULES 1983

525

ELECTRIC LINE AND PLANT SITING HEARINGS 1405.6100

1405.5800 PREHEARING CONFERENCE.

Upon the request of any party or upon his/her own motion, the examiner shall hold a prehearing conference prior to the hearing, if the amount in controversy in any case exceeds \$1,000.

The purpose of the prehearing conference is to simplify the issues to be determined at the hearing; to consider amendment of the agency's notice if necessary; to obtain agreements in regard to uncontested facts or admissibility of testimony or exhibits; to determine the identity and number of proposed witnesses for each party; to consider such other matters that may be necessary or advisable; and, if possible, to reach a settlement without the necessity for further hearing.

A prehearing conference shall be an informal proceeding conducted expeditiously by the examiner. Agreements on the simplification of issues, uncontested facts, admissibility of evidence, or other matters shall be either entered on the record at the hearing or be made the subject of a written order by the examiner.

Statutory Authority: *MS s 14.51*

1405.5900 PREHEARING MOTIONS.

If a party desires the examiner to issue an order before the hearing or during a continuance in the hearing, (other than a request for a continuance or a subpoena), he/she shall make a request to the examiner in writing. The request shall state, in detail, the need for the order and what is being requested. A copy of the request shall be served upon all known parties. If a party is opposed to the granting of a motion, he should notify the examiner as soon as possible. Orders on motions may be either oral or written but the examiner shall notify all parties of record of the order.

Statutory Authority: *MS s 14.51*

1405.6000 PREHEARING DISCOVERY.

A party may demand that any other party disclose the names and addresses of all witnesses that the other party intends to have testify at the hearing. The demand shall be in writing and shall be directed to the party or his/her attorney. Responses to the demand shall be served within ten days of receipt of the demand. Any witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known. Any party unreasonably failing, upon demand, to make such disclosure shall be foreclosed from presenting any evidence at the hearing through an undisclosed witness.

Statutory Authority: *MS s 14.51*

1405.6100 SUBPOENAS.

Subpart 1. Requests. A party desiring to compel the attendance of a witness or the production of documents shall file with the examiner a written request for a subpoena. The request shall indicate the name and address of the person upon whom the subpoena will be served; a brief statement of the potential relevance of the testimony or documents sought; and, if the subpoena request is for the production of documents, the documents sought should be identified with specificity.

Subp. 2. Service. Subpoenas shall be served personally in the manner provided in part 1405.5100, subpart 4, item A. They shall not be served by mail. The witness fees applicable in the district courts pursuant to Minnesota Statutes, section 357.22 shall apply and shall be paid to the potential witness at the time of service. Such fees are \$10 per day for each day of attendance plus 12 cents per mile for travel going to and returning from the place attendance, to be estimated from the witness' residence.

Subp. 3. **Objection to a subpoena.** Any person served with a subpoena who has an objection to it may file an objection with the examiner. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The examiner shall cancel or modify the subpoena if he/she finds that it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and whether or not there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers, or other tangible things.

Statutory Authority: *MS s 14.51*

1405.6200 CHANGES IN DATE, TIME, OR PLACE OF HEARING.

Subpart 1. **Requests.** Any party who desires to change the date, time, or place from that announced in the notice of hearing shall contact the other known parties, or their representatives, and seek agreement regarding a new time, date, or place. If the parties can agree, and if the examiner's schedule allows, the examiner shall approve the change.

Subp. 2. **Notice.** If time permits, the agency shall send a written notice to all parties and the examiner setting forth the new time, date, or place.

Subp. 3. **Continuances during a hearing.** If it appears in the interest of justice that further evidence should be received, the examiner shall continue the hearing to a future date. Oral notice on the record shall be sufficient notice of the additional date.

Statutory Authority: *MS s 14.51*

1405.6300 CONDUCT OF HEARING.

The hearing shall be conducted substantially in the following manner:

A. The examiner shall open the hearing by reading the title of the case, stating the amount claimed by the claimant agency, and briefly stating the facts as alleged in the notice of hearing which give rise to the claim.

B. Any stipulations, settlement agreements, or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

C. The claimant agency shall have the burden of proof and shall begin the presentation of evidence. It shall be followed by the other parties in a sequence determined by the examiner.

D. Testimony may be given in narrative fashion by witnesses rather than by question-and-answer format.

E. Cross-examination of witnesses shall be conducted in a sequence and in a manner determined by the examiner to expedite the hearing while ensuring a fair hearing. At the request of the party whose witness is being cross-examined, the examiner shall make such rulings as are necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

F. Any party may be a witness or may present other persons as witnesses at the hearing. All oral testimony at the hearing shall be under oath or affirmation.

G. A party may question an adverse party or any witness identified with an adverse party by leading questions and contradict and impeach him/her on material matters.

H. When all parties and witnesses have been heard, the hearing shall be closed unless a continuance has been ordered under part 1405.6200.

Statutory Authority: *MS s 14.51*

MINNESOTA RULES 1983

527

ELECTRIC LINE AND PLANT SITING HEARINGS 1405.6600

1405.6400 RESPONSIBILITIES AND RIGHTS OF PARTIES.

Subpart 1. **Necessary preparation.** A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party.

Subp. 2. **Responding to orders.** If the examiner orders that parties do an act, or not do an act, the parties shall comply with the order. If a party objects to an order, such objection shall be stated in advance of the order as part of the record.

Subp. 3. **Copies.** The examiner shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the examiner shall simultaneously send a copy to all other parties, provided, however, that this requirement shall not apply to requests for subpoenas.

Subp. 4. **Representation by counsel.** A party need not be represented by an attorney. He/she may represent himself/herself, or may be represented by an attorney or any other person of his/her choice. If a party has notified other parties that he/she will be represented by an attorney, all communications shall be directed to that attorney.

Statutory Authority: *MS s 14.51*

1405.6500 RESPONSIBILITIES AND RIGHTS OF NONPARTIES.

Subpart 1. **Offering evidence.** Any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the proceeding.

Subp. 2. **Questioning witnesses.** Generally, nonparties shall not be allowed to question witnesses, provided, however, that the examiner may allow such questioning if he/she deems it necessary for the development of a full and complete record.

Statutory Authority: *MS s 14.51*

1405.6600 HEARING EXAMINERS.

Subpart 1. **Impartiality.** An examiner assigned to a case shall be free of any personal, political, or economic association that would impair his/her ability to function in a fair and objective manner. Should an examiner believe that he/she cannot comply with this rule, he/she shall withdraw from the case.

Subp. 2. **Communications.** The examiner shall not communicate, directly or indirectly, with any person or party concerning any issue of fact or law relevant to a pending case except upon notice to all parties and opportunity for them to participate. When these rules authorize communications contrary to this prohibition, such communications shall be limited to only those matters permitted by these rules.

Subp. 3. **Duties.** Consistent with law and these rules, the examiner shall perform the following duties:

- A. receive, and recommend action to the chief hearing examiner upon receipt of, requests for subpoenas;
- B. hear and rule on motions;
- C. preside at the hearing;
- D. administer oaths and affirmations;
- E. grant or deny continuances;
- F. examine witnesses where deemed necessary to make a complete record;
- G. prepare findings of fact, conclusions, and recommendations;
- H. make preliminary, interlocutory, or other orders as deemed necessary to assure a fair hearing;

MINNESOTA RULES 1983

1405.6600 ELECTRIC LINE AND PLANT SITING HEARINGS

528

I. recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot or for other reasons; and

J. do all things necessary and proper to the performance of the foregoing.

Statutory Authority: *MS s 14.51*

1405.6700 RULES OF EVIDENCE.

Subpart 1. **Admissibility.** The examiner shall admit all evidence which logically tends to prove or disprove an important fact, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The examiner shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

Subp. 2. **Submitting.** Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the claimant agency or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

Subp. 3. **Documents.** Documentary evidence may be introduced in the form of copies or excerpts or may be incorporated by reference into the record. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised as to the accuracy or authenticity of the copy or, in the circumstances, it would be unfair to admit the copy in lieu of the original.

Subp. 4. **Administrative notice of facts.** The examiner may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

Statutory Authority: *MS s 14.51*

1405.6800 BURDEN OF PROOF.

The claimant agency shall have the burden of proving the amount and existence of the debt and its right to collect the debt by a preponderance of the evidence. If the debtor asserts any affirmative defenses, the debtor shall have the burden of proving the existence of any such defense by a preponderance of the evidence.

Statutory Authority: *MS s 14.51*

1405.6900 HEARING RECORD.

Subpart 1. **Maintaining.** The examiner shall maintain the official record in each case until the issuance of the report, at which time the record, except for the audiomagnetic recordings thereof, shall be sent to the agency.

Subp. 2. **Content.** The record shall contain:

A. the notice of hearing and all motions and orders which have been reduced to writing;

B. evidence received or considered;

C. an audiomagnetic recording of the hearing;

D. the examiner's report;

E. all memoranda or data submitted by any party in connection with the case; and

F. the transcript of the hearing, if one was prepared.

Subp. 3. **Closing record.** The record of the contested case proceeding shall be closed upon the completion of the testimony, or receipt of the final written memorandum or transcript, if any, or late-filed exhibits which the parties and the examiner have agreed should be received into the record, whichever occurs latest.

MINNESOTA RULES 1983

529

ELECTRIC LINE AND PLANT SITING HEARINGS 1405.7300

Subp. 4. **Transcript.** The audiomagnetic recording of the hearing shall be transcribed if requested by a party or if ordered by the chief hearing examiner. If a transcription is made, the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript from him to pay a reasonable charge therefor. The charge shall be set by the chief hearing examiner and all moneys received for transcripts shall be payable to the state treasurer and shall be deposited in the state Office of Administrative Hearings' account in the state treasury.

Statutory Authority: *MS s 14.51*

1405.7000 HEARING EXAMINER'S REPORT.

Following the close of the record, the examiner shall make his/her report pursuant to Minnesota Statutes, section 14.50, and, upon completion, a copy of said report shall be served upon all parties.

Statutory Authority: *MS s 14.51*

1405.7100 DISRUPTION OF HEARING.

Subpart 1. **Cameras.** Television, newsreel, motion picture, still or other cameras may be operated in the hearing room during the course of the hearing unless the examiner determines that such operation is disrupting the hearing.

Subp. 2. **Recordings.** The official audiomagnetic recording of the hearing shall be made by the examiner. Any party may also record all or part of the proceedings. Nonparties may record all or part of the proceedings unless the examiner determines that such recording is disrupting the hearing. In the event of failure of recording equipment, the examiner may direct any person or party to provide the examiner with the original or a copy of any recording of the proceeding upon payment of the cost of the recording medium.

Subp. 3. **Other conduct.** Pursuant to and in accordance with the provisions of Minnesota Statutes, section 624.72, no person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the examiner shall read this rule to those persons causing such interference or disruption and thereafter proceed as is deemed appropriate.

Statutory Authority: *MS s 14.51*

1405.7200 REHEARING.

Any agency notice of and order for rehearing shall be served on all parties in the same manner prescribed for the notice of and order for hearing, provided that the examiner shall permit service of the notice and order for rehearing less than 20 days prior to rehearing if the parties agree to such earlier service. The rehearing shall be conducted in the same manner prescribed for a hearing.

Statutory Authority: *MS s 14.51*

1405.7300 SEVERABILITY.

If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end, the provisions of these rules are declared to be severable.

Statutory Authority: *MS s 14.51*