

CHAPTER 4220
PUBLIC UTILITIES COMMISSION
POWER PLANTS AND LINES

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4220.0100 DEFINITIONS.

[For text of subps 1 to 3, see M.R. 1987]

Subp. 4. [Repealed, 12 SR 2624]

[For text of subps 5 and 6, see M.R. 1987]

Subp. 7. **Annual system demand.** "Annual system demand" means the highest system demand of a utility occurring during the 12 month period ending with a given month.

Subp. 8. [Repealed, 12 SR 2624]

Subp. 8a. **Capacity factor.** "Capacity factor" means the ratio of the actual amount of electrical energy generated during a designated period by a particular generating facility to the maximum amount of electrical energy that could have been generated during the period by the facility had it been operated continuously at its rated capacity.

Subp. 8b. **Commission.** "Commission" means the Minnesota Public Utilities Commission.

Subp. 8c. **Construction.** "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including an activity incident to preliminary engineering or environmental studies.

[For text of subps 9 to 11, see M.R. 1987]

Subp. 12. **LEGF; large electric generating facility.** "Large electric generating facility" or "LEGF" means an electric power generating unit or combination of units as defined by Minnesota Statutes, section 216B.2421, subdivision 2, paragraph (a).

Subp. 13. **LHVTL; large high voltage transmission line.** "Large high voltage transmission line" or "LHVTL" means a conductor of electrical energy as defined by Minnesota Statutes, section 216B.2421, subdivision 2, paragraph (b), and associated facilities necessary for normal operation of the conductor, such as insulators, towers, substations, and terminals.

[For text of subps 14 to 18, see M.R. 1987]

Subp. 18a. **Nominal generating capability.** "Nominal generating capability" means the average output power level, net of in plant use, that a proposed LEGF is expected to be capable of maintaining over a period of four continuous hours of operation.

[For text of subps 19 to 31, see M.R. 1987]

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.0200 PURPOSE OF RULES.

The purpose of this chapter is to specify the content of applications for certificates of need and to specify criteria for the assessment of need for large electric generating facilities and large high voltage transmission lines.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.0300 SCOPE.

Subpart 1. Facilities covered. A person applying for a certificate of need for an LEGF or an LHVTL shall provide the information required by this chapter. A certificate of need is required for a new LEGF, a new LHVTL, and for expansion of either facility when the expansion is itself of sufficient size to come within the definition of "large electric generating facility" or "large high voltage transmission line" in part 4220.0100. The nominal generating capability of an LEGF is considered its size. If the nominal generating capability of an LEGF varies by season, the higher of the two seasonal figures is considered its size.

Subp. 2. Exemption. Notwithstanding subpart 1, a certificate of need is not required for a facility exempted by Minnesota Statutes, section 216B.243, subdivision 8.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.1100 PURPOSE OF CRITERIA.

The criteria for assessment of need must be used by the commission to determine the need for a proposed large energy facility under Minnesota Statutes, sections 216B.2421, subdivision 2, and 216B.243. The factors listed under each of the criteria set forth in part 4220.1300 must be evaluated to the extent that the commission considers them applicable and pertinent to a facility proposed under this chapter. The commission shall make a specific written finding with respect to each of the criteria.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.1200 CONSIDERATION OF ALTERNATIVES.

The commission shall consider only those alternatives proposed before the close of the public hearing and for which there exists substantial evidence on the record with respect to each of the criteria listed in part 4220.1300.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.1300 CRITERIA.

A certificate of need must be granted to the applicant on determining that:
[For text of item A, see M.R. 1987]

B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record, considering:

[For text of item B, subitems (1) to (4), see M.R. 1987]

C. by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health, considering:

[For text of item C; subitems (1) to (4), see M.R. 1987]

D. the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of it, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.2100 APPLICATION PROCEDURES AND TIMING.

Subpart 1. **Form and manner.** An applicant for a certificate of need shall apply in a form and manner prescribed by this chapter.

Subp. 2. **Copies, title, table of contents.** The original and 13 copies of the application must be filed with the commission. The applicant shall provide copies of the application to other state agencies with regulatory responsibilities in connection with the proposed facility and to other interested persons who request copies. The applicant shall maintain a distribution list of the copies. Documents, forms, and schedules filed with the application must be typed on 8-1/2 inch by 11 inch paper except for drawings, maps, and similar materials. An application must contain a title page and a complete table of contents that includes the applicable rule by the titles and numbers given in this chapter. The date of preparation and the applicant's name must appear on the title page, as well as on each document filed with the application.

Subp. 3. **Changes to application.** After an application is filed, changes or corrections to the application must comply with subpart 2 as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page must be marked with the word "REVISED" and with the date the revision was made. The original copy of the changes or corrections must be filed with the administrative law judge, and the remaining copies must be submitted to the commission. The applicant shall send to persons receiving copies of the application a like number of copies of changed or corrected pages.

Subp. 4. **Cover letter.** An application for a certificate of need must be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter must specify the type of facility for which a certificate of need is requested.

Subp. 5. [Repealed, 12 SR 2624]

Subp. 6. [Repealed, 12 SR 2624]

Subp. 7. **Complete applications.** The commission must notify the applicant within 30 days of the receipt of an application if the application is not substantially complete. On notification, the applicant may correct any deficiency and may resubmit the application. If the revised application is substantially complete, the date of its submission is considered the application date.

Subp. 8. **Exemptions.** Before submitting an application, a person is exempted from any data requirement of this chapter if the person (1) requests an exemption from specified rules, in writing to the commission, and (2) shows that the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document. A request for exemption must be filed at least 45 days before submitting an application. The commission shall respond in writing to a request for exemption within 30 days of receipt and include the reasons for the decision. The commission shall file a statement of exemptions granted and reasons for granting them before beginning the hearing.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.2200 FILING FEES AND PAYMENT SCHEDULE.

[For text of subpart 1, see M.R. 1987]

Subp. 2. Payment schedule. Twenty-five percent of the fee set according to subpart 1 must accompany the application, and the balance must be paid in three equal installments within 45, 90, and 135 days after submission of the application. The applicant must be notified of and billed for costs not covered by the fee described in subpart 1. The additional fees must be paid within 30 days of notification. The billing of additional fees must be accompanied by an itemized document showing the necessity for the additional assessment.

Subp. 3. Payment required. The commission shall not issue its decision on the application until the outstanding set fee payments and additional billings under subparts 1 and 2 are paid by the applicant.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.2300 CONTENTS OF APPLICATION.

[For text of subps 1 and 2, see M.R. 1987]

Subp. 3. Joint ownership and multiparty use. If the proposed LEGF or LHVTL is to be owned jointly by two or more utilities or by a pool, the information required by this chapter must be provided by each joint owner for its system. If the facility is designed to meet the long-term needs, in excess of 80 megawatts, of a particular utility that is not to be an owner, that utility must also provide the information required by this chapter. Joint applicants may use a common submission to satisfy the requirements of any part for which the appropriate response does not vary by utility.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.2350 ENVIRONMENTAL REPORT.

Subpart 1. Draft report. If the application is for an LHVTL, the information submitted under parts 4220.2400, 4220.2600, and 4220.2900 to 4220.3400 must be designated by the applicant as its "draft environmental report" and distributed in accordance with part 4410.7100, subpart 5.

Subp. 2. Written responses. The applicant shall submit written responses to the substantive comments entered into the record of the proceeding before the close of the public hearing on the application. The written responses must be entered into the record and be available to the administrative law judge in preparing the recommendation on the application.

Subp. 3. Final report. The draft environmental report, written comments, and the applicant's written responses to comments comprise the "final environmental report," which must be distributed in accordance with part 4410.7100, subpart 5.

Subp. 4. Notice of final report. On completing the final environmental report, the commission shall have published in the EQB Monitor, published by the Minnesota Environmental Quality Board, a notice indicating completion.

Subp. 5. Supplements. The applicant must prepare a supplement to the final environmental report if the tests described in part 4410.3000, subparts 1 and 2, are met and a certificate of need proceeding on the proposed facility is pending.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

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4220.2400 NEED SUMMARY AND ADDITIONAL CONSIDERATIONS.

Subpart 1. **Need summary.** An application must contain a summary of the major factors that justify the need for the proposed facility. This summary must not exceed, without the approval of the commission, 15 pages in length, including text, tables, graphs, and figures.

[For text of subp 2, see M.R. 1987]

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.2500 DESCRIPTION OF PROPOSED LEGF AND ALTERNATIVES.

An application for a proposed LEGF must include:

A. a description of the facility, including:

(1) the nominal generating capability of the facility, as well as a discussion of the effect of the economies of scale on the facility size and timing;

[For text of item A, subitems (2) to (5), see M.R. 1987]

[For text of item B, see M.R. 1987]

C. for the proposed facility and for each of the alternatives provided in response to item B that could provide electric power at the asserted level of need, a discussion of:

[For text of item C, subitems (1) to (3), see M.R. 1987]

(4) its fuel costs in current dollars per kilowatt hour;

(5) its variable operating and maintenance costs in current dollars per kilowatt hour;

(6) the total cost in current dollars of a kilowatt hour provided by it;

(7) an estimate of its effect on rates system wide and in Minnesota, assuming a test year beginning with the proposed in service date;

(8) its efficiency, expressed for a generating facility as the estimated heat rate, or expressed for a transmission facility as the estimated losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations; and

(9) the major assumptions made in providing the information in subitems (1) to (8), including projected escalation rates for fuel costs and operating and maintenance costs, as well as projected capacity factors;

[For text of items D and E, see M.R. 1987]

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.2600 DESCRIPTION OF PROPOSED LHVTL AND ALTERNATIVES.

Each application for a proposed LHVTL must include:

[For text of item A, see M.R. 1987]

B. a discussion of the availability of alternatives to the facility, including but not limited to:

(1) new generation of various technologies, sizes, and fuel types;

[For text of item B, subitems (2) to (8), see M.R. 1987]

C. for the proposed facility and for each of the alternatives provided in

response to item B that could provide electric power at the asserted level of need, a discussion of:

[For text of item C, subitems (1) to (4), see M.R. 1987]

(5) an estimate of its effect on rates system wide and in Minnesota, assuming a test year beginning with the proposed in service date;

(6) its efficiency, expressed for a transmission facility as the estimated losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations, or expressed for a generating facility as the estimated heat rate; and

(7) the major assumptions made in providing the information in subitems (1) to (6);

[For text of items D and E, see M.R. 1987]

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.2700 PEAK DEMAND AND ANNUAL ELECTRICAL CONSUMPTION FORECAST.

[For text of subpart 1, see M.R. 1987]

Subp. 2. Content of forecast. For each forecast year, the following data must be provided:

[For text of subp 2, items A to D, see M.R. 1987]

E. the estimated annual revenue requirement per kilowatt hour for the system in current dollars; and

F. the applicant's estimated average system weekday load factor by month; in other words, for each month, the estimated average of the individual load factors for each weekday in the month.

Subp. 3. Forecast methodology. An applicant may use a forecast methodology of its own choosing, with due consideration given to cost, manpower requirements, and data availability. However, forecast data provided by the applicant is subject to tests of accuracy, reasonableness, and consistency. The applicant shall detail the forecast methodology employed to obtain the forecasts provided under subpart 2, including:

[For text of subp 3, items A to F, see M.R. 1987]

G. an explanation of discrepancies that appear between the forecasts presented in the application and the forecasts submitted under chapter 4100 or in the applicant's previous certificate of need proceedings.

Subp. 4. Data base for forecasts. The applicant shall discuss the data base used in arriving at the forecast presented in its application, including:

[For text of subp 4, items A and B, see M.R. 1987]

The applicant shall provide to the commission or the administrative law judge on demand copies of the data sets used in making the forecasts, including both raw and adjusted data, input and output data.

Subp. 5. Assumptions and special information. The applicant shall discuss each essential assumption made in preparing the forecast, including the need for the assumption, the nature of the assumption, and the sensitivity of forecast results to variations in the essential assumptions.

The applicant shall discuss the assumptions made regarding:

[For text of subp 5, items A to C, see M.R. 1987]

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D. the data requested in subpart 2 that is not available historically or not generated by the applicant in preparing its own internal forecast;

E. the effect of energy conservation programs on long term electrical demand; and

[For text of subp 5, item F, see M.R. 1987]

[For text of subp 6, see M.R. 1987]

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.2800 SYSTEM CAPACITY.

The applicant shall describe the ability of its existing system to meet the demand for electrical energy forecast in response to part 4220.2700 and the extent to which the proposed facility will increase this capability. In preparing this description, the applicant shall present the following information:

[For text of items A to C, see M.R. 1987]

D. for the summer season and for the winter season corresponding to each forecast year, the load and generation capacity data requested in subitems (1) to (13), including the anticipated purchases, sales, capacity retirements, and capacity additions, except those that depend on certificates of need not yet issued by the commission:

[For text of item D, subitems (1) to (13), see M.R. 1987]

[For text of items E to I, see M.R. 1987]

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.2900 CONSERVATION PROGRAMS.

An application must include:

A. the name of the committee, department, or individual responsible for the applicant's energy conservation and efficiency programs, including load management;

[For text of items B to E, see M.R. 1987]

F. a quantification of the manner by which these programs affect or help determine the forecast provided in response to part 4220.2700, subpart 2, a list of their total costs by program, and a discussion of their expected effects in reducing the need for new generation and transmission facilities.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.3000 CONSEQUENCES OF DELAY.

The applicant shall present a discussion of anticipated consequences to its system, neighboring systems, and the power pool should the proposed facility be delayed one, two, and three years, or postponed indefinitely. This information must be provided for the following three levels of demand: the expected demand provided in response to part 4220.2700, subpart 2, and the upper and lower confidence levels provided in response to part 4220.2700, subpart 3, item E.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.3300 TRANSMISSION FACILITIES.

The applicant shall provide data for each alternative that would involve construction of an LHVTL. The following information must be included:

[For text of item A, see M.R. 1987]

B. for underground transmission facilities:

[For text of item B, subitems (1) and (2), see M.R. 1987]

(3) the amount of heat released by the cable system in kilowatts per foot of cable length;

[For text of items C to G, see M.R. 1987]

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.3400 THE ALTERNATIVE OF NO FACILITY.

For each of the three levels of demand specified in part 4220.3000, the applicant shall provide the following information for the alternative of no facility:

[For text of items A to C, see M.R. 1987]

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*

4220.4100 CERTIFICATE OF NEED CONDITIONS AND CHANGES.

Subpart 1. **Authority of commission.** Issuance of a certificate of need may be made contingent upon modifications required by the commission. When an application is denied, the commission shall state the reasons for the denial.

Subp. 2. [Repealed, 12 SR 2624]

Subp. 3. [Repealed, 12 SR 2624]

Subp. 3a. **Proposed changes in size, type, and timing.** Changes proposed by an applicant to the certified size, type, or timing of a proposed facility before the facility is placed in service must conform to the following provisions:

A. A delay of one year or less in the in service date of a large generation or transmission facility previously certified by the commission is not subject to review by the commission.

B. A power plant capacity addition or subtraction smaller than the lesser of 80 megawatts or 20 percent of the capacity approved in a certificate of need issued by the commission does not require recertification.

C. A change in power plant ownership smaller than the lesser of 80 megawatts or 20 percent of the capacity approved in a certificate of need issued by the commission does not require recertification.

D. The applicant shall notify the commission as soon as it determines that a change described in item A, B, or C is imminent, detailing the reasons for the change.

E. A large transmission line length addition or subtraction made as a result of the route length approved by the Minnesota Environmental Quality Board for projects previously certified does not require recertification.

F. A design change required by another state agency in its permitting process for certified facilities is not subject to review by the commission, unless the change contradicts the basic type determination specified by the certificate of need.

G. If a utility applies to the Minnesota Environmental Quality Board for

a transmission line route that is not expected to meet the definition of LHVTL in part 4220.0100, but at some time in the routing process it becomes apparent that the board may approve a route that meets the definition, the utility may apply for a certificate of need as soon as possible after that time. The length of a route is determined by measuring the length of its center line.

H. If an applicant determines that a change in size, type, timing, or ownership other than specified in this subpart is necessary for a large generation or transmission facility previously certified by the commission, the applicant must inform the commission of the desired change and detail the reasons for the change. A copy of the applicant's submission to the commission must be sent to each intervenor in the certificate of need hearing proceeding on the facility. Intervenor may comment on the proposed change within 15 days of being notified of the change. The commission shall evaluate the reasons for and against the proposed change and, within 45 days of receipt of the request, notify the applicant whether the change is acceptable without recertification. The commission shall order further hearings if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part 4220.1300.

Subp. 4. [Repealed, 12 SR 2624]

Statutory Authority: *MS s 216A.05; 216B.08; 216B.243*

History: *12 SR 2624*