

CHAPTER 4400
ENVIRONMENTAL QUALITY BOARD
HIGH VOLTAGE LINES, POWER PLANTS

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GENERAL

4400.0200 DEFINITIONS.

Subpart 1. **Scope.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Act.** "Act" means the Power Plant Siting Act of 1973, as amended, Minnesota Statutes, sections 116C.51 to 116C.69.

Subp. 2a. **Associated facilities.** "Associated facilities" means buildings, equipment, and other physical structures that are necessary to the operation of a large electric power generating plant or a high voltage transmission line.

Subp. 3. **Board.** "Board" means the Minnesota Environmental Quality Board.

Subp. 3a. **Chair.** "Chair" means the person who is the chair of the Environmental Quality Board.

Subp. 4. [Repealed, 27 SR 1295]

Subp. 4a. **Certified HVTL list.** "Certified HVTL list" means the transmission projects certified by the Public Utilities Commission as priority projects under Minnesota Statutes, section 216B.2425.

Subp. 5. [Repealed, 27 SR 1295]

Subp. 6. **Developed portion of the plant site.** "Developed portion of the plant site" means the portion of the LEPGP site that is required for the physical plant and associated facilities.

Subp. 6a. **Environmental assessment.** “Environmental assessment” means a written document that describes the human and environmental impacts of a proposed large electric power generating plant or high voltage transmission line and alternative routes or sites and methods to mitigate such impacts.

Subp. 6b. **Environmental impact statement or EIS.** “Environmental impact statement” or “EIS” means a detailed written statement that describes proposed high voltage transmission lines and large electric power generating plants and satisfies the requirements of Minnesota Statutes, section 116D.04.

Subp. 7. [Repealed, 27 SR 1295]

Subp. 7a. **EQB.** “EQB” means the entire environmental quality board, including the board and staff.

Subp. 8. **High voltage transmission line or HVTL.** “High voltage transmission line” or “HVTL” means a conductor of electric energy and associated facilities designed for and capable of operating at a nominal voltage of 100 kilovolts or more either immediately or without significant modification. Associated facilities shall include, but not be limited to, insulators, towers, substations, and terminals.

Subp. 9. **Large electric power facilities.** “Large electric power facilities” means high voltage transmission lines and large electric power generating plants.

Subp. 10. **Large electric power generating plant or LEPGP.** “Large electric power generating plant” or “LEPGP” means electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more. Associated facilities include, but are not limited to, coal piles, cooling towers, ash containment, fuel tanks, water and wastewater treatment systems, and roads.

Subp. 11. [Repealed, 27 SR 1295]

Subp. 11a. **Mail.** “Mail” means either the United States mail or electronic mail by e-mail, unless another law requires a specific form of mailing.

Subp. 12. **Person.** “Person” means any individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Subp. 13. [Repealed, 27 SR 1295]

Subp. 14. [Repealed, 27 SR 1295]

Subp. 15. **Right-of-way.** “Right-of-way” means the land interest required within a route for the construction, maintenance, and operation of a high voltage transmission line.

Subp. 16. **Route.** “Route” means the location of a high voltage transmission line between two end points. A route may have a variable width of up to 1.25 miles within which a right-of-way for a high voltage transmission line can be located.

Subp. 17. **Route segment.** “Route segment” means a portion of a route.

Subp. 18. **Site.** “Site” means an area of land required for the construction, maintenance, and operation of a large electric power generating plant.

Subp. 19. [Repealed, 27 SR 1295]

Subp. 20. **Utility.** “Utility” means any entity engaged or intending to engage in this state in the generation, transmission, or distribution of electric energy including, but not limited to, a private investor owned utility, a cooperatively owned utility, a public or municipally owned utility, a limited liability company, or a private corporation.

Statutory Authority: *MS s 116C.66*

History: *15 SR 1598; 27 SR 1295*

4400.0300 PURPOSE AND AUTHORITY.

Parts 4400.0200 to 4400.8000 are prescribed by the Minnesota Environmental Quality Board pursuant to the authority granted to the board in the Power Plant Siting Act, as amended, Minnesota Statutes, sections 116C.51 to 116C.69, to give effect to the purposes of the act.

It is the purpose of the act and the policy of the state to locate large electric power generating plants and high voltage transmission lines in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, the board shall choose locations that minimize adverse human and environmental impact while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion. The board shall provide for broad spectrum citizen participation as a principle of operation. To ensure effective citizen participation, the board shall maintain a public education program on, but not limited to, the considerations identified in Minnesota Statutes, section 116C.57, subdivision 4.

Statutory Authority: *MS s 116C.66*

History: *15 SR 1598; 27 SR 1295*

4400.0350 APPLICABILITY.

This chapter establishes the requirements for the processing of permit applications by the Environmental Quality Board for large electric power generating plants and high voltage transmission lines. Requirements for environmental review of such projects before the Public Utilities Commission are established in the applicable requirements of chapter 4410.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.0400 PERMIT REQUIREMENT.

Subpart 1. **Site permit.** No person may construct a large electric power generating plant without a site permit from the board. A large electric power generating plant may be constructed only on a site approved by the board.

Subp. 2. **Route permit.** No person may construct a high voltage transmission line without a route permit from the board. A high voltage transmission line may be constructed only within a route approved by the board.

Subp. 3. Expansion of existing facility.

A. No person shall increase the voltage of a high voltage transmission line without a route permit or other approval from the EQB.

B. No person shall increase the voltage of a transmission line under 100 kilovolts to over 100 kilovolts without a route permit from the EQB.

C. Except as provided in part 4400.0650 or 4400.3820, no person shall increase the generating capacity or output of an existing large electric power generating plant without a permit from the board.

D. No person shall increase the generating capacity or output of an electric power plant from under 50 megawatts to more than 50 megawatts without a site permit from the EQB.

Subp. 4. **Local authority.** A site permit from the board is not required for a large electric power generating plant that is permitted by local units of government under Minnesota Statutes, section 116C.576. A route permit from the board is not required for a high voltage transmission line that is permitted by local governmental authorities under Minnesota Statutes, section 116C.576.

Subp. 5. **Commence construction.** No person may commence construction of a large electric power generating plant or a high voltage transmission line until a permit has been issued by the board or by the appropriate local units of government if local review is sought. "Commence construction" means to begin or cause to begin as part of

a continuous program the placement, assembly, or installation of facilities or equipment, or to conduct significant physical site preparation or right-of-way preparation work for installation of facilities or equipment. Conducting survey work or collecting geological data or contacting landowners to discuss possible construction of a power plant or transmission line is not commencement of construction.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.0500 SMALL PROJECTS.

Subpart 1. **No EQB permit required.** A permit from the EQB is not required to construct a power plant of less than 50 megawatts or a transmission line of less than 100 kilovolts. Proposers of such projects must obtain whatever approvals may be required by local, state, or federal units of government with jurisdiction over the project.

Subp. 2. **Environmental review.** Proposers of power plants of less than 50 megawatts or transmission lines of less than 100 kilovolts must comply with the environmental review requirements of chapter 4410 and Minnesota Statutes, chapter 116D.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.0600 [Repealed, 27 SR 1295]

4400.0650 EXCEPTIONS TO PERMITTING REQUIREMENT FOR CERTAIN EXISTING FACILITIES.

Subpart 1. **No permit required.** The following projects are not considered construction of a large electric power generating plant or high voltage transmission line and may be constructed without a permit from the board:

A. equipment additions at an existing substation that do not require expansion of the land needed for the substation and do not involve an increase in the voltage or changes in the location of existing transmission lines, except that up to the first five transmission line structures outside the substation may be moved to accommodate the equipment additions provided the structures are not moved more than 500 feet from the existing right-of-way;

B. high voltage transmission lines:

(1) maintenance or repair of a high voltage transmission line within an existing right-of-way;

(2) reconductoring or reconstruction of a high voltage transmission line with no change in voltage and no change in right-of-way, provided that any new structures that are installed are not designed for and capable of operation at higher voltage; or

(3) relocation of a high voltage transmission line that is required by a local or state agency as part of road, street, or highway construction; or

C. large electric power generating plants:

(1) maintenance or repair of a large electric power generating plant;

(2) modification of a large electric power generating plant to increase efficiency as long as the capacity of the plant is not increased more than ten percent or more than 100 megawatts, whichever is greater, and the modification does not require expansion of the plant beyond the developed portion of the plant site. If a subsequent modification results in a total of more than 100 megawatts of additional capacity, this provision does not apply. An increase in efficiency is a reduction in the amount of BTUs (British Thermal Units) required to produce a kilowatt hour of electricity at the facility;

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(3) refurbishment of a large electric power generating plant that does not expand the capacity of the plant or expand the plant beyond the developed portion of the plant site and the refurbishment does not require a certificate of need from the public utilities commission;

(4) conversion of the fuel source of a large electric power generating plant to natural gas, as long as the plant is not expanded beyond the developed portion of the plant site; or

(5) start-up of an existing large electric power generating plant that has been closed for any period of time at no more than its previous capacity rating and in a manner that does not involve a change in the fuel or an expansion of the developed portion of the plant site.

Subp. 2. **Minor alteration.** In the event a modification or other change in an existing substation, high voltage transmission line, or large electric power generating plant does not qualify for an exception under this part, the modification or change may qualify for a minor alteration under part 4400.3820.

Subp. 3. **Notice.** Any person proposing to move transmission line structures under subpart 1, item A, or to reconductor or reconstruct a high voltage transmission line under subpart 1, item B, subitem (2), or to implement changes to a large electric power generating plant under subpart 1, item C, subitem (2), (3), (4), or (5), must notify the chair in writing at least 30 days before commencing construction on the modification or change.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.0675 JOINT PROCEEDING.

The proposer of a large electric power generating plant that will also require a high voltage transmission line may elect to apply for both a site permit for the large electric power generating plant and a route permit for the high voltage transmission line in one application and in one process. The EQB on its own volition may elect to combine two pending applications if it is appropriate to consider both projects as part of one proceeding. An applicant may also combine an application for a pipeline routing permit if a natural gas or petroleum pipeline to a new large electric power generating facility will be required.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.0700 [Repealed, 15 SR 1598; 27 SR 1295]

4400.0710 [Repealed, 27 SR 1295]

4400.0720 [Repealed, 27 SR 1295]

4400.0800 [Repealed, 27 SR 1295]

4400.0900 [Repealed, 27 SR 1295]

4400.1000 [Repealed, 27 SR 1295]

FULL PERMITTING PROCESS FOR LARGE ELECTRIC POWER GENERATING FACILITIES

4400.1025 PERMIT APPLICATION UNDER FULL PERMITTING PROCESS.

Subpart 1. **Filing of application for permit.** A person seeking a site permit or route permit for a large electric power generating facility must file three copies of the application for the permit with the EQB. Upon acceptance of the application, the chair will advise the applicant of how many copies of the application must be submitted to the EQB.

Subp. 2. **Electronic copy.** A person filing an application for a site permit or route permit shall provide the EQB with an electronic version of the application suitable for posting on the EQB's Web page.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.1050 PERMIT FEES.

Subpart 1. **Requirement.** An applicant for a site permit or route permit shall pay a fee in accordance with Minnesota Statutes, section 116C.69. The estimated fee for processing the permit application must be determined in accordance with Minnesota Statutes, section 116C.69.

Subp. 2. **Initial payment.** The applicant shall submit with the application 25 percent of the total estimated fee, or up to 50 percent of the total estimated fee if the board determines that the additional percentage is reasonably necessary to complete the site evaluation and design process. The chair shall not process a permit application until the first portion of the fee is submitted. The EQB shall deposit all money received from the applicant for permit fees in a special account.

Subp. 3. **Additional payments.** The applicant shall pay an additional 25 percent of the fee within 90 days after the application has been accepted by the chair. Additional payments must be made within 30 days of notification by the chair that additional fees are necessary for completion of the permitting process. The board shall not make a final decision on a permit application if any assessed fees have not been paid.

Subp. 4. **Final accounting.** At the end of the permitting process, including any judicial review of the board's final decision, the EQB shall provide a final accounting to the applicant of the total cost of processing the permit application. The applicant may review all actual costs associated with processing an application and present objections to the board. The application fees paid by the applicant shall include the necessary and reasonable expenses incurred in processing the application, including, but not limited to, staff time, expenses for public notice and meetings and hearings, environmental review, administrative overhead, and legal expenses. The applicant shall make the final payment within 30 days of notification or the EQB shall refund any excess payments with 30 days of the final accounting.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.1100 Subpart 1. [Repealed, 27 SR 1295]

Subp. 2. [Repealed, 15 SR 1598]

Subp. 3. [Repealed, 27 SR 1295]

Subp. 4. [Repealed, 27 SR 1295]

Subp. 5. [Repealed, 27 SR 1295]

4400.1150 CONTENTS OF APPLICATION.

Subpart 1. **Site permit for LEPGP.** An application for a site permit for a large electric power generating plant must contain the following information:

A. a statement of proposed ownership of the facility as of the day of filing and after commercial operation;

B. the precise name of any person or organization to be initially named as permittee or permittees and the name of any other person to whom the permit may be transferred if transfer of the permit is contemplated;

C. at least two proposed sites for the proposed large electric power generating plant and identification of the applicant's preferred site and the reasons for preferring the site;

D. a description of the proposed large electric power generating plant and all associated facilities, including the size and type of the facility;

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- E. the environmental information required under subpart 3;
- F. the names of the owners of the property for each proposed site;
- G. the engineering and operational design for the large electric power generating plant at each of the proposed sites;
- H. a cost analysis of the large electric power generating plant at each proposed site, including the costs of constructing and operating the facility that are dependent on design and site;
- I. an engineering analysis of each of the proposed sites, including how each site could accommodate expansion of generating capacity in the future;
- J. identification of transportation, pipeline, and electrical transmission systems that will be required to construct, maintain, and operate the facility;
- K. a listing and brief description of federal, state, and local permits that may be required for the project at each proposed site; and
- L. a copy of the Certificate of Need for the project from the Public Utilities Commission or documentation that an application for a Certificate of Need has been submitted or is not required.

Subp. 2. **Route permit for HVTL.** An application for a route permit for a high voltage transmission line shall contain the following information:

- A. a statement of proposed ownership of the facility at the time of filing the application and after commercial operation;
- B. the precise name of any person or organization to be initially named as permittee or permittees and the name of any other person to whom the permit may be transferred if transfer of the permit is contemplated;
- C. at least two proposed routes for the proposed high voltage transmission line and identification of the applicant's preferred route and the reasons for the preference;
- D. a description of the proposed high voltage transmission line and all associated facilities including the size and type of the high voltage transmission line;
- E. the environmental information required under subpart 3;
- F. identification of land uses and environmental conditions along the proposed routes;
- G. the names of each owner whose property is within any of the proposed routes for the high voltage transmission line;
- H. United States Geological Survey topographical maps or other maps acceptable to the chair showing the entire length of the high voltage transmission line on all proposed routes;
- I. identification of existing utility and public rights-of-way along or parallel to the proposed routes that have the potential to share the right-of-way with the proposed line;
- J. the engineering and operational design concepts for the proposed high voltage transmission line, including information on the electric and magnetic fields of the transmission line;
- K. cost analysis of each route, including the costs of constructing, operating, and maintaining the high voltage transmission line that are dependent on design and route;
- L. a description of possible design options to accommodate expansion of the high voltage transmission line in the future;
- M. the procedures and practices proposed for the acquisition and restoration of the right-of-way, construction, and maintenance of the high voltage transmission line;
- N. a listing and brief description of federal, state, and local permits that may be required for the proposed high voltage transmission line; and

O. a copy of the Certificate of Need or the certified HVTL list containing the proposed high voltage transmission line or documentation that an application for a Certificate of Need has been submitted or is not required.

Subp. 3. **Environmental information.** An applicant for a site permit or a route permit shall include in the application the following environmental information for each proposed site or route to aid in the preparation of an environmental impact statement:

A. a description of the environmental setting for each site or route;

B. a description of the effects of construction and operation of the facility on human settlement, including, but not limited to, public health and safety, displacement, noise, aesthetics, socioeconomic impacts, cultural values, recreation, and public services;

C. a description of the effects of the facility on land-based economies, including, but not limited to, agriculture, forestry, tourism, and mining;

D. a description of the effects of the facility on archaeological and historic resources;

E. a description of the effects of the facility on the natural environment, including effects on air and water quality resources and flora and fauna;

F. a description of the effects of the facility on rare and unique natural resources;

G. identification of human and natural environmental effects that cannot be avoided if the facility is approved at a specific site or route; and

H. a description of measures that might be implemented to mitigate the potential human and environmental impacts identified in items A to G and the estimated costs of such mitigative measures.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.1200 [Repealed, 27 SR 1295]

4400.1210 [Repealed, 27 SR 1295]

4400.1250 REVIEW OF APPLICATION.

Subpart 1. **Review by chair.** Within ten working days of receipt of an application for a site permit or a route permit, the chair shall determine whether the application is complete and notify the applicant in writing of the acceptance or rejection of the application. If the chair rejects an application, the chair shall advise the applicant of the deficiencies in the application.

Subp. 2. **Resubmission of rejected application.** If the chair should reject an application, an applicant may decide to address the deficiencies identified by the chair and resubmit the application with additional information. In this event, the chair shall again review the application within ten days and determine whether the application is complete and advise the applicant of the chair's determination.

Subp. 3. **Reasons for rejection.** The chair shall not reject an application if the information that is missing can be obtained from the applicant within 60 days from the date of the application and the lack of the information will not interfere with the public's ability to review the proposed project.

Subp. 4. **Schedule.** The date of the chair's determination that an application is complete marks the start of the schedule for the board to make a final decision on a permit application.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.1300 [Repealed, 15 SR 1598]

4400.1310 [Repealed, 27 SR 1295]

4400.1350 NOTICE OF PROJECT.

Subpart 1. **Notification lists.** The EQB shall maintain the notification lists described in items A and B.

A. The EQB shall maintain a list of persons who want to be notified of the acceptance of applications for site permits or route permits. Any person may request to have that person's name or an organization's name included on the list. The EQB may from time to time request that persons whose names are on the list advise the EQB whether they want to remain on the list, and the EQB may delete any names for which an affirmative response is not received within a reasonable time. A person whose name has been removed may request to have the name added back on the list. The EQB shall provide an applicant with the general list upon acceptance of an application.

B. The EQB shall maintain a project contact list for each project for which an application for a permit has been accepted. The project contact list must contain the names of persons who want to receive notices regarding the project. Any person may request to have that person's name or an organization's name included on a project contact list. The EQB may add a person's name to the list if the EQB believes the person would like to receive notices about the particular project. The EQB shall provide an applicant with the project contact list upon request.

Subp. 2. **Notification to persons on general list, to local officials, and to property owners.** Within 15 days after submission of an application, the applicant shall mail written notice of the submission to the following people:

A. those persons whose names are on the general list maintained by the EQB for this purpose;

B. each regional development commission, county, incorporated municipality, and township in which any part of the site or route or any alternative is proposed to be located; and

C. each owner whose property is adjacent to any of the proposed sites for a large electric power generating plant or within any of the proposed routes for a high voltage transmission line. For purposes of giving notice under this item, owners are those persons shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer, or any other list of owners approved by the chair.

Subp. 3. **Content of notice.** The notice mailed under subpart 2 shall contain the following information:

A. a description of the proposed project, including a map showing the general area of the proposed site or proposed route and each alternative;

B. a statement that a permit application has been submitted to the EQB, the name of the permit applicant, and information regarding how a copy of the application may be obtained;

C. a statement that the permit application will be considered by the EQB under the provisions of this chapter and the Power Plant Siting Act and describing the time periods for the EQB to act;

D. a statement that the EQB will hold a public meeting within 60 days and the date of the meeting if it is known at the time of the mailing;

E. the manner in which the EQB will conduct environmental review of the proposed project, including the holding of a scoping meeting at which additional alternatives to the project may be proposed;

F. the name of the EQB staff member who has been appointed by the chair to serve as the public advisor, if known, or otherwise, a general contact at the EQB;

G. the manner in which persons may register their names with the EQB on the project contact list;

H. a statement that a public hearing will be conducted after the EIS is prepared;

I. a statement indicating whether a certificate of need or other authorization from the Public Utilities Commission is required for the project and the status of the matter if such authorization is required;

J. a statement indicating whether the applicant may exercise the power of eminent domain to acquire the land necessary for the project and the basis for such authority; and

K. any other information requested by the chair to be included in the notice.

Subp. 4. **Publication of notice.** Within 15 days after submission of an application, the applicant shall publish notice in a legal newspaper of general circulation in each county in which a site, route, or any alternative is proposed to be located that an application has been submitted and a description of the proposed project. The notice must also state where a copy of the application may be reviewed.

Subp. 5. **Confirmation of notice.** Within 30 days after providing the requisite notice, the applicant shall submit to the EQB documentation that all notices required under this part have been given. The applicant shall document the giving of the notice by providing the EQB with affidavits of publication or mailing and copies of the notice provided.

Subp. 6. **Failure to give notice.** The failure of the applicant to give the requisite notice does not invalidate any ongoing permit proceedings provided the applicant has made a bona fide attempt to comply, although the chair may extend the time for the public to participate if the failure has interfered with the public's right to be informed about the project.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.1400 [Repealed, 27 SR 1295]

4400.1450 PUBLIC ADVISOR.

Upon acceptance of an application for a site or route permit, the chair shall designate a staff person to act as the public advisor on the project. The public advisor must be available to answer questions from the public about the permitting process. The public advisor shall not give legal advice or other advice that may affect the legal rights of the person being advised, and the public advisor shall not act as an advocate on behalf of any person.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.1500 [Repealed, 27 SR 1295]

4400.1550 PUBLIC MEETING.

Subpart 1. **Scheduling public meeting.** Upon acceptance of an application for a site or route permit, the chair shall schedule a public meeting to provide information to the public about the proposed project and to answer questions and to scope the environmental impact statement. The public meeting must be held no later than 60 days after acceptance of the application. The public meeting must be held in a location that is convenient for persons who live near the proposed project.

Subp. 2. **Notice of public meeting.** The EQB shall give at least ten days' notice of the public meeting by mailing notice to persons whose names are on the project contact list maintained pursuant to part 4400.1350, subpart 1. The EQB shall also publish notice of the public meeting in a legal newspaper of general circulation in the area where the project is proposed to be located. If appropriate, the EQB may request the applicant to include notice of the public meeting in the notice to be provided by the applicant pursuant to part 4400.1350.

Subp. 3. **Conduct of public meeting.** The chair shall appoint a person, who may be an EQB staff person, to conduct the public meeting. The public meeting must be conducted in an informal manner designed to encourage public participation. The public must be afforded an opportunity to present comments and ask questions. The EQB shall make available at the public meeting a copy of the application and other pertinent documents in the EQB files regarding the application. The staff shall explain the permitting process to the persons in attendance. A transcript of the meeting need not be maintained, although the EQB may elect to keep an audio recording of the meeting.

Subp. 4. **Applicant role.** The applicant shall provide representatives at the public meeting who are capable of answering general questions about the proposed project.

Subp. 5. **EIS scoping.** At the public meeting, the public must be provided an opportunity to comment on the scope of the environmental impact statement in accordance with part 4400.1700.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.1600 CITIZEN ADVISORY TASK FORCE.

Subpart 1. **Chair authority.** The board delegates to the chair the authority to appoint a citizen advisory task force. The chair shall determine whether to appoint such a task force as early in the process as possible. The chair shall establish the size of the task force and appoint its members in accordance with Minnesota Statutes, section 116C.59. The chair shall advise the board of the appointment of the task force at the next monthly board meeting.

Subp. 2. **Board decision.** If the chair decides not to appoint a citizen advisory task force and a person would like such a task force appointed, the person may request that the board create a citizen advisory task force and appoint its members. Upon receipt of such a request, the chair shall place the matter on the agenda for the next regular monthly board meeting.

Subp. 3. **Task force responsibilities.** Upon appointment of a citizen advisory task force, the chair or the board, whichever creates the task force, shall specify in writing the charge to the task force. The charge shall include the identification of additional sites or routes or particular impacts to be evaluated in the environmental impact statement. The chair or the board may establish additional charges, including a request that the task force express a preference for a specific site or route if it has one.

Subp. 4. **Termination of task force.** The task force expires upon completion of its charge, designation by the chair of alternative sites or routes to be included in the environmental impact statement, or the specific date identified by the chair or board in the charge, whichever occurs first.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.1700 PREPARATION OF EIS.

Subpart 1. **EIS required.** The EQB shall prepare an environmental impact statement on each proposed large electric power generating plant and high voltage transmission line for which a permit application has been accepted by the chair.

Subp. 2. **Scoping process.** The EQB shall provide the public with an opportunity to participate in the development of the scope of the environmental impact statement by holding a public meeting and by soliciting public comments. The public meeting required under part 4400.1550 satisfies the requirement to hold a scoping meeting. The EQB shall provide a period of at least seven days from the day of the public meeting for the public to submit comments on the scope of the EIS. The chair shall determine the scope of the environmental impact statement as soon after holding the public meeting as possible. Within five days after the decision, the EQB shall mail notice of the scoping decision to those persons whose names are on either the general list or the

project contact list. Once the chair has determined the scope of the environmental impact statement, the scope must not be changed except upon decision by the chair or the board that substantial changes have been made in the project or substantial new information has arisen significantly affecting the potential environmental effects of the project or the availability of reasonable alternatives.

Subp. 3. **Alternative sites or routes.** During the scoping process, a person may suggest alternative sites or routes to evaluate in the environmental impact statement. A person desiring that a particular site or route be evaluated shall submit to the EQB, during the scoping process, an explanation of why the site or route should be included in the environmental impact statement and any other supporting information the person wants the chair to consider. The chair shall provide the applicant with an opportunity to respond to each request that an alternative be included in the environmental impact statement. The chair shall include the suggested site or route in the scope of the environmental impact statement only if the chair determines that evaluation of the proposed site or route will assist in the board's decision on the permit application.

Subp. 4. **Scope of EIS.** The scoping process must be used to reduce the scope and bulk of an environmental impact statement by identifying the potentially significant issues and alternatives requiring analysis and establishing the detail into which the issues will be analyzed. The scoping decision by the chair shall at least address the following:

- A. the issues to be addressed in the environmental impact statement;
- B. the alternative sites and routes to be addressed in the environmental impact statement; and
- C. the schedule for completion of the environmental impact statement.

Subp. 5. **Matters excluded.** When the Public Utilities Commission has issued a Certificate of Need for a large electric power generating plant or high voltage transmission line or placed a high voltage transmission line on the certified HVTL list maintained by the commission, the environmental impact statement shall not address questions of need, including size, type, and timing; questions of alternative system configurations; or questions of voltage.

Subp. 6. **Draft EIS.** The draft environmental impact statement must be written in plain and objective language. The draft environmental impact statement shall follow the standard format for an environmental impact statement prescribed in part 4410.2300 to the extent the requirements of that rule are appropriate.

Subp. 7. **Public review.** Upon completion of the draft environmental impact statement, the EQB shall make the document available for public review by placing a copy of the document in a public library or other governmental office in each county where the proposed project may be located. The EQB shall send notice of the availability of the draft environmental impact statement to each person on the project contact list maintained by the board under part 4400.1350, subpart 1. The EQB shall also place a notice in the EQB Monitor of the availability of the draft environmental impact statement. The EQB shall post the environmental impact statement on the agency's Web page if possible.

Subp. 8. **Informational meeting.** The EQB shall schedule an informational meeting to provide an opportunity for the public to comment on the draft environmental impact statement. The meeting must not be held sooner than 20 days after the draft environmental impact statement becomes available. The meeting must be held in a location convenient to persons who live near the proposed project. The EQB shall send notice of the informational meeting to each person on the project contact list maintained by the EQB under part 4400.1350, subpart 1. The EQB shall also place notice in the EQB Monitor. The informational meeting may be held just prior to the holding of a contested case hearing on the permit application. The EQB shall hold the record on the environmental impact statement open for receipt of written comments for not less than ten days after the close of the informational meeting.

Subp. 9. **Final EIS.** The EQB shall respond to the timely substantive comments received on the draft environmental impact statement consistent with the scoping decision and prepare the final environmental impact statement. The EQB may attach to the draft environmental impact statement the comments received and its response to comments without preparing a separate document. The EQB shall publish notice of the availability of the final environmental impact statement in the EQB Monitor and shall supply a press release to at least one newspaper of general circulation in the areas where the proposed sites or routes are located.

Subp. 10. **Adequacy determination.** The board shall determine the adequacy of the final environmental impact statement. The board shall not decide the adequacy for at least ten days after the availability of the final environmental impact statement is announced in the EQB Monitor. The final environmental impact statement is adequate if it:

A. addresses the issues and alternatives raised in scoping to a reasonable extent considering the availability of information and the time limitations for considering the permit application;

B. provides responses to the timely substantive comments received during the draft environmental impact statement review process; and

C. was prepared in compliance with the procedures in this chapter.

If the board finds that the environmental impact statement is not adequate, the board shall direct the staff to respond to the deficiencies and resubmit the revised environmental impact statement to the board as soon as possible.

Subp. 11. **Cost.** The applicant for a site permit or route permit shall pay the reasonable costs of preparing and distributing an environmental impact statement. The costs must not be assessed separately from the assessment under part 4400.1050 unless that assessment is inadequate to cover the board's reasonable costs of considering the permit application.

Subp. 12. **Environmental review requirements.** The requirements of chapter 4410 do not apply to the preparation or consideration of an environmental impact statement for a large electric power generating plant or high voltage transmission line except as provided in this chapter.

Statutory Authority: *MS s 116C.66; 116D.04*

History: *27 SR 1295; 28 SR 951*

4400.1800 CONTESTED CASE HEARING.

Subpart 1. **Hearing.** The EQB shall hold a contested case hearing after the draft environmental impact statement is prepared on all applications for a site permit or a route permit. The hearing must be conducted by an administrative law judge from the Office of Administrative Hearings pursuant to the contested case procedures with Minnesota Statutes, chapter 14. Notice of the hearing must be given in accordance with Minnesota Statutes, section 116C.57, subdivision 2d. At least a portion of the hearing must be held in a county where the proposed large electric power generating plant or high voltage transmission line would be located.

Subp. 2. **Issues.** Once the Public Utilities Commission has determined questions of need, including size, type, and timing; questions of system configuration; and questions of voltage, those issues must not be addressed in the contested case hearing.

Subp. 3. **Joint hearing.** If the board determines that a joint hearing with the Public Utilities Commission to consider both permitting and need issues is feasible, more efficient, and may further the public interest, the board may decide to hold a joint hearing with the approval of the commission. The board may also elect to hold a joint hearing with other states pursuant to Minnesota Statutes, section 116C.53, subdivision 3.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.1900 FINAL DECISION.

Subpart 1. **Timing.** The board shall make a final decision on a site permit or a route permit application within 60 days after receipt of the report of the administrative law judge. A final decision must be made within one year after the chair's determination that an application is complete. The board may extend this time limit for up to three months for just cause or upon agreement of the applicant.

Subp. 2. **EIS adequacy.** The board shall not make a final decision on a permit until the board has found the environmental impact statement to be adequate.

Subp. 3. **Certificate of need decision.** The EQB shall not make a final decision on a permit for a project that requires a Certificate of Need from the Public Utilities Commission until the applicant has obtained the necessary approval from the Public Utilities Commission.

Subp. 4. **Notice.** The EQB shall publish notice of its final permit decision in the State Register within 30 days of the date the board makes the decision. The EQB shall also publish notice in the EQB Monitor. The EQB shall mail notice of its final permit decision to those persons whose names are on the project contact list. The EQB shall post notice of the final decision on the agency's Web page, if possible.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

ALTERNATIVE PERMITTING PROCESS FOR CERTAIN FACILITIES**4400.2000 ELIGIBLE PROJECTS.**

Subpart 1. **Eligible projects.** An applicant for a site permit or a route permit for one of the following projects may elect to follow the procedures of parts 4400.2000 to 4400.2950 instead of the full permitting procedures in parts 4400.1025 to 4400.1900:

A. large electric power generating plants with a capacity of less than 80 megawatts;

B. large electric power generating plants that are fueled by natural gas;

C. high voltage transmission lines of between 100 and 200 kilovolts;

D. high voltage transmission lines in excess of 200 kilovolts and less than five miles in length in Minnesota;

E. high voltage transmission lines in excess of 200 kilovolts if at least 80 percent of the distance of the line in Minnesota will be located along existing high voltage transmission line rights-of-way;

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

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

Subp. 2. **Notice to EQB.** An applicant for a permit for one of the qualifying projects in subpart 1, who intends to follow the procedures of parts 4400.2000 to 4400.2750, shall notify the EQB of such intent, in writing, at least ten days before submitting an application for the project.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.2010 PERMIT APPLICATION FOR ALTERNATIVE PERMITTING PROCESS.

Part 4400.1025, regarding submission of a permit application, applies to projects being considered under the alternative permitting process.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

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HIGH VOLTAGE LINES, POWER PLANTS 4400.2650

4400.2050 PERMIT FEES.

Part 4400.1050, regarding permit fees, applies to projects being considered under the alternative permitting process.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.2100 CONTENTS OF APPLICATION.

The applicant shall include in the application the same information required in part 4400.1150, except the applicant need not propose any alternative sites or routes to the preferred site or route. If the applicant has rejected alternative sites or routes, the applicant shall include in the application the identity of the rejected sites or routes and an explanation of the reasons for rejecting them.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.2200 REVIEW OF APPLICATION.

Part 4400.1250 regarding the chair's review of the application, applies to projects being considered under the alternative permitting process.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.2300 NOTICE OF PROJECT.

Part 4400.1350, regarding obligations to give notice of the project, applies to projects being considered under the alternative permitting process.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.2400 PUBLIC ADVISOR.

Part 4400.1450, regarding appointment of a public advisor, applies to projects being considered under the alternative permitting process.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.2500 PUBLIC MEETING.

Subpart 1. **Public meeting.** Part 4400.1550, subparts 1 to 4, apply to projects being considered under the alternative permitting process.

Subp. 2. **Environmental assessment.** At the public meeting, the public shall be provided an opportunity to comment on the scope of the environmental assessment in accordance with part 4400.2750.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.2600 [Repealed, 27 SR 1295]

4400.2650 CITIZEN ADVISORY TASK FORCE.

Part 4400.1600, regarding the appointment of a citizen advisory task force, applies to projects being considered under the alternative permitting process.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.2700 [Repealed, 15 SR 1598]

4400.2710 [Repealed, 27 SR 1295]

4400.2720 [Repealed, 27 SR 1295]

4400.2750 PREPARATION OF ENVIRONMENTAL ASSESSMENT.

Subpart 1. **Environmental assessment required.** The EQB shall prepare an environmental assessment on each proposed large electric power generating plant and each proposed high voltage transmission line being reviewed under the alternative permitting process in parts 4400.2000 to 4400.2950. The environmental assessment must contain information on the human and environmental impacts of the proposed project and of alternative sites or routes identified by the chair and shall address mitigating measures for all sites or routes considered.

Subp. 2. Scoping process.

A. The EQB shall provide the public with an opportunity to participate in the development of the scope of the environmental assessment by holding a public meeting and by soliciting public comments. The public meeting required under part 4400.2500 satisfies the requirement to hold a scoping meeting. The EQB shall mail notice of the meeting to those persons on either the general list or the project contact list at least ten days before the meeting. The EQB shall provide at least seven days from the day of the public meeting for the public to submit comments regarding the scope of the environmental assessment.

B. The chair shall include in the scope of the environmental assessment any alternative sites or routes proposed by the citizen advisory task force or by any member agency of the EQB prior to the close of the scoping period. During the scoping process, any person may suggest an alternative site or route to evaluate in the environmental assessment. A person desiring that a particular site or route be evaluated shall submit to the chair, during the scoping process, an explanation of why the site or route should be included in the environmental assessment and all supporting information the person wants the chair to consider. The chair shall provide the applicant with an opportunity to respond to each request that an alternative be included in the environmental assessment. The chair shall include the suggested site or route in the scope of the environmental assessment only if the chair determines that evaluation of the proposed site or route will assist in the board's ultimate decision on the permit application. Any person may also suggest specific human or environmental impacts that should be included in the environmental assessment.

Subp. 3. Scoping decision. The chair shall determine the scope of the environmental assessment within ten days after close of the public comment period and shall mail notice of the scoping decision to those persons on the project contact list within five days after the decision. Once the chair has determined the scope of the environmental assessment, the scope shall not be changed except upon a decision by the chair or the board that substantial changes have been made in the project or substantial new information has arisen significantly affecting the potential environmental effects of the project or the availability of reasonable alternatives. The chair shall also determine as part of the scoping process a reasonable schedule for completion of the environmental assessment. The scoping decision by the chair must identify:

- A. the alternative sites or routes, if any, to be addressed in the environmental assessment;
- B. any specific potential impacts to be addressed;
- C. the schedule for completion of the environmental assessment; and
- D. other matters to be included in the environmental assessment.

Subp. 4. Content of environmental assessment. The environmental assessment must include:

- A. a general description of the proposed facility;
- B. a list of any alternative sites or routes that are addressed;
- C. a discussion of the potential impacts of the proposed project and each alternative site or route on the human and natural environment;

D. a discussion of mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified for the proposed project and each alternative site or route analyzed;

E. an analysis of the feasibility of each alternative site or route considered;

F. a list of permits required for the project; and

G. a discussion of other matters identified in the scoping process.

Subp. 5. Time frame for completion of environmental assessment. The EQB shall complete the environmental assessment in accordance with the schedule established during the scoping process. In establishing the schedule for completion of the environmental assessment, the chair shall take into account any applicable statutory deadlines, the number and complexity of the alternatives and impacts to be addressed, the status of other proceedings affecting the project, and the interests of the public, the applicant, and the EQB.

Subp. 6. Notification of availability of environmental assessment. Upon completion of the environmental assessment, the EQB shall publish notice in the EQB Monitor of the availability of the environmental assessment and mail notice of the availability of the document to those persons on the project contact list. The EQB shall provide a copy of the environmental assessment to any public agency with authority to permit or approve the proposed project. The EQB shall post the environmental assessment on the agency's Web page, if possible.

Subp. 7. Matters excluded. When the Public Utilities Commission has issued a Certificate of Need for a large electric power generating plant or high voltage transmission line or placed a high voltage transmission line on the certified HVTL list maintained by the commission, the environmental assessment shall not address questions of need, including size, type, and timing; questions of alternative system configurations; or questions of voltage.

Subp. 8. No additional environmental review. An environmental assessment must be the only state environmental review document required to be prepared by the EQB on a project qualifying for review under the alternative review process. No environmental assessment worksheet or environmental impact statement shall be required. Environmental review at the certificate of need stage before the Public Utilities Commission must be performed in accordance with parts 4410.7010 to 4410.7070.

Subp. 9. Cost. The cost of the preparation of an environmental assessment must be assessed to the applicant as part of the application fee pursuant to part 4400.1050.

Statutory Authority: *MS s 116C.66; 116D.04*

History: 27 SR 1295; 28 SR 951

4400.2800 [Repealed, 27 SR 1295]

4400.2850 PUBLIC HEARING.

Subpart 1. Public hearing. The EQB shall hold a public hearing once the environmental assessment has been completed. Notice of the hearing shall be given in accordance with Minnesota Statutes, section 116C.57, subdivision 2d. At least a portion of the hearing shall be held in a county where the proposed large electric power generating plant or high voltage transmission line would be located.

Subp. 2. Hearing examiner. The chair shall appoint a person to act as the hearing examiner at the public hearing. The hearing examiner may be an employee of the EQB. The hearing examiner shall set the date and place for the hearing and provide notice to the public. The hearing examiner may make such rulings as are required to conduct the hearing in a fair, impartial, and expeditious manner, including the authority to maintain decorum at the hearing, to exclude repetitious or irrelevant testimony, to limit the amount of time for oral testimony, and to continue the hearing from time to time as needed. Persons may testify at the hearing without being first sworn under oath. The hearing examiner shall ensure that the record created at the hearing is preserved and transmitted to the board. An audio recording of the hearing must be made, unless the

chair determines that a court reporter is appropriate. The hearing examiner shall not prepare a report or make any recommendation to the board unless the chair or the board requests the hearing examiner to do so.

Subp. 3. **Hearing procedure.** The hearing must be conducted in the following manner, although the hearing examiner may vary the order in which the hearing proceeds:

A. the staff shall make a brief presentation to describe the project, explain the process to be followed, and introduce documents to be included in the record, including the application, the environmental assessment, and various procedural documents;

B. the applicant shall introduce its evidence by way of testimony and exhibits;

C. the public must be afforded an opportunity to make an oral presentation, present documentary evidence, and ask questions of the applicant and staff;

D. the hearing examiner shall provide a period of not less than ten days for the submission of written comments into the record after the close of the hearing; and

E. the hearing examiner shall transmit the complete record created at the hearing, including all written comments, to the chair within five days of the close of the record, unless the hearing examiner has been requested by the chair or the board to prepare a report.

Subp. 4. **Issues.** Once the Public Utilities Commission has determined questions of need, including size, type, and timing; questions of system configurations; and questions of voltage, those issues must not be addressed in the public hearing.

Subp. 5. **Environmental assessment.** Interested persons may comment upon the environmental assessment at the public hearing. Comments on the environmental assessment shall become part of the record in the proceeding but the board shall not be required to revise or supplement the environmental assessment document.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.2900 [Repealed, 27 SR 1295]

4400.2950 FINAL DECISION.

Subpart 1. **Timing.** The board shall make a final decision on a site permit or a route permit application within 60 days after receipt of the record from the hearing examiner. A final decision must be made within six months after the chair's determination that an application is complete. The board may extend this time limit for up to three months for just cause or upon agreement of the applicant.

Subp. 2. **Completeness of environmental assessment.** At the time the board makes a final decision on the permit application, the board shall determine whether the environmental assessment and the record created at the public hearing address the issues identified in the scoping decision.

Subp. 3. **Certificate of need decision.** The EQB shall not make a final decision on a permit for a project that requires a certificate of need from the Public Utilities Commission until the applicant has obtained the necessary approval from the Public Utilities Commission.

Subp. 4. **Notice.** The EQB shall publish notice of its final permit decision in the State Register within 30 days of the day the board makes the decision. The EQB shall also publish notice in the EQB Monitor. The EQB shall mail notice of its final permit decision to those persons whose names are on the project contact list. The EQB shall post notice of the final decision on the agency's Web page, if possible.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.3000 [Repealed, 27 SR 1295]

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HIGH VOLTAGE LINES, POWER PLANTS 4400.3250

GENERAL PERMIT REQUIREMENTS

4400.3050 STANDARDS AND CRITERIA.

No site permit or route permit shall be issued in violation of the site selection standards and criteria established in Minnesota Statutes, sections 116C.57 and 116C.575, and in rules adopted by the board. The board shall issue a permit for a proposed facility when the board finds, in keeping with the requirements of the Minnesota Environmental Policy Act, Minnesota Statutes, chapter 116D, and the Minnesota Environmental Rights Act, Minnesota Statutes, chapter 116B, that the facility is consistent with state goals to conserve resources, minimize environmental impacts, and minimize human settlement and other land use conflicts and ensures the state's electric energy security through efficient, cost-effective power supply and electric transmission infrastructure.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.3100 [Repealed, 27 SR 1295]

4400.3150 FACTORS CONSIDERED.

In determining whether to issue a permit for a large electric power generating plant or a high voltage transmission line, the board shall consider the following:

- A. effects on human settlement, including, but not limited to, displacement, noise, aesthetics, cultural values, recreation, and public services;
- B. effects on public health and safety;
- C. effects on land-based economies, including, but not limited to, agriculture, forestry, tourism, and mining;
- D. effects on archaeological and historic resources;
- E. effects on the natural environment, including effects on air and water quality resources and flora and fauna;
- F. effects on rare and unique natural resources;
- G. application of design options that maximize energy efficiencies, mitigate adverse environmental effects, and could accommodate expansion of transmission or generating capacity;
- H. use or paralleling of existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries;
- I. use of existing large electric power generating plant sites;
- J. use of existing transportation, pipeline, and electrical transmission systems or rights-of-way;
- K. electrical system reliability;
- L. costs of constructing, operating, and maintaining the facility which are dependent on design and route;
- M. adverse human and natural environmental effects which cannot be avoided; and
- N. irreversible and irretrievable commitments of resources.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.3200 [Repealed, 27 SR 1295]

4400.3210 [Repealed, 27 SR 1295]

4400.3250 FACTORS EXCLUDED.

When the Public Utilities Commission has issued a Certificate of Need for a large electric power generating plant or a high voltage transmission line or placed a high

voltage transmission line on the certified HVTL list maintained by the commission, questions of need, including size, type, and timing, questions of alternative system configurations, and questions of voltage shall not be factors considered by the board in deciding whether to issue a permit for a proposed facility.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.3300 [Repealed, 15 SR 1598]

4400.3310 [Repealed, 27 SR 1295]

4400.3350 PROHIBITED ROUTES.

Subpart 1. **Wilderness areas.** No high voltage transmission line may be routed through state or national wilderness areas.

Subp. 2. **Parks and natural areas.** No high voltage transmission line may be routed through state or national parks or state scientific and natural areas unless the transmission line would not materially damage or impair the purpose for which the area was designated and no feasible and prudent alternative exists. Economic considerations alone do not justify use of these areas for a high voltage transmission line.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.3400 [Repealed, 27 SR 1295]

4400.3450 PROHIBITED SITES.

Subpart 1. **Prohibited sites.** No large electric power generating plant may be located in any of the following areas:

- A. national parks;
- B. national historic sites and landmarks;
- C. national historic districts;
- D. national wildlife refuges;
- E. national monuments;
- F. national wild, scenic, and recreational riverways;
- G. state wild, scenic, and recreational rivers and their land use districts;
- H. state parks;
- I. nature conservancy preserves;
- J. state scientific and natural areas; and
- K. state and national wilderness areas.

Subp. 2. **Water use.** The areas identified in subpart 1 must not be permitted as a site for a large electric power generating plant except for use for water intake or discharge facilities. If the board includes any of these areas within a site for use for water intake or discharge facilities, it may impose appropriate conditions in the site permit to protect these areas for the purposes for which they were designated. The board shall also consider the adverse effects of proposed sites on these areas which are located wholly outside of the boundaries of these areas.

Subp. 3. **Site exclusions when alternative sites exist.** No large electric power generating plant may be located in any of the following areas unless there is no feasible and prudent alternative. Economic considerations alone do not justify approval of these areas. These areas are:

- A. state registered historic sites;
- B. state historic districts;
- C. state wildlife management areas, except in cases where the plant cooling water is to be used for wildlife management purposes;

- D. county parks;
- E. metropolitan parks;
- F. designated state and federal recreational trails;
- G. designated trout streams; and
- H. the rivers identified in Minnesota Statutes, section 85.32, subdivision 1.

Subp. 4. **Prime farmland exclusion.** No large electric power generating plant site may be permitted where the developed portion of the plant site, excluding water storage reservoirs and cooling ponds, includes more than 0.5 acres of prime farmland per megawatt of net generating capacity, or where makeup water storage reservoir or cooling pond facilities include more than 0.5 acres of prime farmland per megawatt of net generating capacity, unless there is no feasible and prudent alternative. Economic considerations alone do not justify the use of more prime farmland. "Prime farmland" means those soils that meet the specifications of Code of Federal Regulations 1980, title 7, section 657.5(a). These provisions do not apply to areas located within home rule charter or statutory cities; areas located within two miles of home rule charter or statutory cities of the first, second, and third class; or areas designated for orderly annexation under Minnesota Statutes, section 414.0325.

Subp. 5. **Sufficient water supply required.** No site may be designated that does not have reasonable access to a proven water supply sufficient for plant operation. No use of groundwater may be permitted where removal of groundwater results in material adverse effects on groundwater, groundwater dependent natural resources, or higher priority users in and adjacent to the area, as determined in each case.

The use of groundwater for high consumption purposes, such as cooling, must be avoided if a feasible and prudent alternative exists.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.3500 [Repealed, 27 SR 1295]

4400.3550 PERMIT APPLICATION REJECTION.

The chair shall reject a permit application at the time it is submitted if the application is for a facility to be located on a prohibited site or within a prohibited route or if the applicant fails to address in the application why no feasible and prudent alternative exists for sites or routes that may be authorized in such a situation.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.3600 Subpart 1. [Repealed, 27 SR 1295]

Subp. 2. [Repealed, 27 SR 1295]

4400.3650 PERMIT CONDITIONS.

Subpart 1. **Generally.** The board shall impose in any site permit for a large electric power generating plant or route permit for a high voltage transmission line such conditions as the board deems appropriate and are supported by the record.

Subp. 2. **HVTL permits.** When the board issues a permit for a route for a high voltage transmission line, the board shall specify the design, route, right-of-way preparation, and facility construction and operation it deems necessary. The board may impose a condition in the permit requiring the permittee to construct a high voltage transmission line that is capable of expansion in transmission capacity through multiple circuiting or design modifications.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.3700 [Repealed, 15 SR 1598]

4400.3710 [Repealed, 27 SR 1295]

4400.3750 DELAY IN ROUTE OR SITE CONSTRUCTION.

If construction and improvement of a route or site have not commenced four years after the permit has been issued by the board, the board shall suspend the permit. If at that time, or at a time subsequent, the permittee decides to construct the proposed large electric power generating facility or high voltage transmission line, the permittee shall certify to the board that there have been no significant changes in any material aspects of the conditions or circumstances existing when the permit was issued. The chair shall mail notice of receipt of the certification request to those persons on the general list at least seven days before the board's consideration of the matter, and the same notice to those persons on the project contact list if such a list exists. If the board determines that there are no significant changes, it shall reinstate the permit. If the board determines that there is a significant change, it may order a new hearing and consider the matter further, or it may require the permittee to file a new application.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.3800 [Repealed, 27 SR 1295]

4400.3820 MINOR ALTERATION IN LARGE ELECTRIC POWER GENERATING PLANT OR HIGH VOLTAGE TRANSMISSION LINE.

Subpart 1. **Applicability.** No person may make a minor alteration in a large electric power generating plant or high voltage transmission line without approval from the chair, unless the action is exempt from review under part 4400.0650. A minor alteration is a change in a large electric power generating plant or high voltage transmission line that does not result in significant changes in the human or environmental impact of the facility. The requirements of this part apply to those facilities that have been permitted by the EQB and to those facilities that were not permitted by the EQB but meet the definition of a large electric power generating plant or high voltage transmission line under applicable law. For those large electric power generating plants or high voltage transmission lines for which no permit has been issued by the EQB, this part applies to minor alterations in the facility as it exists on February 18, 2003.

Subp. 2. **Application.** A person seeking authorization to make a minor alteration in a large electric power generating plant or high voltage transmission line shall apply to the chair. The application shall be in writing and shall describe the alteration in the large electric power generating plant or high voltage transmission line to be made and the explanation why the alteration is minor. The chair shall mail notice of receipt of the application to those persons on the general list and to those persons on the project contact list if such a list exists. The chair shall provide at least a ten-day period for interested persons to submit comments on the application or to request that the matter be brought to the board for consideration.

Subp. 3. **Chair decision.** The chair shall decide within ten days after close of the public comment period whether to authorize the minor alteration, bring the matter to the board for consideration, or determine that the alteration is not minor and requires a full permitting decision. The chair may authorize the minor alteration but impose reasonable conditions on the approval. The chair shall notify the applicant in writing of the chair's decision and send a copy of the decision to any person who requested notification or filed comments on the application.

Subp. 4. **Local review.** For those large electric power generating plants or high voltage transmission lines for which no permit has been issued by the EQB, the owner or operator of such unpermitted facilities may elect to seek approval of a minor alteration from the local unit of government if the facility qualifies for local review under Minnesota Statutes, section 116C.576.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.3840 AMENDMENT OF PERMIT CONDITIONS.

Subpart 1. **Authority.** The chair may amend any of the conditions in a site permit for a large electric power generating plant or in a route permit for a high voltage transmission line issued by the EQB upon request of any person.

Subp. 2. **Process.** The person requesting an amendment of a condition in a site permit or a route permit shall submit an application to the chair in writing describing the amendment sought and the reasons for the amendment. The chair shall mail notice of receipt of the application to those persons on the general list and to those persons on the project list if such a list exists. The chair shall provide at least a ten-day period for interested persons to submit comments on the application or to request that the matter be brought to the board for consideration.

Subp. 3. **Decision.** The chair shall decide within ten days after close of the public comment period whether to approve the amendment request or to bring the matter to the board for consideration. The chair shall notify the applicant in writing of the chair's decision and send a copy of the decision to any person who requested notification or filed comments on the application.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.3850 TRANSFER OF PERMIT.

Subpart 1. **Application.** A permittee holding a large electric power generating plant site permit or a high voltage transmission line route permit may request the EQB to transfer its permit. The permittee shall provide the name of the existing permittee, the name and description of the entity to which the permit is to be transferred, the reasons for the transfer, a description of the facilities affected, and the proposed effective date of the transfer. The person to whom the permit is to be transferred shall provide the EQB with such information as the EQB shall require to determine whether the new permittee can comply with the conditions of the permit. The chair shall mail notice of receipt of the application to those persons on the general list at least seven days in advance of the board's consideration of the matter. The chair shall provide the same notice to persons on the project contact list if such a list exists.

Subp. 2. **Approval of transfer.** The board shall approve the transfer if the board determines that the new permittee will comply with the conditions of the permit. The board, in approving the transfer of a permit, may impose reasonable additional conditions in the permit as part of the approval. The board may decide to hold a public meeting to provide the public with an opportunity to comment on the request for the transfer prior to making a decision.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.3900 Subpart 1. [Repealed, 27 SR 1295]

Subp. 1a. [Repealed, 27 SR 1295]

Subp. 1b. [Repealed, 27 SR 1295]

Subp. 2. [Repealed, 27 SR 1295]

Subp. 3. [Repealed, 27 SR 1295]

Subp. 4. [Repealed, 15 SR 1598]

Subp. 5. [Repealed, 27 SR 1295]

Subp. 6. [Repealed, 27 SR 1295]

Subp. 7. [Repealed, 27 SR 1295]

4400.3910 [Repealed, 27 SR 1295]

4400.3950 REVOCATION OR SUSPENSION OF PERMIT.

Subpart 1. **Initiation of action to revoke or suspend.** The board may initiate action to consider revocation or suspension of a permit on its own motion or upon the request of any person who has made a prima facie showing by affidavit and documentation that a violation of the act, this chapter, or the permit has occurred.

Subp. 2. **Hearing.** If the board initiates action to consider revocation or suspension of a permit, the board shall provide the permittee with an opportunity for a contested case hearing conducted by an administrative law judge from the Office of Administrative Hearings.

Subp. 3. **Finding of violation.** If the board finds that a violation of the act, this chapter, or the permit has occurred, it may revoke or suspend the permit, require the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension, or require corrective measures and suspend the permit. In determining the appropriate sanction, the board shall consider the following:

A. whether the violation will result in any significant additional adverse environmental effects;

B. whether the results of the violation can be corrected or ameliorated; and

C. whether a suspension or revocation of a permit or certificate will impair the utility's electrical power system reliability.

Statutory Authority: *MS s 116C.66*

History: *27 SR 1295*

4400.4000 [Repealed, 27 SR 1295]

EMERGENCY PERMIT**4400.4050 EMERGENCY PERMIT.**

Subpart 1. **Application for emergency permit.** Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high voltage transmission line due to a major unforeseen event may apply to the board for an emergency permit. The application must contain the following information:

A. a description of the proposed large electric power generating plant or high voltage transmission line;

B. an explanation of the major unforeseen event causing the emergency situation;

C. a discussion of the anticipated impacts on the electric system if the proposed facility is not approved within 195 days;

D. a copy of the written notification to the Public Utilities Commission of the major unforeseen event and the need for immediate construction; and

E. as much of the information required under part 4400.1150 as the utility has available.

Subp. 2. **Public hearing.** The EQB shall hold a public hearing on the application for an emergency permit. The hearing must be held within 90 days after the application is submitted. The hearing must be held in accordance with part 4400.2850.

Subp. 3. **Final decision.** The board shall make a final decision on an emergency permit within 195 days after the board's acceptance of the application. The board shall grant the emergency permit if it finds the following:

A. a demonstrable emergency exists;

B. the emergency requires immediate construction;

C. adherence to the procedures and time schedules specified in Minnesota Statutes, section 116C.57, would jeopardize the utility's electric power system or the

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utility's ability to meet the electric needs of its customers in an orderly and timely manner;

D. the utility will implement mitigating measures to minimize the human and environmental impacts of the facility; and

E. the utility will carry out the project in an expeditious manner consistent with the emergency.

Subp. 4. **Permit conditions.** The board may impose reasonable conditions in an emergency permit.

Subp. 5. **Permit fee.** The applicant for an emergency permit shall pay the same fee as would be required for a regular permit for the same project.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.4100 [Repealed, 27 SR 1295]

4400.4200 [Repealed, 27 SR 1295]

4400.4300 [Repealed, 27 SR 1295]

4400.4400 [Repealed, 27 SR 1295]

4400.4500 [Repealed, 27 SR 1295]

4400.4900 [Repealed, 27 SR 1295]

LOCAL REVIEW

4400.5000 LOCAL REVIEW OF PROPOSED FACILITIES.

Subpart 1. **Local review.** An applicant who seeks a site or route permit for one of the projects identified in subpart 2 has the option of applying to those local units of government that have jurisdiction over the site or route for approval to build the project. If local approval is granted, a site or route permit is not required from the board. If the applicant files an application with the EQB, the applicant shall be deemed to have waived its right to seek local approval of the project.

Subp. 2. **Eligible projects.** An applicant may seek approval from a local unit of government to construct the following projects:

A. a large electric power generating plant with a capacity of less than 80 megawatts;

B. a large electric power generating plant of any size that burns natural gas and is intended to be a peaking plant;

C. a high voltage transmission line of between 100 and 200 kilovolts;

D. a substation with a voltage designed for and capable of operation at a nominal voltage of 100 kilovolts or more;

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

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

Subp. 3. **Notice to EQB.** Within ten days of submission of an application to a local unit of government for approval of an eligible project, the applicant shall notify the chair in writing that the applicant has elected to seek local approval of the proposed project. Within the same ten-day period, the applicant shall mail notice to those persons on the general notification list that a permit has been applied for from the local unit of government for the project and shall provide a description of the project

and the name of a person with the local unit of government to contact for more information.

Subp. 4. **Referral to EQB.** A local unit of government with jurisdiction over a project identified in this section to whom an applicant has applied for approval to build the project may request the EQB to assume jurisdiction and make a decision on a site or route permit. A local unit of government shall file the request with the board within 60 days after an application for the project has been filed with any one local unit of government. If one of the local units of government with jurisdiction over the project requests the board to assume jurisdiction, jurisdiction over the project transfers to the board and the applicant shall file under the applicable provisions of this chapter for a permit from the board.

Subp. 5. **Environmental review.** A local unit of government that maintains jurisdiction over a qualifying project shall prepare an environmental assessment on the project. The local unit of government shall afford the public an opportunity to participate in the development of the scope of the environmental assessment before it is prepared. Upon completion of the environmental assessment, the local unit of government shall publish notice in the EQB Monitor that the environmental assessment is available for review, how a copy of the document may be reviewed, that the public may comment on the document, and the procedure for submitting comments to the local unit of government. The local unit of government shall provide a copy of the environmental assessment to the EQB upon completion of the document. The local unit of government shall not make a final decision on the permit until at least ten days after the notice appears in the EQB Monitor. If more than one local unit of government has jurisdiction over a project, and the local units of government cannot agree on which unit will prepare the environmental assessment, any local unit of government or the applicant may request the board to select the appropriate local unit of government to be the responsible governmental unit to conduct an environmental review of the project.

Subp. 6. **No local authority.** In the event a local unit of government that might otherwise have jurisdiction over a proposed large electric power generating plant or high voltage transmission line determines that it has no ordinances or other provisions for reviewing and authorizing the construction of such project or has no capability of preparing an environmental assessment on the project, the local unit of government shall refer the matter to the EQB for review.

Subp. 7. **Matters excluded.** When the Public Utilities Commission has issued a Certificate of Need for a large electric power generating plant or high voltage transmission line or placed a high voltage transmission line on the certified HVTL list maintained by the commission, the local unit of government shall not address questions of need, including size, type, and timing; questions of alternative system configurations; or questions of voltage.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.5100 [Renumbered 4350.3000]

4400.5200 [Renumbered 4350.3010]

4400.5300 [Renumbered 4350.3020]

4400.5500 [Renumbered 4350.3030]

4400.5600 [Renumbered 4350.3040]

4400.5700 [Renumbered 4350.3050]

4400.5800 [Renumbered 4350.3060]

4400.5900 [Renumbered 4350.3070]

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4400.6000 [Renumbered 4350.3080]

ANNUAL PUBLIC HEARING

4400.6050 ANNUAL PUBLIC HEARING.

Subpart 1. **Annual public hearing.** The board shall hold an annual public hearing in November or December in St. Paul in order to advise the public of matters relating to the siting of large electric power generating plants and routing of high voltage transmission lines. The meeting must be conducted by the EQB staff. At the meeting, the EQB shall advise the public of the permits issued by the EQB in the past year. The EQB shall invite representatives of other state agencies to attend the meeting and be available to answer questions by the public. An audio recording of the hearing must be maintained.

Subp. 2. **Notice.** The EQB shall provide at least ten days but no more than 45 days notice of the annual hearing by mailing notice to those persons who have requested notice and by publication in the EQB Monitor. The notice must be accompanied by a tentative agenda for the hearing.

Subp. 3. **Report.** The staff shall prepare a report of the annual hearing within 60 days after the hearing and submit it to the board. No action on the report is required.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.6100 [Renumbered 4350.3090]

4400.6200 [Renumbered 4350.3100]

4400.6300 [Renumbered 4350.3110]

4400.7000 [Renumbered 4350.3120]

ANNUAL ASSESSMENT ON UTILITIES

4400.7050 ANNUAL ASSESSMENT ON UTILITIES.

For purposes of determining the annual assessment on a utility pursuant to the act, each utility shall, on or before July 1 of each year, submit to the board a report of its retail kilowatt-hour sales in the state and its gross revenue from kilowatt-hour sales in the state for the preceding calendar or utility reporting year. Upon receipt of these reports, the board shall bill each utility as specified in the act.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.8000 PROGRAM ADVISORY TASK FORCE.

The board may appoint a program advisory task force to provide advice and recommendations concerning development, revision, and enforcement of any rule or program initiated under the act or this chapter. The board shall provide guidance to the program advisory task force in the form of a charge and through specific requests. The program advisory task force must be composed of as many members as may be designated by the board and its membership must be solicited on a statewide basis. The program advisory task force and its chair must be appointed for a one-year term.

Statutory Authority: *MS s 116C.66*

History: 27 SR 1295

4400.9910 [Renumbered 4350.3130]