

**CHAPTER 4210**  
**DEPARTMENT OF ENERGY, PLANNING AND**  
**DEVELOPMENT**  
**ENERGY DIVISION**  
**PROCEDURES GOVERNING CERTIFICATE OF**  
**NEED PROGRAM FOR LARGE ENERGY**  
**FACILITIES**

**NOTE:** Under Laws of Minnesota 1983, chapter 289, section 46, this chapter of Minnesota Rules shall be administered by the Public Utilities Commission. Thus, references to the Department of Energy, Planning and Development, or to its divisions, should be read as intending the Public Utilities Commission.

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**4210.0100 DEFINITIONS.**

Subpart 1. **Scope.** For the purpose of parts 4210.0100 to 4210.3300, the following terms have the meanings given them.

Subp. 2. **Agency.** "Agency" means the Energy Division of the Department of Energy, Planning and Development.

Subp. 3. **Applicant.** "Applicant" means the person or persons submitting a certificate of need application.

Subp. 4. **Coal supplier.** "Coal supplier" means any entity engaged in Minnesota in the wholesale distribution of coal or transportation into this state of any coal intended for use or distribution in the state or transshipment from the state.

Subp. 5. **Construction.** "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies.

Subp. 6. **Director.** "Director" means the director of the agency.

Subp. 7. **Large energy facility.** "Large energy facility" means:

A. any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more;

B. any high voltage transmission line with a capacity of 200 kilovolts or more having more than 100 miles of its length in Minnesota;

C. any facility on a single site designed for or capable of storing more than 1,000,000 gallons of crude petroleum or petroleum fuels or oil or derivatives thereof;

D. any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof;

E. any pipeline for transporting natural or synthetic gas at pressures in excess of 200 pounds per square inch and having more than 50 miles of its length in Minnesota;

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F. any facility designed for or capable of storing on a single site more than 100,000 gallons of liquified natural gas or synthetic gas;

G. any underground gas storage facility requiring a permit pursuant to Minnesota Statutes 1974, section 84.57;

H. any facility designed for or capable of serving as a depot for coal transported into this state for use within the state or transshipment from the state and any petroleum refinery; and

I. any facility intended to convert coal into any other combustible fuel and having the capacity to process in excess of 25 tons per hour.

**Subp. 8. Person.** "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision; unit, or agency other than a court of law.

**Subp. 9. Petroleum supplier.** "Petroleum supplier" means any petroleum refinery in the state, and any entity engaged in transmission or wholesale distribution of more than 100,000 gallons of crude petroleum or petroleum fuels or oil or derivatives thereof annually in this state.

**Subp. 10. Utility.** "Utility" means any entity engaged in the generation, transmission, or distribution of electric energy and any entity engaged in the transmission or distribution of natural or synthetic natural gas, including but not limited to a private investor-owned utility or a public or municipally owned utility.

**Statutory Authority:** *MS s 116J.10*

### 4210.0200 PURPOSE AND SCOPE.

**Subpart 1. Purpose.** The purpose of this chapter is to provide procedures to be followed in the issuance of a certificate of need for the construction of large energy facilities in Minnesota pursuant to Minnesota Statutes 1974, section 116H.13. These rules are adopted pursuant to the power of the director conferred by Minnesota Statutes 1974, section 116H.08, clause (a).

**Subp. 2. Scope.** On or after the effective date of agency rules governing assessment of need criteria, no large energy facility for which such criteria have been promulgated shall be sited or constructed in Minnesota unless a certificate of need for said facility has been issued by the director pursuant to this chapter. Provided, however, that any utility that, as of the effective date of agency rules for criteria of assessment of need governing its facility, has pending before the Minnesota Environmental Quality Board an application for a certificate of site compatibility, an application for corridor designation, or an application for a permit for transmission line construction may pursue its application before the board; but in any event, shall not begin construction of said facility until a certificate of need for said facility has been issued pursuant to this chapter.

**Subp. 3. Exception.** Any person who, as of the effective date of rules of criteria of assessment of need governing his facility, has pending before the Minnesota Environmental Quality Board an application for a certificate of site compatibility, an application for corridor compatibility, or an application for a construction permit for a transmission line, or who has received a certificate of corridor compatibility may pursue the pending application and subsequent applications for a construction permit for the facility, before the board. However, such person shall not begin construction of said facility until a certificate of need for said facility has been issued pursuant to this chapter.

**Statutory Authority:** *MS s 116J.10*

**APPLICATIONS AND PRELIMINARY MATTERS****4210.1100 APPLICATION FOR CERTIFICATE OF NEED.**

Subpart 1. **Time, form, and content.** Except as provided in part 4210.0200, subpart 2, any person desiring to construct a new large energy facility in Minnesota shall submit an application for a certificate of need for said facility to the director prior to commencing construction of said facility or, in the case of large electric generating facilities and large high voltage transmission lines, prior to filing an application for a certificate of site compatibility or an application for a transmission line corridor designation. The application shall contain the information required in the applicable substantive rules (see chapters 4220, 4230, 4240, 4250, 4260, and 4270) and shall be verified by the person responsible for its preparation.

Subp. 2. **Number of copies.** An applicant shall submit the original and four copies of its application, including one unbound copy, and shall make additional copies available upon request of the director.

Subp. 3. **Fee.** Each application for a certificate of need shall be accompanied by a fee as prescribed by the applicable substantive rules (see chapters 4220, 4230, 4240, 4250, 4260, and 4270).

**Statutory Authority:** *MS s 116J.10*

**4210.1200 PUBLIC INSPECTION AND AGENCY EVALUATION.**

Subpart 1. **Application available to public.** An application shall be available for viewing by the public at the office of the agency. Any person may request a copy of the application. Each person requesting a copy shall identify himself and the person he represents, if any. The director may grant any such request for good cause shown. Any state or local or federal agency requesting a copy of an application shall receive one. The applicant shall supply the agency with sufficient copies of the application to enable the agency to comply with this subpart.

Subp. 2. **Agency evaluation.** Immediately following receipt of an application, the agency shall evaluate the application and the need for the proposed facility and may, if it so elects, within 60 days of receipt of the application, issue its report thereon. A copy of the report shall be served on all parties to the proceeding. The persons responsible for preparation of the report shall be available for examination regarding the report by parties to the proceeding. The agency may become a party to the proceeding by filing a notice of intervention pursuant to part 4210.1400, subpart 1, but in any event shall be deemed a party if it has exercised its option to issue a report pursuant to this subpart.

**Statutory Authority:** *MS s 116J.10*

**4210.1300 STATE AGENCY PARTICIPATION.**

Any state agency authorized to issue permits for siting, construction, or operation of large energy facilities shall present its position regarding the need for the facility proposed in the application at the public hearing. Any such state agency may become a party to the proceeding by filing a notice of intervention pursuant to part 4210.1400, subpart 1.

**Statutory Authority:** *MS s 116J.10*

**4210.1400 INTERVENTION.**

Subpart 1. **Notice of intervention.** The agency and any federal, state, or local agency with authority to grant permits or certificate of siting, construction, or operation of large energy facilities may become a party to the proceeding by filing a notice of intervention with the director. Such notice shall be filed within 30 days of the date of issuance of the notice of application unless after that time the director, at his discretion, permits the filing of a notice of intervention. Such notice shall contain:

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A. a statement of the jurisdiction of the agency with respect to the proposed facility; and

B. a statement of the agency's interest in and its position with respect to the application.

**Subp. 2. Petition for leave to intervene.** Any person wishing to become a party to the proceeding may petition for leave to intervene by filing a petition for leave to intervene. Such petition shall be filed within 30 days of the date of issuance of the notice of application unless after that time the director, at his discretion, permits the filing of a petition for leave to intervene. Such petition shall contain:

A. a statement of the interest of the petitioner in the proposed facility; and

B. a statement of the position of the petitioner with respect to the application.

**Subp. 3. Service.** A copy of any notice of intervention or petition for leave to intervene shall be served upon the applicant and all other parties by the proposed intervenor; and proof of service shall be filed with the notice or petition.

**Subp. 4. Granting petition to intervene.** The hearing examiner shall grant or deny any petition to intervene within ten days after such petition has been filed with the agency. A petition for intervention shall be granted if the hearing examiner determines that the petitioner may be materially affected by the outcome of the proceedings, or the intervention of the petitioner will materially advance the consideration of the application.

Notice of the action of the petition shall be served on all parties.

**Statutory Authority:** *MS s 116J.10*

### 4210.1500 PARTIES.

**Subpart 1. Identity.** Parties to any proceeding under these rules shall include the applicant, and any person who has properly intervened under part 4210.1400.

**Subp. 2. Representation.** Any party in a proceeding under these rules shall be represented by counsel; provided, however, that the hearing examiner may, upon good cause shown, permit any party to represent himself.

**Subp. 3. Consolidation of parties.** The hearing examiner may consolidate parties that are similarly situated if he determines that such consolidation would enhance the orderliness and efficiency of the hearing without substantially prejudicing any party.

**Subp. 4. Role of participants.** Any person who is not a party to a proceeding may appear and give written or oral testimony at the public hearing. However, the right to call and examine witnesses is reserved exclusively to parties to the proceeding.

**Statutory Authority:** *MS s 116J.10*

### 4210.1600 CONSOLIDATION.

At any time prior to a hearing, the hearing examiner, either upon his own motion or upon motion of any party, may recommend to the director that separate proceedings be consolidated for hearing if he determines that the separate proceedings present substantially the same issues of fact or law, a decision in one proceeding would affect the rights of parties in another proceeding, and consolidation would not substantially prejudice any party.

The director shall take action on any recommendation on consolidation within five days after the recommendation is made. If he orders proceedings consolidated, notice of consolidation shall be served on all parties.

**Statutory Authority:** *MS s 116J.10*

## PREHEARING, HEARING, AND REHEARING

## 4210.2100 HEARING EXAMINER.

Subpart 1. **Appointment and qualifications.** Within five days of receipt of an application, the director shall appoint a hearing examiner. Such appointment shall be in accordance with law and any applicable rules. The hearing examiner shall be an attorney licensed to practice law in Minnesota. At the time of his appointment, he shall not be an employee of, or on retainer to, the agency. To the extent possible, he shall possess some familiarity with the type of facility proposed in the application. After appointment, the hearing examiner shall be considered an employee of the agency for the sole purpose of compensation and authorization to conduct the hearing and recommend findings of fact and a decision to the director. In all other respects he shall be independent of the agency.

Subp. 2. **Authority.** The appointment of the hearing examiner shall, to the extent permitted by law, authorize the hearing examiner to call and conduct the hearing and recommend a decision to the director.

Subp. 3. **Functions.** The functions of the hearing examiner shall be to hear and rule on preliminary motions, issue subpoenas, conduct the hearing, examine witnesses, make such preliminary discovery, interlocutory, or other orders as he deems appropriate, recommend a decision to the director, and do all things necessary or proper to the performance of the foregoing.

Subp. 4. **Disqualification.** The director may, for good cause shown, revoke the appointment of any hearing examiner upon the filing of a petition for disqualification by a party or upon the director's own motion. Unless the basis for the request for disqualification is misconduct on the part of the hearing examiner, any petition for disqualification shall be filed within ten days after the appointment of the hearing examiner. The reasons for the revocation shall be made a part of the official record.

A hearing examiner shall withdraw from participation in a hearing at any time prior to the final determination if he deems himself disqualified for any reason.

Whenever a hearing examiner is disqualified or removed, the director may vacate and annul all proceedings and orders issued as of the date of disqualification, or may order the hearing to proceed in the same manner as if disqualification had not occurred.

Subp. 5. **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 80 days after the receipt of an application.

Subp. 6. **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.

**Statutory Authority:** *MS s 116J.10*

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## **4210.2200 PREHEARING CONFERENCE.**

A prehearing conference where all parties are invited and which is open to the public may be held at the discretion of the hearing examiner at any time for the purpose of considering such matters as the hearing examiner shall direct, including, but not limited to:

- A. the simplification or settlement of any issue;
- B. the disclosure of the identity of witnesses and a summary of the testimony of each;
- C. the exchange of documentary evidence and the reports of expert witnesses to be submitted at the hearing; and
- D. any other appropriate matter.

The conference shall be an informal proceeding conducted fairly and expeditiously by the hearing examiner. Any decision made or agreements reached at the prehearing conference shall be included in a prehearing order issued by the hearing examiner not less than three days prior to the hearing. Said order shall be served on all parties. No agreement may be made to waive the public hearing.

**Statutory Authority:** *MS s 116J.10*

## **4210.2300 MOTIONS.**

Subpart 1. **In writing.** Any application for procedural relief shall be made by motion that, unless made during the hearing, shall be made in writing and shall state with particularity the relief or order sought. A motion shall be filed with the hearing examiner and served on all parties in accordance with part 4210.2400.

Subp. 2. **Answers.** Any party may reply to a motion within ten days after its service upon him or within such time as the hearing examiner shall state.

Subp. 3. **Delay.** No procedural motion shall cause the delay of a hearing unless the hearing examiner determines that good cause for such delay exists.

Subp. 4. **Hearing examiner's ruling.** The ruling of the hearing examiner shall be served on all parties, or if made at the hearing, shall be made part of the record.

Subp. 5. **Review.** The ruling of the hearing examiner on any motion shall be subject to review by the director only upon his review of the report of the hearing examiner as provided in part 4210.2900.

**Statutory Authority:** *MS s 116J.10*

## **4210.2400 SERVICE.**

Copies of all pleadings, except applications, and copies of all petitions to intervene, written motions, and notices shall be served upon all other parties personally or by mail and proof of service shall be filed with the hearing examiner. When a party is represented by an attorney, service upon the attorney shall be deemed service upon the party.

**Statutory Authority:** *MS s 116J.10*

## **4210.2500 DISCOVERY.**

Upon motion of any party for good cause shown, the hearing examiner may permit the service of interrogatories, the taking of depositions, or such other discovery as may be appropriate. No motion made under this part shall be granted except upon a showing that the moving party has made a request for the information sought and such request has been refused and that the information produced would be relevant to the proceeding or may demonstrably lead to relevant information. The hearing examiner may issue subpoenas to compel the attendance of witnesses or the production of documents. Parties shall determine whether such requests shall be complied with and inform the requester of that decision within three working days, and shall provide the discovery requested

within a reasonable time.

**Statutory Authority:** *MS s 116J.10*

#### **4210.2600 ADDITIONAL INFORMATION.**

Upon request of the hearing examiner and subject to the limitations contained in part 4210.2700, subpart 7, the applicant shall submit such additional information as the hearing examiner deems necessary. The application of an applicant who without good cause shown fails to comply with an order to supply additional information may be dismissed. Any other party who without good cause fails to comply with any order to supply additional information may be dismissed.

**Statutory Authority:** *MS s 116J.10*

#### **4210.2700 THE HEARING.**

**Subpart 1. Conduct of hearing.** The hearing shall be open to the public. The parties may cross-examine witnesses and present evidence, rebuttal testimony, oral argument, and written briefs. The sequence of events shall be determined by the hearing examiner.

**Subp. 2. Witnesses.** Any party may be a witness or may present witnesses on his behalf. All testimony at a hearing shall be under oath or affirmation. Every party shall have the right to cross-examination of adverse witnesses. Any person offering oral testimony who is not a party shall be subject to cross-examination by any party.

**Subp. 3. 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.

**Subp. 4. Cross-examination of preparer of application.** The person or persons responsible for preparation of the application or other persons having substantial knowledge of its preparation shall be available for cross-examination by any party. Failure to comply with this section may result in dismissal of an application.

**Subp. 5. Cross-examination of preparer of agency report.** The person or persons responsible for the preparation of the agency report or other persons having substantial knowledge of its preparation shall be available for cross-examination by any party.

**Subp. 6. After close of 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.

**Subp. 7. Rules of evidence.** Rules of evidence:

**A. Admission:** the hearing examiner may admit and rely on evidence that possesses probative value commonly accepted by reasonable people. The hearing examiner shall give effect to the rules of privilege recognized by law. Proposed evidence that is incompetent, irrelevant, immaterial, repetitious, or otherwise objectionable may be excluded.

**B. Official notice:** the hearing examiner may take notice of judicially cognizable facts and, in addition, may take notice of technical or scientific facts within his specialized knowledge. Where final determination rests on official

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notice of material facts not appearing in the evidence in the record, the hearing examiner shall serve and file a statement of notice of facts upon the parties. A party is entitled, upon timely request, to an opportunity to rebut such facts.

C. **Burden of proof:** the burden of proving any contested assertion of fact in the proceeding shall be upon the proponent thereof.

Subp. 8. **Transcript.** A verbatim record of the hearing shall be taken by court reporters or by recording equipment. A court reporter shall be used if demanded by any party. Unless the agency agrees to bear the expense of the court reporter, such expense shall be paid by the party demanding the reporter. If a transcript is requested, the agency may require the requesting party to pay the reasonable cost of preparing the transcript.

Subp. 9. **Cameras.** Television, newsreel, motion picture, still, or other cameras, and lights or other devices used in connection with such cameras, shall be permitted in the hearing room while the hearing is in progress, subject to such conditions and restrictions as the hearing examiner may impose in order to avoid disruption of the hearing. Mechanical recording devices, in addition to those provided by the agency or at its discretion, shall also be permitted in the hearing room during the course of the hearing subject to such conditions and restrictions as the hearing examiner may impose in order to avoid disruption of the hearing.

Subp. 10. **Interference.** Pursuant to and in accordance with provisions of Minnesota Statutes 1974, 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 the hearing.

**Statutory Authority:** *MS s 116J.10*

### **4210.2800 PROPOSED FINDINGS AND BRIEFS.**

Within 20 days after the close of the hearing, the parties shall file proposed findings and conclusions and a brief in support thereof.

**Statutory Authority:** *MS s 116J.10*

### **4210.2900 REPORT OF HEARING EXAMINER.**

The hearing examiner shall prepare a written report of his findings and his recommendation as to issuance of a certificate of need, and submit it to the director within 50 days after the close of the hearing. The agency shall immediately serve a copy of the report on all parties to the proceeding.

**Statutory Authority:** *MS s 116J.10*

### **4210.3000 COMMENTS AND EXCEPTIONS.**

Within ten days following receipt of the hearing examiner's report, any party may file written comments on or exceptions to the findings and recommendation of the hearing examiner. Such comments or exceptions shall be served upon all parties.

**Statutory Authority:** *MS s 116J.10*

### **4210.3100 THE RECORD.**

In each proceeding the agency shall prepare an official record, which shall contain:

- A. all pleadings, motions, and intermediate rulings;
- B. the prehearing order of the hearing examiner, if any;
- C. all evidence received or considered;
- D. a statement of matters officially noticed;
- E. questions and offers of proof, objections, and rulings thereon;
- F. proposed findings and briefs in support thereof;
- G. the report of the hearing examiner;



H. all comments and exceptions and briefs in support thereof; and

I. all memoranda or data submitted to the hearing examiner by the agency staff or any person in connection with the proceeding.

The official record shall be made available to the director for use in reaching his decision.

**Statutory Authority:** *MS s 116J.10*

#### **4210.3200 DECISION OF DIRECTOR.**

Within 30 days after the date of the hearing examiner's report, and in any case within 180 days after receipt of the application, the director shall render a decision on the application. The decision shall be in writing and shall be accompanied by a statement of the reasons therefor, including a concise statement of conclusions upon each contested issue of fact necessary to the decision. The director shall also rule on any decision of the hearing examiner appealed to him during the course of the proceeding. The decision shall be served on all parties to the case.

**Statutory Authority:** *MS s 116J.10*

#### **4210.3300 REHEARING.**

Subpart 1. **Director's right to reconsider.** The director may, within 180 days after the receipt of the application upon request and good cause shown or on his own motion, reconsider a final decision.

Subp. 2. **Petition for rehearing.** Within 30 days of the issuance of the director's decision, any party to the matter may request a rehearing by filing a petition for rehearing. Such petition shall contain the name and address of the petitioner, the agency designation for the matter, and the reasons for the petition.

Subp. 3. **Director's action.** The director shall grant or deny a petition for rehearing as part of the record. Such petition shall be granted upon a showing that there are irregularities in the hearing, errors of law, newly discovered material evidence of such importance as likely to have altered the outcome of the hearing, or upon a showing of good cause for failure to appear at the hearing. Evidence and argument may be presented at the discretion of the director, in written or oral form or both, by any party to the matter with respect to the granting or denial of petition.

Subp. 4. **Notice of rehearing.** Notice of rehearing shall be served on all parties and published in the same manner prescribed for notice of hearing.

Subp. 5. **Rehearing procedure.** A rehearing in a matter shall be conducted in the same manner prescribed for a hearing.

Subp. 6. **Decision after rehearing.** The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

**Statutory Authority:** *MS s 116J.10*