

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Energy agency (Agency or Board)

Regulation No. EA 501- 520 Chapter 5 EA 601- 638 Chapter 6

Subject: Rules of Procedure governing certificate of need and Certificate of need for assessment of need for large Electric facilities

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

SEP 30 1975

BY Ede Staudenmaier
AUTH. SIGNATURE

3:10 PM

Stamped and filed with the Secretary of State Sept 30, 1975 1:45 PM

Rev. 9-72

MINNESOTA ENERGY AGENCY
740 American Center Building, 160 East Kellogg Boulevard
St. Paul, Minnesota 55101 612-296-5120

November 25, 1975

Etta Staudenmaier
Documents
140 Centennial Building
St. Paul, MN 55155

Dear Mrs. Staudenmaier:

In examining the galley proofs, I found six errors. They are:

1. EA 503
Paragraphs (a), (c), (d), and (e) should be relabled (a), (b), (c), and (d). All drafts of this rule in my file have the same mistake.

2. EA 507(a)
The first word in this paragraph should be "identity" instead of "identify". This is a typographical error that arose in the second draft of this rule and was subsequently unnoticed.

3. EA 611(b)
"Socially Beneficial Uses. An application shall also be granted if a determination is made . . . ." The word "also" is included in the original proposed rule, but does not appear in the rule as proposed by the hearing examiner or in the rule as adopted by the Energy Agency. There was no intention by the hearing examiner or the Energy Agency to drop this word. It is clearly a clerical omission. Attached is a copy of a letter dated November 18, 1975, from William F. Brooks, who conducted the public hearing on the proposed rules. The letter attests to the fact that the word "also" was unintentionally omitted in the typing of his findings and conclusions on the proposed rule.

4. EA 632
"15 pages in length, including tesxt, tables, graphs and figures." This is an obvious typographical error that should be corrected.

5. EA 634(b)
"A-~~description~~ discussion of the availability of alternatives . . . ." This change should be made to make the wording of EA 633(b) and EA 634(b) consistent.

6. EA 636(d)
". . . Subject to this constraint the following information shall be provided for each of the-~~reporting~~ forecast years . . . ." In the original draft "reporting years" was used throughout Chapter 6 wherever forecast years now appears. In the first revision, it was decided that "forecast years" should replace "reporting years". Somehow EA 636(d) missed this revision.

In addition to correcting the six errors mentioned above, I think that Chapter 5 and Chapter 6 should be printed in separate booklets. Chapter 5 will soon need to be revised to reflect rules promulgated by the office of the chief hearing examiner. Therefore, I project that the Energy Agency will need at most 200 copies of Chapter 5. However, we will still need 500 copies of Chapter 6.

Sincerely,

Richard A. Wallen
Manager, Certificate of Need

RAW:sc
Encs.

cc: Cecelia Dion
Michael D. Miller

CHESTNUT, BROOKS & BURKARD
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
SUITE 854 MIDLAND BANK BUILDING
MINNEAPOLIS, MINNESOTA 55401

JACK L. CHESTNUT
RICHARD C. JONES (1969)
WILLIAM F. BROOKS, JR.
JOSEPH T. BURKARD
W. ROY JOHNSON
FLOYD E. BOLINE
WILLIAM L. ORR
THOMAS M. STRINGER
DAVID G. KUDUK
THOMAS H. GRAHAM
CRAIG A. ERICKSON
KARL L. CAMBRONNE

AREA CODE 612
333-6513

November 18, 1975

Richard A. Wallen, Ph.D.
Chief Energy Facility Analyst
State of Minnesota Energy Agency
740 American Center Building
160 East Kellogg Blvd.
St. Paul, Minnesota 55101

Dear Mr. Wallen:

In reviewing the draft of my Findings of Fact, Conclusions and Recommendation, with respect to proposed Minnesota Energy Agency Regulations governing applications for Certificates of Need, I find that there was a clerical omission in typing Apendix A to that document.

Specifically, a word was unintentionally omitted through clerical oversight in Regulation 611 (b).

The sentence should read as follows:

> "611 (b) Socially Beneficial Uses. An application shall also be granted if a determination is made that the ***"

The underlined word "also" should be included in the final draft of the Regulations. It was not my intention to remove it, but its omission may cast ambiguity on the proposed Regulation and in proofreading, you should make certain that it is properly inserted.

If you have any questions, please contact me.

Very truly yours,

WILLIAM F. BROOKS, JR.

WFB:kjn

MINNESOTA ENERGY AGENCY
740 American Center Building, 160 East Kellogg Boulevard
St. Paul, Minnesota 55101 612-296-5120

September 18, 1975

Mr. Michael D. Miller
Special Assistant to the
Attorney General
Room G19K
Administration Building
St. Paul, Minnesota 55155

Dear Mike:

In rereading the rules that we submitted to you (EA 500-520 and EA 601-638) on September 17, I have discovered four typographical errors in Chapter 5. The first error appears in the TIMETABLE UNDER RULES; the line starting with Day 61 should read, "Agency may issue its report"; "must" is inconsistant with EA 504 (d). The second error appears in line 12 of EA 500 (b); the word "council" is missing an "n". The third error appears in EA 514 (b), line 4 on page 12; the letters in the word, "to" are transposed. The fourth error appears in EA 514 (d)(3), page 14, line 2; the word, "the" is missing immediately before the word, "proceeding".

Hopefully, I have found the last such errors. However, if experience is any judge, there is at least one more.

Sincerely,

Dick

Richard A. Wallen
Manager
Certificate of Need Program

RAW:jk

TIMETABLE UNDER RULES

Day 1	Application filed.
Day 6	Hearing examiner appointed.
Day 11	Hearing date set; notice of application and hearing issued.
Day 41	Intervenors must file.
Day 51	Hearing examiner must decide petitions for intervention.
Day 61	Agency must issue its report.
Day 62-77	Pre-hearing conference held.
Day 81-100	Public hearing.
Day 120	Proposed findings and briefs filed by parties.
Day 150	Hearing examiner's report filed.
Day 160	Comments on and exceptions to report filed.
Day 180	Director decides to grant or deny certificate.

Chapter 5
EA 501 - 520

EA 500. PURPOSE AND APPLICABILITY

(a) Purpose. The purpose of these rules is to provide procedures to be followed in the issuance of a certificate of need for the construction of large energy facilities in Minnesota pursuant to Minn. Stat. § 116H.13 (1974). These rules are adopted pursuant to the power of the director conferred by Minn. Stat. § 116H.08 (a) (1974).

(b) Applicability. On or after the effective date of Agency rules and regulations governing assessment of need criteria, no large energy facility for which such criteria have been promulgated shall be sited or constructed in Minnesota unless a certificiate of need for said facility has been issued by the director pursuant to these rules; provided, however, that any utility which, as of the effective date of Agency rules for criteria of assessment of need governing its facility, has pending before the Minnesota Environmental Quality Council an application for a certificate of site compatibility, an application for corridor designation, or an application for a permit for transmission line construction, may pursue its application before the Coucil, but in any event, shall not begin construction of said facility until a certificate of need for said facility has been issued pursuant to these rules.

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

EA 501. DEFINITIONS

(a) "Agency" means the Minnesota Energy Agency;

(b) "Applicant" means the person or persons submitting a Certificate of Need application;

(c) "Coal supplier" means any entity engaged in Minnesota in the wholesale distribution of coal or transportation into this state of any coal intended for use or distribution in the state or transhipment from the state;

(d) "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies;

(e) "Director" means the director of the Minnesota Energy Agency;

(f) "Large energy facility" means any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more, any high voltage transmission line with a capacity of 200 kilovolts or more having more than 100 miles of its length in Minnesota, any facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof, any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of crude petroleum of petroleum fuels or oil or derivatives thereof, any pipeline for transporting natural or synthetic gas at pressures in excess of 200 pounds per square inch and having more than 50 miles of its length in Minnesota, any facility designed for or capable of storing on a single site more than 100,000 gallons of liquified

natural gas or synthetic gas, any underground gas storage facility requiring a permit pursuant to Minn. Stat. § 84.57 (1974), any facility designed for or capable of serving as a depot for coal transported into this state for use within the state or transhipment from the state and any petroleum refinery, and any facility intended to convert coal into any other combustible fuel and having the capacity to process in excess of 25 tons per hour.

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

(h) "Petroleum supplier" means any petroleum refinery in the state and any entity engaged in transmission or wholesale distribution of more than 100,000 gallons of crude petroleum or petroleum fuels or oil or derivatives thereof annually in this state;

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

EA 502. APPLICATION FOR CERTIFICATE OF NEED

(a) Time, Form and Content of Application. Except as provided in EA 500(b), any person desiring to construct a new large energy facility in Minnesota shall submit an application for a certificate of need for said facility to the director prior to commencing construction of said

facility or, in the case of large electric generating facilities and large high voltage transmission lines, prior to filing an application for a certificate of site compatibility or an application for a transmission line corridor designation. The application shall contain the information required in the applicable substantive rules (see EA 601 et seq.) and shall be verified by the person responsible for its preparation.

(b) Number of Copies. An applicant shall submit the original and four copies of its application including one unbound copy, and shall make additional copies available upon request of the director.

(c) Fee. Each application for a certificate of need shall be accompanied by a fee as prescribed by the applicable substantive rules (EA 601 et seq.).

EA 503. HEARING EXAMINER

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

(c) Authority. The appointment of the hearing examiner shall, to the extent permitted by law, authorize the hearing examiner to call and conduct the hearing and recommend a decision to the director.

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

(e) Disqualification.

(1) The director may, for good cause shown, revoke the appointment of any hearing examiner upon the filing of a petition for disqualification by a party or upon the director's own motion. Unless the basis for the request for disqualification is misconduct on the part of the hearing examiner, any petition for disqualification shall be filed within 10 days after the appointment of the hearing examiner. The reasons for the revocation shall be made a part of the official record.

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

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

EA 504. ACTION ON APPLICATION

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

(b) Hearing Examiner to Issue Notice. Within 10 days after an application is received by the Agency, the hearing examiner shall issue a notice of application and hearing. Such notice shall contain a brief description of the substance of the application, the name of the hearing examiner, and the time and place of hearing, and shall be published in the state register. The notice shall also be published in newspapers of general circulation throughout the state, and shall be publicized in such other manner as the director may deem appropriate. Copies of the notice shall be mailed to appropriate state, federal and local agencies.

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

(d) Agency Evaluation. Immediately following receipt of an application, the Agency shall evaluate the application and the need for the proposed facility and may, if it so elects, within 60 days of receipt of the application, issue

its report thereon. A copy of the report shall be served on all parties to the proceeding. The persons responsible for preparation of the report shall be available for examination regarding the report by parties to the proceeding. The Agency may become a party to the proceeding by filing a notice of intervention pursuant to EA 506(a), but in any event, shall be deemed a party if it has exercised its option to issue a report pursuant to this section.

EA 505. STATE AGENCY PARTICIPATION

Any state agency authorized to issue permits for siting, construction or operation of large energy facilities shall present its position regarding the need for the facility proposed in the application at the public hearing. Any such state agency may become a party to the proceeding by filing a notice of intervention pursuant to EA 506(a).

EA 506. INTERVENTION

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

(1) a statement of the jurisdiction of the agency with respect to the proposed facility;

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

(b) Petition for Leave to Intervene. Any person wishing to become a party to the proceeding may petition for leave to intervene by filing a petition for leave to intervene.

Such petition shall be filed within 30 days of the date of issuance of the notice of application unless after that time the director, at his discretion, permits the filing of a petition for leave to intervene. Such petition shall contain:

(1) a statement of the interest of the petitioner in the proposed facility; and

(2) a statement of the position of the petitioner with respect to the application.

(c) Service. A copy of any Notice of Intervention or Petition for Leave to Intervene shall be served upon the applicant and all other parties by the proposed intervenor and proof of service shall be filed with the Notice or Petition.

(d) Granting Petition to Intervene. The hearing examiner shall grant or deny any Petition to Intervene within ten days after such petition has been filed with the Agency. A Petition for Intervention shall be granted if the hearing examiner determines that:

(1) the Petitioner may be materially affected by the outcome of the proceedings; or

(2) the intervention of the Petitioner will materially advance the consideration of the application.

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

EA 507. PARTIES

(a) Identify. Parties to any proceeding under these rules shall include:

(1) the applicant; and

(2) any person who has properly intervened under EA 506.

(b) Representation. Any party in a proceeding under these rules shall be represented by counsel; provided,

however, that the hearing examiner may, upon good cause shown, permit any party to represent himself.

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

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

EA 508. CONSOLIDATION

At any time prior to a hearing, the hearing examiner, either upon his own motion or upon motion of any party, may recommend to the director that separate proceedings be consolidated for hearing if he determines that:

(1) the separate proceedings present substantially the same issues of fact or law;

(2) a decision in one proceeding would affect the rights of parties in another proceeding; and

(3) consolidation would not substantially prejudice any party.

The director shall take action on any recommendation on consolidation within 5 days after the recommendation is made. If he orders proceedings consolidated, notice of consolidation shall be served on all parties.

EA 509. PREHEARING CONFERENCE

A prehearing conference where all parties are invited and which is open to the public may be held at the discretion of the hearing examiner at any time for the purpose of considering

such matters as the hearing examiner shall direct, including, but not limited to:

(a) the simplification or settlement of any issue;

(b) the disclosure of the identity of witnesses and a summary of the testimony of each;

(c) the exchange of documentary evidence and the reports of expert witnesses to be submitted at the hearing;

(d) any other appropriate matter.

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

EA 510. MOTIONS

(a) Motions To Be In Writing. Any application for procedural relief shall be made by motion which, unless made during the hearing, shall be made in writing and shall state with particularity the relief or order sought. A motion shall be filed with the hearing examiner and served on all parties in accordance with EA 511.

(b) Answers. Any party may reply to a motion within 10 days after its service upon him or within such time as the hearing examiner shall state.

(c) Delay. No procedural motion shall cause the delay of a hearing unless the hearing examiner determines that good cause for such delay exists.

(d) Hearing Examiner's Ruling. The ruling of the hearing examiner shall be served on all parties, or if made at the hearing, shall be made part of the record.

(e) Review. The ruling of the hearing examiner on any motion shall be subject to review by the director only upon his review of the report of the hearing examiner as provided in EA 516.

EA 511. SERVICE

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

EA 512. DISCOVERY

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

EA 513. ADDITIONAL INFORMATION

Upon request of the hearing examiner and subject to the limitations contained in EA 514(d), the applicant shall submit such additional information as the hearing examiner deems necessary. The application of an applicant who without good cause shown fails to comply with an order to supply additional information may be dismissed. Any other party who without good cause fails to comply with any order to supply additional information may be dismissed.

EA 514. THE HEARING

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

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

(c) Written Testimony.

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

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

(3) Cross-examination of Preparer of Agency Report. The person or persons responsible for the preparation of the Agency report or other persons having substantial

knowledge of its preparation shall be available for cross-examination by any party.

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

(d) Rules of Evidence

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

(2) Official Notice. The hearing examiner may take notice of judicially cognizable facts and, in addition, may take notice of technical or scientific facts within his specialized knowledge. Where final determination rests on official notice of material facts not appearing in the evidence in the record, the hearing examiner shall serve and file a statement of Notice of Facts upon the parties. A party is entitled, upon timely request, to an opportunity to rebut such facts.

(3) Burden of Proof. The burden of proving any contested assertion of fact in proceeding shall be upon the proponent thereof.

(e) Transcript.

(1) Record. A verbatim record of the hearing shall be taken by court reporters or by recording equipment. A court reporter shall be used if demanded by any party. Unless the Agency agrees to bear the expense of the court reporter, such expense shall be paid by the party demanding the reporter.

(2) Cost. If a transcript is requested, the Agency may require the requesting party to pay the reasonable cost of preparing the transcript.

(f) Disruption of Hearing.

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

(2) Interference. Pursuant to and in accordance with provisions of Minn. Stat. § 624.72 (1974), no person shall interfere with the free, proper, and lawful access to or egress from the hearing room.

No person shall interfere with the conduct of the hearing.

EA 515. PROPOSED FINDINGS AND BRIEFS

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

EA 516. REPORT OF THE HEARING EXAMINER

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

EA 517. COMMENTS AND EXCEPTIONS

Within 10 days following receipt of the hearing examiner's report, any party may file written comments on or exceptions to the findings and recommendation of the hearing examiner. Such comments or exceptions shall be served upon all parties.

EA 518. THE RECORD

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

(a) all pleadings, motions and intermediate rulings;

(b) the pre-hearing order of the hearing examiner, if any;

(c) all evidence received or considered;

(d) a statement of matters officially noticed;

(e) questions and offers of proof, objections and rulings thereon;

(f) proposed findings and briefs in support thereof;

(g) the report of the hearing examiner;

(h) all comments and exceptions and briefs in support thereof;

(i) all memoranda or data submitted to the hearing examiner by the Agency staff or any person in connection with the proceeding.

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

EA 519. DECISION OF THE DIRECTOR

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

EA 520. REHEARING

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

(b) Obtaining a Rehearing.

(1) Petition for Rehearing. Within 30 days of the issuance of the director's decision, any party to the matter may request a rehearing by filing a Petition for Rehearing. Such petition shall contain:

(i) the name and address of the petitioner;

(ii) the Agency designation for the matter; and

(iii) the reasons for the petition.

(2) Director's Action. The director shall grant or deny a Petition for Rehearing as part of the record. Such Petition shall be granted upon a showing that there are irregularities in the hearing, errors of

law, or newly discovered material evidence of such importance as likely to have altered the outcome of the hearing, or upon a showing of good cause for failure to appear at the hearing. Evidence and argument may be presented at the discretion of the director, in written or oral form, or both, by any party to the matter with respect to the granting or denial of Petition.

(c) Notice of Rehearing. Notice of rehearing shall be served on all parties and published in the same manner prescribed for notice of hearing.

(d) Rehearing Procedure. A rehearing in a matter shall be conducted in the same manner prescribed for a hearing.

(e) Decision After Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

MINNESOTA ENERGY AGENCY
RULES GOVERNING CONTENTS OF APPLICATIONS
FOR CERTIFICATE OF NEED AND CRITERIA
FOR ASSESSMENT OF NEED FOR LARGE ELECTRIC
GENERATING FACILITIES AND LARGE HIGH
VOLTAGE TRANSMISSION LINES

Chapter 6
EA 601 - 638

EA 601. DEFINITIONS

(a) "Adjusted Net Demand" means system demand, minus firm purchases, plus firm sales;

(b) "Agency" means the Minnesota Energy Agency;

(c) "Annual Adjusted Net Demand" means annual system demand, minus firm purchases, plus firm sales;

(d) "Annual Electrical Consumption" means sales of kilowatt hours of electricity to ultimate consumers over a twelve-month period beginning January 1st and ending December 31st of the forecast year;

(e) "Annual Plant Efficiency" means the ratio of the electrical energy leaving a power plant to the fuel energy used to produce that amount of electricity expressed as a percentage;

(f) "Annual System Demand" means the highest system demand occurring during the twelve-month period beginning May 1st of the forecast year;

(g) "Director" means the director of the Minnesota Energy Agency;

(h) "Firm Purchases" and "Firm Sales" means the amount of power to be purchased or sold intended to have assured availability;

(i) "Forecast Years" means the 26 calendar years consisting of the calendar year the application is filed with the agency, the ten previous calendar years, and the fifteen subsequent calendar years;

(j) "Large Electric Generating Facility (LEGF)" means any electric power generating plant or combination of plants at a single site and associated facilities designed for or

capable of operation at a combined capacity of 50,000 kilowatts or more, including, but not limited to fossil fuel, nuclear fuel, pumped storage and hydro-electric plants;

(k) "Large High Voltage Transmission Line (LHVTL)" means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more having more than 100 miles of its length in Minnesota. Associated facilities shall include, but not be limited to, insulators, towers, and substations and terminals operating at a nominal voltage of 200 kilovolts or more;

(l) "Load Center" means that portion or portions of a utility's system where electrical energy demand is concentrated;

(m) "Load Factor" means the ratio of the average load in kilowatts supplied during a designated period to the maximum load in kilowatts that was supplied during that designated period;

(n) "Minnesota Service Area" means that portion of a utility's system lying within Minnesota;

(o) "Net Generating Capacity" means the total amount of kilowatts, less station use, that all the generating facilities of a system could supply at the time of its maximum system demand. The capability of the generating units which are temporarily out of service for maintenance or repair shall be included in the net generating capacity;

(p) "Net Reserve Capacity Obligation" means the annual adjusted net demand multiplied by the percent reserve capacity requirement;

(q) "Participation Power" means power and energy which is sold from a specific generating unit or units for a period of six or more months on a continuously available basis (except when such unit or units are temporarily out of service for maintenance during which time the delivery of energy from other generating units is at the seller's option);

(r) "Participation Purchases" and Participation Sales" means purchases and sales under a participation power agreement or a seasonal participation power agreement;

(s) "Peak Demand" means the highest system demand occurring within any designated period of time;

(t) "Seasonal Adjusted Net Demand" means seasonal system demand, minus firm purchases, plus firm sales;

(u) "Seasonal Participation Power" means participation power sold and bought on a seasonal (summer or winter) basis;

(v) "Seasonal System Demand" means the maximum system demand on the applicant's system which occurs or is expected to occur in any normal six summer months or six winter months;

(w) "Summer Months" means the period from May 1st through October 31st; "Winter Months" means the period from November 1st through April 30th;

(x) "System" means that combination of generating, transmission, and distribution facilities which make up the operating physical plant of the utility, whether owned or non-owned, for the delivery of electric energy to ultimate consumers and includes the geographic area where the utility's ultimate consumers are located;

(y) "System Demand" means the number of kilowatts which is equal to the kilowatt hours required in any clock hour, attributable to energy required by the system during such hour for supply of firm energy to ultimate consumers, including system losses, and also including any transmission losses occurring on other systems and supplied by the system for transmission of firm energy, but excluding generating station uses and excluding transmission losses charged to another system; and

(z) "Utility" means any entity engaged in the generation, transmission or distribution of electrical energy, including but not limited to a private investor-owned utility or a public or municipally-owned utility.

(aa) "Ultimate consumers" means consumers purchasing electricity for their own use and not for resale.

EA 611. CRITERIA FOR ASSESSMENT OF NEED

(a) Level of Reliability. An application shall be granted if it is determined that the probable result of denial of the application will be an unacceptable level of reliability of electric service to ultimate consumers in Minnesota or in neighboring states. In examining the effect of denial of an application, the following factors shall be considered:

(1) the future demand for electricity in the applicant's system, including:

(i) the accuracy of the applicant's forecast of demand;

(ii) the effects of existing conservation programs or other state and federal programs on future demand;

(2) the ability of current facilities and planned facilities not requiring a certificate of need to meet the future demand for electricity;

(3) alternative ways of meeting the demand;

(4) the appropriateness of the applicant's system reserve margin; and

(5) the appropriateness of the size, type and the timing of the proposed facility;

(b) Socially Beneficial Uses. An application shall be granted if a determination is made that the socially beneficial uses of the output of the proposed facility, including its uses to protect or enhance environmental quality, are deemed significant to justify the need for the facility. In making this determination, the following factors shall be considered:

(1) the effect of promotional activities in giving rise to demand for the proposed facility;

(2) the effects of the facility in inducing further developments; and

(3) the policies, rules and regulations of other state and federal agencies and local governments.

EA 621. GENERAL PROVISIONS

(a) Applicability.

(1) Large Electric Generating Facilities. Any applicant for a certificate of need for a LEGF shall provide all information required by EA 631 - 638 for its system.

(2) Large High Voltage Transmission Lines. Any applicant for a certificate of need for a LHVTL shall provide all information required by EA 631 - 638 for its system.

(i) if the proposed LHVTL is designed primarily to bring electric power from a generating facility or a system outside of Minnesota to the applicant's distribution network, or if the proposed LHVTL is designed to deliver electric power from a generating facility within Minnesota to a distribution network or a system, all the information required by EA 631 - 638 shall be provided for the applicant's system;

(ii) if the proposed LHVTL is designed primarily to deliver electric power from one or more of the applicant's generating facilities or its transmission network in Minnesota to a load center in the applicant's system, all information required by EA 631 - 638 shall be provided for the applicant's system or service area; provided, however, that the information required by EA 635 and EA 636 shall also be provided for the load center which the proposed LHVTL will serve; or

(iii) if the proposed LHVTL will connect one system to another for the purpose of power sharing or reducing system reserve requirements, all information required by EA 631 - 638 shall be provided for both systems.

(3) Joint Ownership. If the proposed LEGF or LHVTL for which a certificate of need is sought will be owned jointly by two or more utilities or by a pool, all information required by EA 631 - 638 shall be provided for the system or service area of each joint owner and for the commonly owned system.

(b) Estimates. When recorded data is not available, or when the applicant does not use the required data in preparing its own forecast, the applicant shall use an estimate and indicate in the forecast documentation section (EA 635 (c)) the procedure(s) used in deriving the estimate.

(c) Fees. The fee for processing an application shall be:

(1) $10,000 plus $50 for each megawatt of plant capacity for LEGF's; or

(2) $10,000 plus $40 per kilovolt of rated capacity for LHVTL's;

plus such additional fees as are reasonably necessary for completion of the evaluation of the need for the proposed facility. In no event shall the total fees required of any applicant exceed $50,000. Twenty-five percent of the set fee shall accompany the application, and the balance shall be payable in three equal installments within 45, 90 and 135 days after submission of an application. The applicant shall be notified when its application is acted on by the director of any additional fees and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized document showing the necessity for the additional fees assessed.

EA 631. CONTENTS OF APPLICATION. Every application for a certificate of need for a large electric generating facility or a large high voltage transmission line shall substantially conform to the requirements of EA 632 - 637 subject to the conditions stated in EA 621.

EA 632. NEED SUMMARY. Each application shall contain a summary of the major factors which justify the need for the proposed facility. The summary shall not exceed, without the approval of the director, 15 pages in length, including test, tables, graphs and figures.

EA 633. DESCRIPTION OF PROPOSED LARGE ELECTRIC GENERATING FACILITY. Each application for a proposed LEGF shall include the following information:

(a) a description of the type of facility, including;

(1) a description of the generating capacity of the facility, which includes a discussion of the effect of the economies of scale on the facility size and timing;

(2) a description of the anticipated operating cycle;

(3) the type of fuel used, including:

(i) the reason for the choice of fuel;

(ii) projection of the availability of this fuel type over the projected life of the facility;

(iii) alternate fuels, if any;

(4) the anticipated annual plant efficiency;

(b) a discussion of the availability of alternatives to the facility, including but not limited to:

(1) purchased power;

(2) increased efficiency of existing facilities;

(c) a map (of appropriate scale) showing the applicant's system; and

(d) such other information about the facility as may be relevant to determination of need.

EA 634. DESCRIPTION OF PROPOSED LARGE HIGH VOLTAGE TRANSMISSION LINE. Each application for a proposed LHVTL shall include the following information:

(a) a description of the type and general location of the proposed line, including:

(1) the design voltage;

(2) the design power capability;

(3) the expected losses at the design voltage and at the design current in the length of the transmission line and at the terminals or substations;

(4) the approximate length of the proposed transmission line and the portion of that length in Minnesota; and

(5) the approximate location of DC terminals or AC substations (this information shall be shown on a map of appropriate scale);

(b) a description of the availability of alternatives to the facility, including but not limited to:

(1) new generation; and

(2) upgrading of existing transmission lines or existing generating facilities;

(c) a map (of appropriate scale) showing the applicant's system or load center to be served by the proposed LHVTL; and

(d) such other information about the facility as may be relevant to determination of need.

EA 635. PEAK DEMAND AND ANNUAL ELECTRICAL CONSUMPTION FORECAST

(a) Scope. Each application shall contain pertinent data concerning peak demand and annual electrical consumption within the applicant's service area and system, except as provided in EA 621 (a), including but not limited to the data requested in subsection (b).

(b) Content of Forecast. For each forecast year, the following data shall be provided:

(1) when the applicant's service area includes areas other than Minnesota, annual electrical consumption

by ultimate consumers within the applicant's Minnesota service area;

(2) annual electrical consumption by ultimate consumers within the applicant's system in the following categories:

(i) farm, excluding irrigation and drainage pumping. (For reporting purposes, any tract of land used primarily for agricultural purposes shall be considered farm land);

(ii) irrigation and drainage pumping;

(iii) non-farm residential. (When electricity is supplied through a single meter for both residential and commercial uses, it shall be reported according to its principal use. Apartment buildings shall be reported as residential even if not separately metered);

(iv) commercial. (This category shall include wholesale and retail trade; communication industries; public and private office buildings, banks, dormitories, insurance, real estate and rental agencies; hotels and motels; personal business and auto repair services; medical and educational facilities; recreational, social, religious, and amusement facilities; governmental units, excluding military bases; warehouses (other than manufacturer owned); electric, gas, water and water pumping, excluding water pumping for irrigation, and other utilities);

(v) mining;

(vi) industrial. (This category shall include all manufacturing industries, construction operations and petroleum refineries);

(vii) street and highway lighting;

(viii) electrified transportation. (This category shall include energy supplied for the propulsion

of vehicles, but shall not include energy supplied for office buildings, depots, signal lights or other associated facilities which shall be reported as commercial or industrial);

(ix) other. (This category shall include municipal water pumping facilities, oil and gas pipeline pumping facilities, military camps and bases, and all other consumers not reported in categories (i) through (viii); and

(x) the sum of categories (i) through (ix);

(3) an estimate of the demand for power by ultimate consumers in the applicant's system for each of the categories listed in subsection (2) at the time of the applicant's system peak demand. The required estimate contained in this subparagraph may be waived by the director in his discretion upon a showing by the applicant that preparation of such an estimate would be unnecessarily burdensome;

(4) the applicant's system peak demand by month;

(5) the applicant's monthly average system daily load factor;

(6) the applicant's monthly system weekday load factor; and

(7) the applicant's monthly average system weekend load factor.

(c) Forecast Documentation.

(1) Forecast Methodology. Each applicant may use whatever forecast methodology yields the most useful results for its system. However, the applicant shall detail the forecast methodology employed to obtain the forecasts provided under section (b), including:

(i) the overall methodological framework which is used;

(ii) the specific analytical techniques which are used, their purpose, and the component(s) of the forecast to which they have been applied;

(iii) the manner in which these specific techniques are related in producing the forecast;

(iv) where statistical techniques have been used:

1. the purpose of the technique;

2. typical computations (e.g., computer printouts, formulas used), specifying variables and data; and

3. the results of appropriate statistical tests;

(v) forecast confidence levels or ranges of accuracy for annual peak demand and annual electrical consumption;

(vi) a brief analysis of the methodology used, including:

1. its strength and weaknesses;

2. its suitability to the system;

3. cost considerations;

4. data requirements;

5. past accuracy; and

6. other factors considered significant by the applicant;

(vii) an explanation of any discrepancies which appear between the forecasts presented in the application and the forecasts submitted to the agency under EA 206 or in the previous certificate of need proceedings.

(2) Data Base for Forecasts. The applicant shall discuss the data base used in arriving at the forecast presented in his application, including:

(i) a complete list of all data sets used in making the forecast, including a brief description of each data set and an explanation of how each was obtained, (e.g., monthly observations, billing data, consumer survey, etc.) or a citation to the source (e.g., population projection from the state demographer's office);

(ii) a clear identification of any adjustments made to raw data in order to adapt them for use in forecasts, including:

1. the nature of the adjustment;
2. the reason for the adjustment; and
3. the magnitude of the adjustment;

The applicant shall provide to the director or the hearing examiner on demand copies of all data sets used in making the forecasts, including both raw and adjusted data, input and output data.

(3) Assumptions and Special Information.

(i) Discussion. The applicant shall discuss each essential assumption made in preparing the forecast, including:

1. the need for the assumption;
2. the nature of the assumption; and
3. the sensitivity of forecast results to variations in the essential assumptions;

(ii) Subject of Assumption. The applicant shall discuss the assumptions made regarding:

1. the availability of alternate sources of energy;
2. the expected conversion from other fuels to electricity or vice-versa;
3. future prices of electricity for customers in the applicant's system and the effect that such price changes will likely have on the applicant's system demand;
4. the assumptions made in arriving at any data requested in section (b) which is not available historically or not generated by the applicant in preparing his own internal forecast;

5. the effect of existing energy conservation programs under federal or state legislation on long term electrical demand; and

6. any other factor considered by the applicant in preparing the forecast.

(4) Coordination of Forecasts with Other Systems. The applicant shall provide:

(i) a description of the extent to which the applicant coordinates its load forecasts with those of other systems, such as neighboring systems, associate systems in a power pool, or coordinating organization; and

(ii) a description of the manner in which such forecasts are coordinated, and any problems experienced in efforts to coordinate load forecasts.

EA 636. SYSTEM CAPACITY. The applicant shall describe the ability of its existing system to meet the demand for electric energy forecast in EA 635 and the extent to which the proposed facility will increase this capability. In preparing this description, the applicant shall present the following information:

(a) Power Planning Programs. A brief discussion of power planning programs, including criteria, applied to the applicant's system and to the power pool or area within which the applicant's planning studies are based;

(b) Firm Purchases and Firm Sales. The applicant's seasonal firm purchases and seasonal firm sales for each utility involved in each transaction for each of the forecast years;

(c) Participation Purchases and Participation Sales. The applicant's seasonal participation purchases and seasonal participation sales for each utility involved in each transaction for each of the forecast years;

(d) Load and Generation Capacity Data. The information presented in this subsection shall not include any purchases, sales or generation capability which are contingent on a certificate of need which has not yet been issued. Subject to this constraint the following information shall be provided for each of the reporting years:

(1) Seasonal System Demand;

(2) Annual System Demand;

(3) Total Seasonal Firm Purchases;

(4) Total Seasonal Firm Sales;

(5) Seasonal Adjusted Net Demand (1 - 3 + 4);

(6) Annual Adjusted Net Demand (2 - 3 + 4);

(7) Net Generating Capacity;

(8) Total Participation Purchases;

(9) Total Participation Sales;

(10) Adjusted Net Capability (7 + 8 - 9);

(11) Net Reserve Capacity Obligation;

(12) Total Firm Capacity Obligation (5 + 11); and

(13) Surplus or Deficit (-) Capacity (10 - 12);

(e) Load Capacity and Reserve as Projected with the Proposed Facility in Operation. For each of the fifteen years subsequent to the filing of the application, the information requested in section (d) shall be provided, including purchases, sales and generating capability contingent on the proposed facility;

(f) Load Capacity and Reserve as Projected. For each of the fifteen years subsequent to the filing of the application the information requested in section (d) shall be provided including purchases, sales, and generating capacity associated with all new facilities proposed by the applicant;

(g) Proposed Capacity Additions and Proposed Capacity Retirements. For each of the fifteen years subsequent to the filing

of the application, a list of proposed additions and retirements in net generating capability shall be provided. If any addition is expected to require a certificate of need, the probable date of application shall also be given;

(h) Load, Capacity Profile. For the previous calendar year, the current year, the first full calendar year before the proposed facility is expected to be in operation and the first full calendar year of operation of the proposed facility, a graph of monthly adjusted net demand shall be provided. The applicant shall on each of these graphs, also plot the sum of monthly adjusted net demand and actual, planned, or estimated maintenance outages of generation and transmission facilities and shall plot on the same graphs the adjusted net capability; and

(i) Reserve Requirements. The applicant shall describe its method of determining system reserve margins, including a discussion of the probability of forced outages of generating units, deviation from load forecasts, scheduled maintenance outages of generation and transmission facilities, power exchange arrangements as they affect reserve requirements, and transfer capabilities.

EA 637. CONSEQUENCES OF DELAY. The applicant shall present a discussion of anticipated consequences to its system, neighboring systems, and power pool should the proposed facility be delayed 1, 2, and 3 years or postponed indefinitely.

EA 638. CERTIFICATE OF NEED MODIFICATIONS

(a) When the director denies an application, he shall state the reasons for the refusal and the changes in the size and/or proposed inservice date of the facility necessary to issue a certificate of need in compliance with the standards;

(b) Applications for changes in inservice date for large generation and transmission facilities previously certified shall conform to the following:

(1) If an applicant determines that a change in the inservice date is necessary for a large generation or transmission facility previously certified by the director, he shall inform the director of the desired change of date for inservice operation, accompanied by a written statement detailing the reasons for the proposed change. The director shall evaluate these reasons and within 45 days of receipt of said application, notify the applicant if the proposed change of inservice date is acceptable.

(2) Delays in the inservice date of large generation or transmission facilities previously certified by the director for up to one year are not subject to review by the director. The applicant shall inform the director as soon as he determines that a delay is imminent, accompanied by a written statement detailing the reasons for such delay.

(c) Small additions and subtractions to generating plant capacity and transmission line length shall conform to the following:

(1) Power plant capacity additions and subtractions less than 50 megawatts from the capacity approved in a certificate of need issued by the director shall not require recertification.

(2) Large transmission line length modifications shall conform to the following:

(i) Large transmission line length additions or subtractions made as a result of the route length approved by the Minnesota Environmental Quality Council for projects previously certified shall not require recertification.

(ii) When a utility applies to MEQC for a transmission line corridor for which it does not expect

the corridor approved to exceed 100 miles within the State, but whereas the corridor approved by MEQC exceeds 100 miles within the State, the applicant may apply for a certificate of need prior to or concurrently with application for MEQC route construction permit. The length of a corridor is determined by measuring the length of its center line.

(d) When the director approves a certificate of need application, or modification thereof, he shall state which fuel types are not permitted in supplying the additional generation capacity certified.

APPROVED AS TO FORM AND LEGALITY
SEP 30 1975 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 30 1975 1:45 pm
Joan Anderson Growe
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
SEP 1975
BY Eda Staudenmaier
AUTH. SIGNATURE
3:10 p.m.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

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In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules and Regulations Governing Rules of Procedure (EA 500-520)

and

Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and for Large High Voltage Transmission Lines (EA 601-637)

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ORDER FOR HEARING

To effectively implement Minnesota Statutes 116H.08 (Minnesota Laws 1974, Chapter 307), the Minnesota Energy Agency deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in the Agency by said Minnesota Statutes, Section 116H.08.

NOW, THEREFORE, IT IS ORDERED this 30th day of June, 1975, that a public hearing on the proposed rules captioned above shall be held in Room D, 5th floor of the Veterans Building, Saint Paul, Minnesota 55155 on August 5th, 1975, commencing at 9:30 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

MINNESOTA ENERGY AGENCY

By John C. McKay
John McKay
Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

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In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules and Regulations Governing Rules of Procedure (EA 500-520)

and

Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and for Large High Voltage Transmission Lines (EA 601-637)

NOTICE OF HEARING

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NOTICE IS HEREBY GIVEN that a public hearing will be held pursuant to Minnesota Statutes Section 15.0412 (1973) and Minnesota Statutes 116H.08 (Minnesota Laws 1974, Chapter 307), in the above-entitled matter in Room D, 5th floor of the Veterans Building, Saint Paul, Minnesota 55155 on August 5th, 1975, commencing at 9:30 A.M., and continuing until all representatives or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted in writing without appearing at the hearing by mailing to the Minnesota Energy Agency, Room 740, American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota 55101, at any time prior to closing of the record. The record shall close at 4:30 P.M. on August 25th, 1975.

Copies of the proposed rules are now available and may be obtained by writing to the Minnesota Energy Agency at the address below. Additional copies will be available at the door on the date of the hearing.

These rules are proposed rules only and are subject to alterations or modifications as the Agency deems necessary and appropriate from its consideration of all the evidence adduced at the public hearing and all statements entered into the record.

Dated this 30 day of June, 1975.

MINNESOTA ENERGY AGENCY

By John C. McKay
John McKay, Director

Minnesota Energy Agency
740 American Center Building
160 East Kellogg Boulevard
Saint Paul, Minnesota 55101

Telephone: 612-296-5120
612-296-5724

ERRATA SHEET FOR MINNESOTA ENERGY AGENCY PROPOSED RULES AND REGULATIONS GOVERNING RULES OF PROCEDURES (EA 500 - 520) and CONTENTS OF APPLICATIONS FOR CERTIFICATE OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE ELECTRIC GENERATING FACILITIES AND FOR LARGE HIGH VOLTAGE TRANSMISSION LINES (EA 601 - 637)

\+ Line Numbered from Top of Page
\- Line Numbered from Bottom of Page

Page	Location	Change Described
Rules of Procedure		
1	6	Change: EA 500. Purposed and To read: EA 500. Purpose and
2	-13	Change: more, any interstate high To read: more, any high
Rules Governing Content and Criteria		
2	-15	Change: (o) "Net Generation Capacity" means the To read: (o) "Net Generating Capacity" means for any month the
2	-14	Change: the generation facilities To read: the generating facilities
2	-11	Change: system demand; To read: system demand. The capability of the generating units which are temporarily out of service for maintenance or repair shall be included in the Net Generating Capability;
5	7	Change: distribution network, all To read: distribution network, or if the proposed LHVTL is designed to deliver electric power from a generating facility within Minnesota to a distribution network or a system, all

Page	Location	Change Described
5	-18	Change: by EA 632 and 633 shall To read: by EA 635 and 636 shall
5	-2	Change: documentation section (EA 633 (b)) the To read: documentation section (EA 635 (c)) the
10	8	Change: levels and ranges To read: levels or ranges
10	9	Change: and energy demand; To read: and annual electrical consumption;
10	14	Change: cost consideration To read: cost considerations
12	-12	Change: The applicant's firm purchases and firm sales To read: The applicant's seasonal firm purchases and seasonal firm sales
12	-9	Change: The applicant's participation purchases and participation sales To read: The applicant's seasonal participation purchases and seasonal participation sales
13	3	Change: (3) Total Firm Purchases; To read: (3) Total Seasonal Firm Purchases;
13	4	Change: (4) Total Firm Sales; To read: (4) Total Seasonal Firm Sales;

Page	Location	Change Described
13	10	Change: Capability (7+9-9); To read: Capability (7+8-9);
13	12	Change: Obligation; and To read: Obligation (5+11); and

TIMETABLE UNDER PROPOSED RULES

Day 1	Application filed.
Day 6	Hearing examiner appointed.
Day 11	Hearing date set; notice of application and hearing issued.
Day 41	Intervenors must file.
Day 51	Hearing examiner must decide petitions for intervention.
Day 61	Agency must issue its report.
Day 62-71	Pre-hearing conference held.
Day 81-100	Public hearing.
Day 120	Proposed findings and briefs filed by parties.
Day 150	Hearing examiner's report filed.
Day 160	Comments on and exceptions to report filed.
Day 180	Director decides to grant or deny certificate.

MINNESOTA ENERGY AGENCY
PROPOSED RULES OF PROCEDURE GOVERNING
CERTIFICATE OF NEED PROGRAM

Chapter 5
EA 501 - 520

EA 500. PURPOSED AND APPLICABILITY

(a) Purpose. The purpose of these rules is to provide procedures to be followed in the issuance of a certificate of need for the construction of large energy facilities in Minnesota pursuant to Minn. Stat. § 116H.13 (1974). These rules are adopted pursuant to the power of the director conferred by Minn. Stat. § 116H.08, subd. (a) (1974).

(b) Applicability. On or after the effective date of Agency rules and regulations governing assessment of need criteria, no large energy facility for which such criteria has been promulgated shall be sited or constructed in Minnesota unless a certificate of need for said facility has been issued by the director pursuant to these rules. Provided, however, that any utility which, as of the effective date of Agency rules for criteria of assessment of need governing its facility, has pending before the Minnesota Environmental Quality Council an application for a certificate of site compatibility or an application for a permit for transmission line construction, may pursue its application before the Council, but in any event, shall not begin construction of said facility until a certificate of need for said facility has been issued pursuant to these rules.

EA 501. DEFINITIONS

(a) "Agency" means the Minnesota Energy Agency;

(b) "Applicant" means the utility or utilities submitting a Certificate of Need application;

(c) "Coal supplier" means any entity engaged in Minnesota in the wholesale distribution of coal or transportation into this state of any coal intended for use or distribution in the state or transhipment from the state;

(d) "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies;

(e) "Director" means the director of the Minnesota Energy Agency;

(f) "Large energy facility" means any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more, any interstate high voltage transmission line with a capacity of 200 kilovolts or more having more than 100 miles of its length in Minnesota, any facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof, any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof, any pipeline for transporting natural or synthetic gas at pressures in excess of 200 pounds per square inch and having more than 50 miles of its length in Minnesota, any facility designed for or capable of storing on a single site more

than 100,000 gallons of liquified natural gas or synthetic gas, any underground gas storage facility requiring a permit pursuant to Minnesota Statutes § 84.57 (1974), any facility designed or capable of serving as a depot for coal transported into this state for use within the state or transhipment from the state and any petroleum refinery, and any facility intended to convert coal into any other combustible fuel and having the capacity to process in excess of 25 tons per hour.

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

(h) "Petroleum supplier" means any petroleum refinery in the state and any entity engaged in transmission or wholesale distribution or more than 100,000 gallons of crude petroleum or petroleum fuels or oil or derivatives thereof annually in this state;

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

EA 502. APPLICATION FOR CERTIFICATE OF NEED

(a) Time, Form and Content of Application. Except as provided in EA 500(b), any person desiring to construct a new large energy facility in Minnesota shall submit an application for a certificate of need for said facility to the director prior to commencing construction of said facility or, in the case of large electric generating facilities and large high voltage transmission lines, prior to filing an application for a certificate of site compatibility or an application for a permit for transmission line construction. The application shall contain the information required in the applicable substantive rules (see EA 601 et seq.) and shall be verified by the person responsible for its preparation.

(b) Number of Copies. An applicant shall submit the original and four copies of its application including one unbound copy, and shall make additional copies available upon request of the director.

(c) Fee. Each application for a certificate of need shall be accompanied by a fee as prescribed by the applicable substantive rules (EA 601 et seq.).

EA 503. HEARING EXAMINER

(a) Appointment and Qualifications. Within five days of receipt of an application, the director shall appoint a hearing examiner. Such appointment shall be in accordance with law and any applicable rules and regulations. The hearing examiner shall be an attorney licensed to practice law in Minnesota. At the time of his appointment, he shall not be an employee of, or on retainer to, the Agency. To the extent possible, he shall possess some familiarity with the type of facility proposed in the application. After appointment, the hearing examiner shall be considered an employee of the Agency for the sole purpose of compensation and authorization to conduct the hearing and recommend findings

of fact and a decision to the director. In all other respects he shall be independent of the Agency.

(c) Authority. The appointment of the hearing examiner shall, to the extent permitted by law, authorize the hearing examiner to call and conduct the hearing and recommend a decision to the director.

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

(e) Disqualification.

(1) The director may, for good cause shown, revoke the appointment of any hearing examiner upon the filing of a petition for disqualification by a party or upon the director's own motion. The reasons for the revocation shall be made a part of the official record.

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

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

EA 504. ACTION ON APPLICATION

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

(b) Hearing Examiner to Issue Notice. Within 10 days after an application is received by the Agency, the hearing examiner shall issue a notice of application and hearing. Such notice shall contain a brief description of the substance of the application, the name of the hearing examiner, and the time and place of hearing, and shall be published in the state register. The notice shall also be published in newspapers of general circulation throughout the state, and shall be publicized in such other manner as the director may deem appropriate. Copies of the notice shall be mailed to appropriate state, federal and local agencies.

(c) Application Available to Public. An application shall be available for copying by the public at the office from the Agency. Any person may request a copy of the application. Any person requesting a copy shall identify himself and the person he represents, if any. The director may grant any such request for good cause shown. Any state or local or federal agency requesting a copy of an application shall receive one. The applicant shall supply the Agency with sufficient copies of the application to enable the Agency to comply with this subdivision.

(d) Agency Evaluation. Immediately following receipt of an application, the Agency shall evaluate the application and the need for the proposed facility and shall, within

60 days of receipt of the application, issue its report thereon. A copy of the report shall be served on all parties to the proceeding. The persons responsible for preparation of the report shall be available for examination regarding the report by parties to the proceeding. The Agency may become a party to the proceeding by filing a notice of intervention pursuant to EA 506(a).

EA 505. STATE AGENCY PARTICIPATION

Any state agency authorized to issue permits for siting, construction or operation of large energy facilities shall present its position regarding the need for the facility proposed in the application at the public hearing. Any such state agency may become a party to the proceeding by filing a notice of intervention pursuant to EA 506(a).

EA 506. INTERVENTION

(a) Notice of Intervention. The Agency and any federal, state or local agency with authority to grant permits or certificate for siting, construction, or operation of large energy facilities may become a party to the proceeding by filing with the director, within 30 days of the date of issuance of the notice of application, a notice of intervention. Such notice shall contain:

(1) a statement of the jurisdiction of the agency with respect to the proposed facility;

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

(b) Petition for Leave to Intervene. Any person wishing to become a party to the proceeding may petition for leave to intervene by filing a petition for leave to intervene

with the director within 30 days of the date of issuance of the notice of application and hearing. Such petition shall contain:

(1) a statement of the interest of the petitioner in the proposed facility; and

(2) a statement of the position of the petitioner with respect to the application.

(c) Service. A copy of any Notice of Intervention or Petition for Leave to Intervene shall be served upon the applicant and all other parties by the proposed intervenor and proof of service shall be filed with the Notice or Petition.

(d) Granting Petition to Intervene. The hearing examiner shall grant or deny any Petition to Intervene within ten days after such petition has been filed with the Agency. A Petition for Intervention shall be granted if the hearing examiner determines that:

(1) the Petitioner may be materially affected by the outcome of the proceedings; or

(2) the intervention of the Petitioner will materially advance the consideration of the application.

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

EA 507. PARTIES

(a) Identify. Parties to any proceeding under these rules shall include:

(1) the applicant;

(2) any person who has properly intervened under EA 506;

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

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

EA 508. CONSOLIDATION.

At any time prior to a hearing, the hearing examiner, either upon his own motion or upon motion of any party, may order separate proceedings consolidated for hearing if he determines that:

(1) the separate proceedings present substantially the same issues of fact or law;

(2) a decision in one proceeding would affect the rights of parties in another proceeding; and

(3) consolidation would not substantially prejudice any party.

Notice of consolidation shall be served on all parties.

EA 509. PREHEARING CONFERENCE

A prehearing conference where all parties are invited and is open to the public may be held at the discretion of the hearing examiner at any time after the Agency has issued its report pursuant to EA 504(d), but no less than 10 days prior to the public hearing, for the purpose of considering such matters as the hearing examiner shall direct, including, but not limited to:

(a) the simplification or settlement of any issue;

(b) the disclosure of the identity of witnesses and a summary of the testimony of each;

(c) the exchange of documentary evidence and the reports of expert witnesses to be submitted at the hearing;

(d) any other appropriate matter.

The conference shall be an informal proceeding conducted fairly and expeditiously by the hearing examiner. Any decision made or agreements reached at the prehearing conference shall be included in a pre-hearing order issued by the hearing examiner no less than five days prior to the hearing. Said order shall be served on all parties. No agreement may be made to waive the public hearing.

EA 510. MOTIONS

(a) Motions To Be In Writing. Any application for procedural relief shall be made by motion which, unless made during the hearing, shall be made in writing and shall state with particularly the relief or order sought. A motion shall be filed with hearing examiner and served on all parties in accordance with EA 511.

(b) Answers. Any party may reply to a motion within 10 days after its service upon him or within such time as the hearing examiner shall state.

(c) Delay. No procedural motion shall cause the delay of a hearing unless the hearing examiner determines that good cause for such delay exists.

(d) Hearing Examiner's Ruling. The ruling of the hearing examiner shall be served on all parties, or if made at the hearing, shall be made part of the record.

(e) Review. The ruling of the hearing examiner on any motion shall be subject to review by the director only upon his review of the report of the hearing examiner as provided in EA 519.

EA 511. SERVICE

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

EA 512. DISCOVERY

Upon motion of any party for good cause shown, the hearing examiner may permit the service of interrogatories, the taking of depositions, or such other discovery as may be appropriate. No motion made under this rule shall be granted except upon a showing that the moving party has made a request for the information sought and such request has been refused and that the information produced would be relevant to the proceeding. The hearing examiner may issue subpoenas to compel the attendance of witnesses or the production of documents.

EA 513. ADDITIONAL INFORMATION

Upon request of the hearing examiner, the applicant shall submit such additional information as the hearing examiner deems necessary. The application of an applicant who without good cause shown fails to comply with an order to supply additional information may be dismissed.

EA 514. THE HEARING

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

(b) Witnesses. Any party may be a witness or may present witnesses on his behalf. All testimony at a hearing shall be under oath or affirmation. Every party shall have the right of cross-examination of adverse witnesses. Any person

offering oral testimony who is not a party shall be subject to cross-examination by any party.

(c) Written testimony.

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

(2) Cross-examination of Preparer of Application. The person responsible for preparation of the application or his subordinates shall be available for cross-examination by any party. Failure to comply with this section may result in dismissal of an application.

(3) Cross-examination of Preparer of Agency Report. The person responsible for the preparation of the Agency report or his subordinates shall be available for cross-examination by any party.

(d) Rules of Evidence

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

(2) Official Notice. The hearing examiner may take notice of judicially cognizable facts and, in addition, may take notice of technical or scientific facts within his specialized knowledge. Where final determination rests

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

(3) Standard of Proof. The burden of proving any contested issue of fact in a proceeding shall be substantial evidence.

(e) Transcript.

(1) Record. A verbatim record of the hearing shall be taken by court reporter or by recording equipment. A court reporter shall be used if demanded by any party. Unless the Agency agrees to bear the expense of the court reporter, such expense shall be paid by the party demanding the reporter.

(2) Cost. If a transcript is requested, the Agency may require the requesting party to pay the reasonable cost of preparing the transcript.

(f) Disruption of Hearing.

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

(2) Interference. Pursuant to and in accordance with provisions of Minn. Stat. § 624.72 (1974), no person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere with the conduct of the hearing.

EA 515. PROPOSED FINDINGS AND BRIEFS

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

EA 516. REPORT OF THE HEARING EXAMINER

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

EA 517. COMMENTS AND EXCEPTIONS

Within 10 days following receipt of the hearing examiner's report, any party may file written comments on or exceptions to the findings and recommendation of the hearing examiner. Such comments or exceptions shall be served upon all parties.

EA 518. THE RECORD

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

(a) all pleadings, motions and intermediate rulings;

(b) the pre-hearing order of the hearing examiner, if any;

(c) all evidence received or considered;

(d) a statement of matters officially noticed;

(e) questions and offers of proof, objections and rulings thereon;

(f) proposed findings and briefs in support thereof;

(g) the report of the hearing examiner;

(h) all comments and exceptions and briefs in support thereof;

(i) all memoranda or data other than advice of legal counsel submitted to the hearing examiner by the Agency staff or any person in connection with the proceeding.

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

EA 519. DECISION OF THE DIRECTOR

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

EA 520. REHEARING

(a) Director's Right to Reconsider. The director may, upon request and good cause shown, or on his own motion, reconsider a final decision.

(b) Obtaining a Rehearing.

(1) Petition for Rehearing. Within 30 days of the issuance of the director's decision, any party to the matter may request a rehearing by filing a Petition for Rehearing. Such petition shall contain:

(i) the name and address of the petitioners;

(ii) the Agency designation for the matter; and

(iii) the reasons for the petition.

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

(c) Notice of Rehearing. Notice of rehearing shall be served on all parties and published in the same manner prescribed for notice of hearing.

(d) Rehearing Procedure. A rehearing in a matter shall be conducted in the same manner prescribed for a hearing.

(e) Decision After Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

MINNESOTA ENERGY AGENCY PROPOSED RULES
GOVERNING CONTENTS OF APPLICATIONS
FOR CERTIFICATE OF NEED AND CRITERIA
FOR ASSESSMENT OF NEED FOR LARGE ELECTRIC
GENERATING FACILITIES AND LARGE HIGH
VOLTAGE TRANSMISSION LINES

Chapter 6
EA 601 - 637

EA 601. DEFINITIONS.

(a) "Adjusted Net Demand" means system demand, minus firm purchases, plus firm sales;

(b) "Agency" means the Minnesota Energy Agency;

(c) "Annual Adjusted Net Demand" means annual system demand, minus firm purchases, plus firm sales;

(d) "Annual Electrical Consumption" means sales of kilowatt hours of electricity to ultimate consumers over a twelve-month period beginning January 1st and ending December 31st of the forecast year;

(e) "Annual Plant Efficiency" means the ratio of the electrical energy leaving a power plant to the fuel energy used to produce that amount of electricity expressed as a percentage;

(f) "Annual System Demand" means the highest system demand occurring during the twelve-month period ending April 30th of the forecast year;

(g) "Director" means the director of the Minnesota Energy Agency;

(h) "Firm Purchases" and "Firm Sales" means the firm amount power to be purchased or sold, as the case may be, pursuant to the terms of a peaking power, a short term power, or a continuous power transaction;

(i) "Forecast Years" means the 26 calendar years consisting of the calendar year the application is filed with the agency, the ten previous calendar years, and the fifteen subsequent calendar years;

(j) "Large Electric Generating Facility (LEGF)" means any electric power generation plant or combination of plants at a single site and associated facilities designed for or

capable of operation at a combined capacity of 50,000 kilowatts or more, including, but not limited to fossil fuel, nuclear fuel, pumped storage and hydro-electric plants;

(k) "Large High Voltage Transmission Line (LHVTL)" means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more having more than 100 miles of its length in Minnesota. Associated facilities shall include, but not be limited to, insulators, towers, and substations and terminals operating at a nominal voltage of 200 kilovolts or more;

(l) "Load Center" means that portion or portions of a utility's system where electrical energy demand is concentrated;

(m) "Load Factor" means the ratio of the average load in kilowatts supplied during a designated period to the maximum load in kilowatts that was supplied during that designated period;

(n) "Minnesota Service Area" means that portion of a utility's system lying within Minnesota;

(o) "Net Generation Capacity" means the total amount of kilowatts, less station use, that all the generation facilities of a system could normally supply simultaneously to itself and to inter-connected systems at the time of its maximum system demand;

(p) "Net Reserve Capacity Obligation" means the annual adjusted net demand multiplied by the percent reserve capacity requirement;

(q) "Participation Power" means power and energy which is sold from a specific generating unit or units for a period of six or more months on a continuously available basis (except when such unit or units are temporarily out of service for maintenance during which time the delivery of energy from other generating units is at the seller's option);

(r) "Participation Purchases" and "Participation Sales" means

purchases and sales under a participation power agreement or a seasonal participation power agreement;

(s) "Peak Demand" means the highest kilowatt demand during a designated period recorded on a one hour integrated reading basis;

(t) "Seasonal Adjusted Net Demand" means seasonal system demand, minus firm purchases, plus firm sales;

(u) "Seasonal Participation Power" means participation power sold and bought on a seasonal (summer or winter) basis;

(v) "Seasonal System Demand" means the maximum system demand on the applicant's system which occurs or is expected to occur in any normal six summer months or six winter months;

(w) "Summer Months" means the period from May 1st through October 31st; "Winter Months" means the period from November 1st through April 30th;

(x) System" means the geographical area where a utility's ultimate electrical consumers are located;

(y) "System Demand" means the number of kilowatts which is equal to the kilowatt hours required in any clock hour, attributable to energy required by the system during such hour for supply of firm energy to ultimate consumers, including system losses, and also including any transmission losses occurring on other systems and supplied by the system for transmission of firm energy, but excluding generating station uses and excluding transmission losses charged to another system; and

(z) "Utility" means any entity engaged in the generation, transmission or distribution of electrical energy, including but not limited to a private investor-owned utility or a public or municipally-owned utility.

EA 611. CRITERIA FOR ASSESSMENT OF NEED

(a) Level of Reliability. An application shall be granted if it is determined that the probable result of denial of the application will be an unacceptable level of reliability of electric service to ultimate consumers in Minnesota or in

neighboring states. In examining the effect of denial of an application, the following factors shall be considered:

(1) the future demand for electricity in the applicant's system, including:

(i) the accuracy of the applicant's forecast of demand;

(ii) the effect of conservation programs or other state and federal programs on future demand;

(2) the ability of current facilities and planned facilities not requiring a certificate of need to meet the future demand for electricity;

(3) alternative ways of meeting the demand;

(4) the methods used to determine the applicant's system reserve margin; and

(5) the appropriateness of the size, type, and the timing of the proposed facility;

(b) Socially Beneficial Uses. An application shall also be granted if a determination is made that the socially beneficial uses of the output of the proposed facility, including its uses to protect or enhance environmental quality, are deemed significant to justify the need for the facility. In making this determination, the following factors shall be considered:

(1) the effect of promotional activities in giving rise to demand for the proposed facility;

(2) the effects of the facility in inducing further developments; and

(3) the policies, rules and regulations of other state and federal agencies and local governments.

EA 621. GENERAL PROVISIONS.

(a) Applicability.

(1) Large Electric Generating Facilities. Any applicant for a certificate of need for a LEGF shall provide all information required by EA 631 - 637 for its system.

(2) High Voltage Transmission Lines. Any applicant for a certificate of need for a LHVTL shall provide information as follows:

(i) if the proposed LHVTL is designed primarily to bring electric power from a generating facility or a system outside of Minnesota to the applicant's distribution network, all the information required by EA 631 - 637 shall be provided for the applicant's system;

(ii) if the proposed LHVTL is designed primarily to deliver electric power from one or more of the applicant's generating facilities or its distribution network in Minnesota to a load center in the applicant's system, all information required by EA 631 - 637 shall be provided for the applicant's system or service area; provided, however, that the information required by EA 632 and 633 shall also be provided for the load center which the proposed LHVTL will serve; or

(iii) if the proposed LHVTL will connect one system to another for the purpose of power sharing or reducing system reserve requirements, all information required by EA 631 - 637 shall be provided for both systems.

(3) Joint Ownership. If the proposed LEGF or LHVTL for which a certificate of need is sought will be owned jointly by two or more utilities or by a pool, all information required by EA 631 - 637 shall be provided for the system or service area of each joint owner and for the commonly owned system.

(b) Estimates. When recorded data is not available, or when the applicant does not use the required data in preparing its own forecast, the applicant shall use an estimate and indicate in the forecast documentation section (EA 633 (b)) the procedure(s) used in deriving the estimate.

(c) Fees. The fee for processing an application shall be:

(1) $10,000 plus $50 for each megawatt of plant capacity for LEGF's; or

(2) $10,000 plus $40 per kilovolt of rated capacity for LHVTL's;

plus such additional fees as are reasonably necessary for completion of the evaluation of the need for the proposed facility. In no event shall the total fees required of any applicant exceed $50,000. Twenty-five percent of the set fee shall accompany the application, and the balance shall be payable in three equal installments within 45, 90 and 135 days after submission of an application. The applicant shall be notified when its application is acted on by the director of any additional fees and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized document showing the necessity for the additional fees assessed.

EA 631. CONTENTS OF APPLICATION. Every application for a certificate of need for a large electric generating facility or a large high voltage transmission line shall substantially conform to the requirements of EA 632 - 637 subject to the conditions stated in EA 621.

EA 632. NEED SUMMARY. Each application shall contain a summary of the major factors which justify the need for the proposed facility. The summary shall not exceed 15 pages in length, including text, tables, graphs and figures.

EA 633. DESCRIPTION OF PROPOSED LARGE ELECTRIC GENERATING FACILITY. Each application for a proposed LEGF shall include the following information:

(a) the type of facility (i.e. base load or peaking);

(b) a description of the generating capacity of the facility, including a discussion of the effect of economies of scale on facility size and timing;

(c) the type of fuel to be used, including:

(1) the reason for the choice of fuel;

(2) a projection of the availability of this fuel type over the projected life of the facility;

(3) alternate fuels, if any;

(d) the anticipated annual plant efficiency;

(e) a discussion of the availabiilty of alternatives to the facility, including but not limited to:

(1) purchased power;

(2) increased efficiency of existing facilities;

(f) a map (of appropriate scale) showing the applicant's system; and

(g) such other information about the facility as may be relevant to determination of need.

EA 634. DESCRIPTION OF PROPOSED LARGE HIGH VOLTAGE TRANSMISSION LINE. Each application for a proposed LHVTL shall include the following information:

(a) a discussion of the type and general location of the proposed line, including:

(1) the design voltage;

(2) the design power capability;

(3) the expected losses at the design voltage and at the design current in the length of the transmission line and at the terminals or substations;

(4) the approximate length of the proposed transmission line and the portion of that length in Minnesota; and

(5) the approximate location of DC terminals or AC substations (this information shall be shown on a map of appropriate scale);

(b) a discussion of the availability of alternatives to the facility, including but not limited to:

(1) new generation; and

(2) upgrading of existing transmission lines or existing generating facilities;

(c) a map (of appropriate scale) showing the applicant's system or load center to be served by the proposed LHVTL; and

(d) such other information about the facility as may be relevant to determination of need.

EA 635. PEAK DEMAND AND ANNUAL ELECTRICAL CONSUMPTION FORECAST.

(a) Scope. Each application shall contain pertinent data

concerning peak demand and annual electrical consumption within the applicant's service area and system, except as provided in EA 621 (a), including but not limited to the data requested in subsection (b).

(b) Content of Forecast. For each forecast year, the following data shall be provided:

(1) when the applicant's service area includes areas other than Minnesota, annual electrical consumption by ultimate consumers within the applicant's Minnesota service area;

(2) annual electrical consumption by ultimate consumers within the applicant's system in the following categories:

(i) farm, excluding irrigation and drainage pumping (For reporting purposes, any tract of land used primarily for agricultural purposes shall be considered farm land);

(ii) irrigation and drainage pumping;

(iii) non-farm residential (When electricity is supplied through a single meter for both residential and commercial uses, it shall be reported according to its principal use. Apartment buildings shall be reported as residential even if not separately metered);

(iv) commercial (This category shall include wholesale and retail trade; communication industries; public and private office buildings, banks, dormitories, insurance, real estate and rental agencies; hotels and motels; personal business and auto repair services; medical and educational facilities; recreational, social, religious, and amusement facilities; governmental units, excluding military bases; warehouses (other than manufacturer owned); electric, gas, water and water pumping, excluding water pumping for irrigation, and other utilities);

(v) mining;

(vi) industrial (This category shall include

all manufacturing industries, construction operations and petroleum refineries);

(vii) street and highway lighting;

(viii) electrified transportation (This category shall include energy supplied for the propulsion of vehicles, but shall not include energy supplied for office buildings, depots, signal lights or other associated facilities which shall be reported as commercial or industrial);

(ix) other (This category shall include municipal water pumping facilities, oil and gas pipeline pumping facilities, military camps and bases, and all other consumers not reported in categories (i) through (viii); and

(x) the sum of categories (i) through (ix);

(3) the demand for power by ultimate consumers in the applicant's system for each of the categories listed in subsection (2) at the time of the applicant's system peak demand;

(4) the applicant's system peak demand by month;

(5) the applicant's monthly average system daily load factor;

(6) the applicant's monthly system weekday load factor; and

(7) the applicant's monthly average system weekend load factor.

(c) Forecast Documentation.

(1) Forecast Methodology. Each applicant may use whatever forecast methodology yields the most useful results for its system. However, the applicant shall detail the forecast methodology employed to obtain the forecasts provided under section (b), including:

(i) the overall methodological framework which is used;

(ii) the specific analytical techniques which are used, their purpose, and the component(s) of the forecast to which they have been applied;

(iii) the manner in which these specific techniques are related in producing the forecast;

(iv) where statistical techniques have been used:

1. the purpose of the technique;

2. typical computations (e.g., computer printouts, formulas used), specifying variables and data; and

3. the results of appropriate statistical tests;

(v) forecast confidence levels and ranges of accuracy for annual peak demand and energy demand;

(vi) a brief analysis of the methodology used, including:

1. its strengths and weaknesses;

2. its suitability to the system;

3. cost consideration;

4. data requirements;

5. past accuracy; and

6. other factors considered significant by the applicant;

(vii) an explanation of any discrepancies which appear between the forecasts presented in the application and the forecasts submitted to the agency under EA 206 or in the previous certificate of need proceedings.

(2) Data Base for Forecasts. The applicant shall discuss the data base used in arriving at the forecast presented in his application, including:

(i) a complete list of all data sets used in making the forecast, including a brief description of each data set and an explanation of how each was obtained, (e.g., monthly observations, billing data, consumer survey, etc.) or a citation to the source (e.g., population projection from the state demographer's office);

(ii) a clear identification of any adjustments made to raw data in order to adapt them for use in forecasts, including:

1. the nature of the adjustment;
2. the reason for the adjustment; and
3. the magnitude of the adjustment;

The applicant shall provide to the director or the hearing officer on demand copies of all data sets used in making the forecasts, including both raw and adjusted data, input and output data.

(3) Assumptions and Special Information.

(i) Discussion. The applicant shall discuss each essential assumption made in preparing the forecast, including:

1. the need for the assumption;
2. the nature of the assumption; and
3. the sensitivity of forecast results to variations in the essential assumptions;

(ii) Subject of Assumption. The applicant shall discuss the assumptions made regarding:

1. the availability of alternate sources of energy;
2. the expected conversion from other fuels to electricity or vice-versa;
3. future prices of electricity for customers in the applicant's system and the effect that such price changes will likely have on the applicant's system demand;
4. the assumptions made in arriving at any data requested in Section (b) which is not available historically or not generated by the applicant in preparing his own internal forecast;

5. the effect of existing energy conservation programs under federal or state legislation on long term electrical demand; and

6. any other factor considered by the applicant in preparing the forecast.

(4) Coordination of Forecasts with Other Systems.

The applicant shall provide:

(i) a description of the extent to which the applicant coordinates its load forecasts with those of other systems, such as neighboring systems, associate systems in a power pool, or coordinating organization; and

(ii) a description of the manner in which such forecasts are coordinated, and any problems experienced in efforts to coordinate load forecasts.

EA 636. SYSTEM CAPACITY. The applicant shall describe the ability of its existing system to meet the demand for electric energy forecast in EA 635 and the extent to which the proposed facility will increase this capability. In preparing this description, the applicant shall present the following information:

(a) Power Planning Programs. A brief discussion of power planning programs, including criteria, applied to the applicant's system and to the power pool or area within which the applicant's planning studies are based;

(b) Firm Purchases and Firm Sales. The applicant's firm purchases and firm sales for each utility involved in each transaction for each of the forecast years;

(c) Participation Purchases and Participation Sales. The applicant's participation purchases and participation sales for each utility involved in each transaction for each of the forecast years;

(d) Load and Generation Capacity Data. The information presented in this subsection shall not include any purchases, sales or generation capability which are contingent on a certificate of need which has not yet been issued. Subject to this constraint the following information shall be provided for each of the reporting years:

(1) Seasonal System Demand;

(2) Annual System Demand;

(3) Total Firm Purchases;

(4) Total Firm Sales;

(5) Seasonal Adjusted Net Demand (1 - 3 + 4);

(6) Annual Adjusted Net Demand (2 - 3 + 4);

(7) Net Generating Capacity;

(8) Total Participation Purchases;

(9) Total Participation Sales;

(10) Adjusted Net Capability (7 + 9 - 9);

(11) Net Reserve Capacity Obligation;

(12) Total Firm Capacity Obligation; and

(13) Surplus or Deficit (-) Capacity (10 - 12);

(e) Load Capacity and Reserve as Projected with the Proposed Facility in Operation. For each of the fifteen years subsequent to the filing of the application, the information requested in section (d) shall be provided, including purchases, sales and generating capability contingent on the proposed facility;

(f) Load Capacity and Reserve as Projected. For each of the fifteen years subsequent to the filing of the application the information requested in section (d) shall be provided including purchases, sales, and generating capacity associated with all new facilities proposed by the applicant;

(g) Proposed Capacity Additions and Proposed Capacity Retirements. For each of the fifteen years subsequent to the filing of the application, a list of proposed additions and retirements in net generating capability shall be provided. If any addition is expected to require a certificate of need, the probable date of application shall also be given;

(h) Load, Capacity Profile. For the previous calendar year, the current year, the first full calendar year before the proposed facility is expected to be in operation and the first full calendar year of operation of the proposed facility, a

graph of monthly adjusted net demand shall be provided. The applicant shall on each of these graphs, also plot the sum of monthly adjusted net demand and actual, planned, or estimated maintenance outages of generation and transmission facilities and shall plot on the same graphs the adjusted net capability; and

(i) Reserve Requirements. The applicant shall describe its method of determining system reserve margins, including a discussion of the probability of forced outages of generating units, deviation from load forecasts, scheduled maintenance outages of generation and transmission facilities, power exchange arrangements as they affect reserve requirements, and transfer capabilities.

EA 637. CONSEQUENCES OF DELAY. The applicant shall present a discussion of anticipated consequences to its system, neighboring systems, and power pool should the proposed facility be delayed 1, 2, and 3 years or postponed indefinitely.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

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In the matter of the Proposed Adoption by the Minnesota Energy Agency of Rules and Regulations Governing Rules of Procedure (EA 500 - EA 520)

and

Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and for Large High Voltage Transmission Lines (EA 601 - EA 637)

APPOINTMENT OF HEARING OFFICER

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I, Philip W. Getts, by the power vested in me as Acting Director of the Minnesota Energy Agency, do hereby appoint William F. Brooks, Jr., Esq., Midland Bank Building, Minneapolis, Minnesota, as a Hearing Officer for the purpose of convening and holding a hearing pursuant to a notice thereof issued on the 30th day of June, 1975, and preparing findings, conclusions, and the recommended order thereon.

Signed this 29TH day of July, 1975.

MINNESOTA ENERGY AGENCY

By _____
Philip W. Getts
Acting Director

AFFIDAVIT OF ACQUISITION
OF MAILING LIST

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules and Regulations Governing Rules of Procedure (EA 500-521)

and

Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and for Large High Voltage Transmission Lines (EA 540-543)

JULIE CLOSE, being first duly sworn upon oath, desposes and says:

1. That she is a Fuel Allocation Officer in the Minnesota Energy Agency for the State of Minnesota.

2. That on the 20th day of June, 1975, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minnesota Statute 15.0412.

3. That on the 20th day of June, 1975, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Julie Close
JULIE CLOSE

Subscribed and sworn to before me
This 20th day of June, 1975.

Mildred G. Norling
Mildred G. Norling, Notary Public
in and for Hennepin County, Minnesota.
My commission expires February 12, 1976.

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

CERTIFICATE

In the matter of the Proposed Adoption by the Minnesota Energy Agency of Rules and Regulations Governing Rules of Procedure (EA 500-521)

and

Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and for Large High Voltage Transmission Lines (EA 540-543)

I hereby certify that the attached 424 labels & 1 sheet constitute the complete list of persons, associations, and other interested groups who as of 3:45 o'clock P.M., this 20th day of June, 1975, have requested pursuant to M. S. 1974, Stat. 15.0421, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Joan Anderson Growe
JOAN GROWE
Secretary of State
State of Minnesota

BY Ceil Dion

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

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In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules and Regulations Governing Rules of Procedure (EA 500-520)

and

Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and for Large High Voltage Transmission Lines (EA 601-637)

AFFIDAVIT

OF MAILING

- - - - - - - - - - - - - - - - - -

Richard A. Wallen, BEING FIRST DULY SWORN, deposes and says:

That on the 30th day of June, 1975, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Richard A. Wallen

Subscribed and sworn to before me this 30th day of June, 1975.

Mildred G. Norling

Mildred G. Norling, Notary Public in and for Hennepin County, Minnesota. My commission expires February 12, 1976.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

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In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules and Regulations Governing Rules of Procedure (EA 500-520)

and

Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and for Large High Voltage Transmission Lines (EA 601-638)

STATEMENT OF NEED

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The above-captioned rules have been adopted by the Minnesota Energy Agency in partial fulfillment of its responsibilities under Minn. Stat. § 116H.13 (1974). The Legislature has determined that no large energy facility shall be constructed in this state without the Agency having first certified a need therefor. The rules of procedure provide that a fair procedure will be uniformly applied to all applications for Certificates of Need. The statute requires that each determination be made within six months of the filing thereof. The procedure provided by the rules allows each applicant maximum opportunity to support its assertion of need for the proposed facility by application, testimony and documentation within the time limit imposed.

Rules EA 601-638 express the criteria which shall be uniformly applied in the determination of need for proposed large energy facilities. The rules also specify the data which shall be supplied by each applicant for a Certificate of Need. Both the procedure and the substantive rules are needed to enable the Agency to accurately assess the need for large energy facilities in Minnesota.

Dated: September 16, 1975

MINNESOTA ENERGY AGENCY

By _____
JOHN P. MILLHONE
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

COUNTY OF RAMSEY

- - - - - - - - - - - - - - - - - - - -

In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules and Regulations Governing Rules of Procedure (EA 500-520)

and

FINDINGS OF FACT

Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and for Large High Voltage Transmission Lines (EA 601-638)

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The above-entitled matter came on for hearing before William F. Brooks, Jr., Hearing Examiner, on the 5th day of August, 1975, in Room D, 5th floor of the Veterans Building, St. Paul, Minnesota, after due and proper notice pursuant to Minn. Stat. § 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose. The Agency presented its affirmative case for the proposed rules and all interested persons who appeared and requested an opportunity to be heard were heard by both oral and written testimony. Before the record was closed on August 25, 1975, additional material and supplemental submissions were received from interested parties, accepted into the record, and considered.

The Agency hereby approves and adopts the Findings of Fact, Conclusions and Recommendations of Hearing Examiner, except for his modifications of EA 500(c) and EA 621(c). The Agency's findings concerning those rules are fully expressed in findings 6 and 35 below. Having considered the hearing transcript,

written testimony, the Findings of Fact, Conclusions and Recommendations of Hearing Examiner, and upon all the records, files and proceedings herein, the Agency finds the following:

1. That the Director of the Minnesota Energy Agency is empowered, pursuant to Minn. Stat. § 116H.08(a) (1974), to adopt rules and regulations necessary to carry out the purposes of Minn. Stat. §§ 116H.01 to 116H.15 (1974), as amended.

2. That the rules provided for herein were proposed pursuant to the authority vested in the Director of the Minnesota Energy Agency by the section cited above.

3. That the proposed rules and regulations were adopted pursuant to the Administrative Procedure Act, Minn. Stat. ch. 15.

WITH RESPECT TO RULES OF PROCEDURE GOVERNING CERTIFICATE OF NEED PROGRAM (EA 500-520).

4. That EA 500(a) states the purposes for EA 501-520, relates those rules to Minn. Stat. ch. 116H, and is demonstrated on the record as a whole to be both needed and reasonable.

5. That EA 500(b) is mandated by Minn. Stat. § 116H.13, subd. 2 and, as amended in response to testimony at the hearing, contains a necessary and reasonable provision for the situation in which an application for corridor compatibility is pending before the Minnesota Environmental Quality Council.

6. That EA 500(c), as proposed by the Hearing Examiner and modified by the Agency is a reasonable and needed provision for the prevention of great time delay and resultant expense to persons who have applications pending before the Environmental Quality Council for corridor compatibility or who have received a corridor designation and have not yet filed for a construction permit. This rule assures that the prior assertions and assurances by the Minnesota Energy Agency upon which applicants have heretofore relied will be effectuated, and insures that fundamental fairness will be accorded to those persons presently

in the process of seeking site approval for the large energy facilities with which these rules are concerned.

It is further found that the Agency modification was needed to ensure that the intent of the Hearing Examiner is realized. As stated by the Hearing Examiner, EA 500(c) included terminology inconsistent with that used by the Environmental Quality Council in its Rules and Regulations and further was inconsistent with his intended result. The Agency's stated version corrects the terminology and conforms the language to the intended result.

7. That the terms defined in EA 501 are necessary to the effectiveness of the rules and that the definitions are reasonable, as modified. The change in EA 501(b) from "utility or utilities" to "person or persons" was necessary to extend the rule to all those who may in the future become applicants for a Certificate of Need.

8. That the procedural requirements for filing an application for Certificate of Need, as set forth in EA 502, are both needed and reasonable. The revision of the phrase in EA 502(a) from "an application for a permit for transmission line construction" to "an application for a transmission line corridor designation" was necessary to avoid an unintended result, i.e. that the siting process could be commenced prior to the Certificate of Need process. It is further found that no emergency certification procedures are necessary because the normal Certificate of Need process requires less time than the other processes necessary to the construction of a large electric generating facility or a large high voltage transmission line and because applicants can commence pursuit of emergency siting approval immediately after applying for Certificate of Need.

9. That EA 503 states provisions reasonable and necessary to the function of the hearing examiner in the Certificate of Need process, and that the EA 503(e) provisions for forcing the examination of the Hearing Examiner's qualifications early in the proceedings will lessen the probability of a disqualification later on in the proceedings which would result in a great loss of time and energy.

10. That the provisions of EA 504 are reasonable and necessary to expeditious processing of applications consonant with due process. EA 504(b) provides for the widest possible reasonable distribution of hearing notice throughout the state of Minnesota. EA 504(d) provides that the Agency may issue a report on its evaluation of the application, but that if it so elects, it shall be deemed a party to the proceeding.

11. That EA 505 conforms to statutory mandate by requiring that each state agency authorized to issue permits for siting, construction or operation of large energy facilities present its position regarding the need for the facility at the hearing and that any such agency may become a party to the proceeding by filing a notice of intervention.

12. That the EA 506 provisions for intervention by notice or petition are reasonable and necessary. The added provision for discretionary granting of late filing of notices of or petitions for intervention covers unforeseeable exigencies.

13. That EA 507 provides reasonable and necessary requirements for the identity, representation, role, and consolidation of parties in the interest of orderliness and efficiency without prejudice to any party.

14. That EA 508 makes reasonable and necessary provision for the consolidation of proceedings (to prevent duplication of effort or prejudice to parties) by the director upon the Hearing Examiner's recommendation.

15. That EA 509 makes a reasonable and necessary provision for pre-hearing conference to make hearings more efficient and orderly with a short time period between the pre-trial order and the hearing.

16. That EA 510 makes reasonable and necessary provision for motion practice in the Certificate of Need proceeding and that the rule reflects standard administrative law procedures.

17. That EA 511 makes reasonable and necessary provision for the service of Certificate of Need proceedings documents, and that those provisions represent standard administrative law procedures.

18. That the pre-hearing discovery provisions of EA 512 reflect standard administrative law procedures and are needed and reasonable to provide a deadline for response to pre-discovery requests for information.

19. That EA 513 makes a reasonable and necessary provision for the Hearing Examiner to obtain additional information from the applicant or any other party, which persons shall be subject to a penalty for failure to comply with a proper order for additional information.

20. That EA 514(a) makes reasonable and necessary provisions for the conduct of the hearing.

21. That EA 514(b) makes reasonable and necessary provisions regarding oral testimony and the cross-examination of witnesses.

22. That EA 514(c) makes reasonable and necessary provision for the submission of written testimony and the cross-examination of submitters of written statements, preparers of applications, preparers of the agency evaluation report, and submitters of statements or information after the close of the hearing.

23. That EA 514(d) provides reasonable rules of evidence for admitting evidence and taking official notice of facts, consistent with standard administrative law procedures.

24. That EA 514(e) makes reasonable and necessary provisions for the recording and transcription of hearings and for the imposition of the costs for the preparation thereof.

25. That EA 514(f) makes necessary provisions for the minimization of hearing disruptions.

26. That EA 515 makes a reasonable and necessary provision requiring parties to summarize their positions for the Hearing Examiner.

27. That EA 516 provides a reasonable and necessary deadline for the submission of the Hearing Examiner's recommendations to the Director.

28. That EA 517 makes a reasonable and necessary provision allowing parties to comment on the Hearing Examiner's recommendations.

29. That EA 518 provides reasonable and necessary requirements for a complete record making available to the director all information relevant to the decision which must be made by him.

30. That EA 519 makes reasonable and necessary provision for the timing, form, contents, and distribution of the director's decision.

31. That EA 520 makes reasonable and necessary provision for a rehearing in the case of discovery of errors or because of improper procedures and clearly states that the director loses jurisdiction after 180 days, the period mandated by statute, and can thereafter no longer order a rehearing.

WITH RESPECT TO PROPOSED RULES GOVERNING APPLICATIONS FOR CERTIFICATE OF NEED AND CRITERIA FOR ASSESSMENT OF NEED (EA 601-638).

32. That EA 601 is demonstrated upon the record as a whole to include definitions which are both needed and reasonable. The definitions included are those which are widely used by utilities in Minnesota and throughout the country.

33. That EA 611 provides criteria for the assessment of need, as required by Minn. Stat. § 116H.13 subd. 1. The rule states the factors which shall be considered in determining whether the two major criteria are met.

Reliability is the major criteria because utilities plan new facilities to maintain or achieve a certain level of reliability. The determination of whether the level of reliability without the new facility would be acceptable to ultimate consumers of electricity is left to the hearing process. Applications may also be granted upon determination that socially beneficial uses of the output justify the need for the facility.

34. That EA 621 is demonstrated upon the whole record to be both needed and reasonable. Certain modifications for clarity and consistence were deemed necessary and were adopted. EA 621(a) introduces three classes of transmission lines to allow for the different informational requirements for those classes of lines. EA 621(b) allows the applicant to use estimates when actual data is not available.

35. That EA 621(c), in the form and with the content proposed by the Agency, is demonstrated upon the record as a whole to be both needed and reasonable. Statutory authority for the proposed fee schedule is contained in Minn. Stat. §§ 116H.13 subd. 6. That authority is sufficiently broad to permit the fee schedule proposed by the Agency and sets a limit of $50,000 for any one fee. The three criteria for setting fees are: 1) the size of the facility, 2) the difficulty of the assessment

of need, and 3) fairness and reason. It is found that the Agency's proposed fee schedule satisfies these criteria. The size of the proposed facility is reflected in the fee schedule. That size is a reasonable indicator of the complexity of the proceeding and the difficulty of the assessment of need. Because the fee schedule is related to facility size, it is related to the applicant's total cost of building the facility and, thus, is of uniform application to each applicant.

It is the Agency's understanding of legislative intent that the Certificate of Need program be self supporting. It is found that, if the lower fee schedule proposed by the Hearing Examiner is adopted, fee revenues would be reduced so that the Certificate of Need program could not be self-supporting. The fee schedule set by the Agency assures a reasonable probability that the expenses attributable to processing applications will be covered by the fees collected. Expenses necessitated by the Certificate of Need program which should be covered by fees are the following: manpower costs (including direct salary costs, fringe benefits, and allocated secretarial time), hearing costs (Hearing Examiner fees, court reporter fees, transcript costs, and hearing room cost), other direct expenses (these include supplies, copying, travel, phone, postage, office space, attorneys' fees, and any other equipment), and allocated indirect expenses (these include administrative time, computer time, and time spent by the Agency's Research Division allocated to the Certificate of Need program). The Agency's full explanation of these costs is found in its Supplemental Submission dated August 25, 1975 and in Appendix A incorporated therein.

It is further found that the fee schedule proposed by the Agency is more fair to the applicants. The cost of the initial proceedings will be significantly larger than the cost

of subsequent proceedings, however, all applicants will receive similar benefits and should therefore pay similar fees.

It is further found that the mandatory six-month review of fee schedules required by Minn. Stat. § 16A.128 insures that fees will not be excessive.

It is further found that the alternative of an initial low fee supplemented by such additional fees as are reasonably necessary to complete the evaluation of the need for each proposed facility would necessitate internal cost accounting which is beyond the Agency's capability in light of its manpower, appropriations, accounting procedures, and facilities.

It is further found that the recommendation of the Hearing Examiner does not adequately take into consideration the limitations placed upon the Agency in the handling of funds generated by fees. Fees for any application may not exceed $50,000 and all fees collected "shall be credited to the general fund of the state treasury." Minn. Stat. § 116H.13, subd. 6 (1974). The assertion by the Hearing Examiner that costs beyond the original application fee can be assessed to the applicant revealed a misconception of the actual flow of funds. Appropriation requests for the Certificate of Need program are based upon the Agency's estimated cost for processing applications known at the time of the request and upon the fees to be paid by the applicants. If processing costs exceed fees collected, the Agency can indeed assess additional fees up to a total of $50,000, however, because those fees go to the general fund the only source the Agency has to recoup excess costs incurred by it is using funds from other Agency programs and requesting and obtaining an additional appropriation from the legislature.

It is thus found that the Hearing Examiner's proposed modification of the fee schedule is based upon an undocumented statement that the initial fee is high and his unfounded assertion

that additional assessments will somehow compensate for additional Agency costs. Though the basis for his finding that EA 621(c) as proposed is not reasonable is not specified, it seems that it is based only upon the undocumented presentation by Mr. Seeley of Northern States Power Company on pages 26-32 of the hearing transcript. The finding was made in the face of a strong presentation by the Agency, which is the one party to the hearing in the best position to make the estimate of application processing costs. Neither the Northern States Power presentation nor the Hearing Officer's finding and modification were based upon supported anticipated actual costs nor upon an expressed realization of the fee fund flow mandated by statute.

36. That EA 631, requiring that each application conform to the requirement of these rules, is demonstrated upon the record as a whole to be both needed and reasonable.

37. That EA 632, requiring that each application include a summary section, intended to permit the reader of the application to quickly gain a broad understanding of the arguments presented by the applicant as to the need for the proposed facility, is demonstrated upon the record as a whole to be both needed and reasonable. It is further found that granting the Director authority to waive the maximum length of the summary, in his discretion, provides necessary and reasonable flexibility.

38. That EA 633 is demonstrated upon the record as a whole to be both needed and reasonable. The information required by EA 633 will assist in determining how the proposed facility will affect other fuel systems in Minnesota, how much fuel will be required by the facility, whether that facility represents an improvement over existing facilities, etc. Several suggestions related to environmental concerns made at the hearing were policy proposals which will be given future consideration

if experience so dictates.

39. That EA 634 is demonstrated upon the record as a whole to be both needed and reasonable as a request for the minimum amount of information concerning a proposed large high voltage transmission line which the Energy Agency feels is required in the assessment of need for that proposed facility.

40. That EA 635 is demonstrated upon the record as a whole to be both needed and reasonable. The information therein requested expands upon the information requested in other Agency rules and is necessary to the determination of need for a specific facility. Certain requested data are needed to help to determine the overall effect of conservation programs, load management programs and other programs that will affect one sector of the economy more than others. The data will also help the Agency ascertain how the various sectors of the economy contribute to the need for the facility. It is further found that as to certain data required in estimate form, the applicants are in the best position to make such estimates.

It is further found that the system peak demand information is necessary to aid in determining the need for new facilities because utilities design and build systems to meet system peak demand. To determine the effect of various conservation programs, load management programs, and other programs of the applicant's system peak demand, it is important to be able to determine how such programs affect the applicant's system peak demand.

It is further found that the provision permitting the Director to waive some or all of the information requested under EA 635(b)(3) is a necessary and reasonable provision for those circumstances where the applicant demonstrates undue difficulty in providing data requested.

It is further found that the forecast documentation required by EA 635(c) is necessary to examine the accuracy of demand forecast, how it was prepared, assumptions used in the preparation of the forecasts and data used in the preparation of the forecasts.

41. That EA 636 makes a reasonable and necessary requirement for information to provide the link between energy forecasts and need for proposed facilities. It is further found that the demands for information imposed by this section are reasonable and are necessary for the following purposes: to provide insight into the way the applicant plans for additional facilities, to understand the applicant's power pooling with other systems, to understand the applicant's ability to meet his projected forecasts without the proposed facility, to provide information on the applicant's ability to meet his projected forecasts assuming the proposed facility is completed, to understand how the applicant intends to meet his projected forecast, to understand how the proposed facility will tie into the applicant's existing system, and to understand how the applicant determines system reserve margins.

42. That EA 637 is demonstrated upon the record as a whole to be necessary and reasonable to help determine the appropriateness of the timing of the proposed facility.

43. That EA 638, submitted to the Agency at the hearing by an interested party, is demonstrated upon the record as a whole to be both needed and reasonable. It is reasonable to assume that applications denied will be modified and resubmitted, that changes in inservice data for large generation and transmission facilities will occur, that small additions and subtractions to generating plant capacity and transmission line length shall

occur, and that certain fuel types will not be compatible in certain proposed facilities. EA 638 provides for those modifications.

Dated: September 16, 1975.

MINNESOTA ~~ENERGY~~ AGENCY

By _____

JOHN P. MILLHONE
Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

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In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules and Regulations Governing Rules of Procedure (EA 500-520)

and

Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and for Large High Voltage Transmission Lines (EA 601-638)

ORDER ADOPTING RULES

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The above entitled matter came for hearing before the Minnesota Energy Agency on the 5th day of August, 1975, at 9:30 a.m., in Room D, 5th Floor, Veterans Service Building, Saint Paul, Minnesota, after proper notice required by Minnesota Statute 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria and having confirmed the need for the above captioned rules:

NOW, therefore, IT IS ORDERED that these rules identified as EA 500-520 and EA 601-638 are adopted this 16 day of September, 1975, pursuant to the authority vested in the Agency by Minn. Stat. § 116H.08 (a) (1974).

MINNESOTA ENERGY AGENCY

By _____
John P. Millhone
Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

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In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules and Regulations Governing Rules of Procedure (EA 500-520)

and

Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and for Large High Voltage Transmission Lines (EA 601-638)

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

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I, Special Assistant Attorney General Joan Swartz, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

JOAN SWARTZ
Special Assistant
Attorney General

Dated: September 16, 1975.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules and Regulations Governing Rules of Procedure (EA 500-520)

and

Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and for Large High Voltage Transmission Lines (EA 601-637)

FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION OF HEARING EXAMINER

The above-entitled matter came on for hearing before the undersigned Hearing Examiner on the fifth day of August, 1975, in Room D, Fifth Floor of the Veterans Building, Saint Paul, Minnesota after due and proper notice pursuant to Minnesota Statutes 1974, Section 15.0412.

Present to present the Agency's affirmative case for the proposed rules were Dr. Richard Wallen, Chief Energy Facility Analyst and Manager of the Certificate of Need Program, and Ms. Joan K. Swartz, Special Assistant Attorney General.

All interested persons who appeared and requested an opportunity to be heard were heard, and both oral and written testimony was received. Subsequent to the close of the hearing upon oral testimony and before the record was closed on August 25, 1975, additional material was received from interested parties, accepted into the record, and considered.

Having heard and considered the oral and written testimony, including the arguments of the Agency and the parties, and upon all the records, files and proceedings herein, the undersigned Hearing Examiner makes the following:

FINDINGS OF FACT

WITH RESPECT TO HEARING PROCEDURES

1. That the Director of the Minnesota Energy Agency is empowered, pursuant to Minnesota Statutes 1974, Section 116H.08, to carry out the purposes of Minnesota Statutes 1974, Sections 116H.01 through 116H.15, as amended.

2. That the proposed rules which are the subject of the hearing fall within the grant of rule-making power to the Director cited supra.

3. That the Agency properly issued its order for hearing on the proposed rules on June 30, 1975 (see Agency Exhibit 1).

4. That the Agency gave due and proper notice of the hearing pursuant to Minnesota Statutes 1974, Section 15.0412 (see Agency Exhibits 2, 3, 4, 5, and 6), and gave further public notice through releases to the public press (T. 8).

WITH RESPECT TO PROPOSED RULES AND REGULATIONS GOVERNING RULES OF PROCEDURE (EA500-520)

5. That proposed rules 510, 511, 515, 516, 517, and 519 are demonstrated by the Agency's affirmative presentation, contained in its "Justification for the Proposed Rules of Procedure" (Agency Exhibit 10), hereinafter referred to as "Justification", and in its Supplemental Submission received by the Hearing Examiner, hereinafter referred to as "Supplemental Submission", and made a part of the record herein by him on August 25, 1975, to be both needed and reasonable. The proposed rules cited in this Finding were not opposed by any party who appeared at the hearing or submitted material within the time allowed therefor.

6. That proposed rule 500(a) is demonstrated on the record as a whole to be both needed and reasonable.

7. That proposed rule 500(b) is demonstrated on the record as a whole to be both needed and reasonable if modified as hereinafter set forth.

Upon the testimony adduced at the hearing, it is found that the proposed rule must be expanded to include the situation in which an application for corridor designation is pending before the Minnesota Environmental Quality Council, to correct an oversight in initial drafting.

Further, pending the close of the record, it was brought to the attention of the Hearing Examiner by the Minnesota Energy Agency that a strict interpretation of proposed rule 500(b) would, in certain instances, disadvantage present applicants for corridor permits because they would be unable to apply for a route permit (permit for transmission line construction) until a Certificate of Need is issued.

The Hearing Examiner therefore takes notice of prior testimony by the Minnesota Energy Agency before the Minnesota Environmental Quality Council, and at various power plant siting hearings, that the siting process should continue for all facilities in the process of being sited at the time these proposed rules are promulgated. To assure that the prior assertions and assurances by the Minnesota Energy Agency upon which applicants have relied will be effectuated, and to insure that fundamental fairness will be accorded to those applicants presently in the process of requesting permits, the Hearing Examiner further finds that proposed rule 500 should be expanded by the addition of the following paragraph:

> (c) Exception Any person who, as of the effective date of rules of criteria of assessment of need governing his facility, has pending before the Minnesota Environmental Quality Council, an application for a certificate of site compatibility, an application for corridor designation, or an application for a permit for transmission line construction, may pursue its application, and any subsequent applications required to obtain a construction permit for the facility, before the Council, but in any event, shall not begin construction of said facility until a Certificate of Need for said facility has been issued pursuant to these rules.

8. That proposed rule 501 is demonstrated on the record as a whole to be both needed and reasonable if modified as herein-

after set forth.

It is further found upon the evidence adduced at the hearing that in subdivision (b) thereof the words "utility" and "utilities" should be supplanted by the words "person" and "persons", in order to extend the rule to all those who may in the future become applicants for a Certificate of Need.

It is further found that the suggestion that rule 501(f) be amended to include size requirements is without merit in view of the Agency's stated position that the matter will be dealt with in the promulgation of rules with respect to coal terminals.

9. That proposed rule 502 is demonstrated on the record as a whole to be both needed and reasonable if modified as hereinafter set forth.

It is further found upon the evidence presented by the Agency that in paragraph (a) thereof the phrase "an application for a permit for transmission line construction" should read "an application for a transmission line corridor designation" in order to avoid a result not intended, i.e., that the siting process could be commenced prior to the Certificate of Need process.

With respect to rule 502, it is found that no emergency procedures are necessary in view of the interpretation of the process as a whole made by the Agency.

10. That rule 503 is both needed and reasonable, and further, that upon the evidence adduced, the Agency's proposal to expand paragraph (e) by the addition of the following language,

> "Unless the basis for the request for disqualification is misconduct on the part of the Hearing Examiner, any petition for disqualification shall be filed within 10 days after the appointment of the Hearing Examiner.",

is needed and reasonable.

11. In respect to rule 504:

a. That rule 504(a) is demonstrated on the record as a whole to be both needed and reasonable.

b. That rule 504(b) is demonstrated on the record as a whole to be both needed and reasonable.

Proposed rule 504(b) requires adequate notice to all parties who may be affected, including the officials of local municipalities that may have an interest, and further permits such additional notice as may seem appropriate in the interests of fundamental fairness. The questions raised during the hearing by the representative of the Minnesota Pollution Control Agency appear to be directed at policy which is not at issue in the instant proceeding.

c. That proposed rule 504(c) is demonstrated on the record as a whole to be both needed and reasonable.

It appears again that comments directed at this proposed rule were in the nature of policy suggestions and outside the purview of the hearing.

d. That proposed rule 504(d) is not demonstrated on the record as a whole to be both needed and reasonable.

It is further found that rule 504(d), if modified as follows to reflect the evidence adduced upon the record, is both needed and reasonable. Such modification would read as follows:

> (d) Agency Evaluation Immediately following receipt of an application, the Agency may evaluate the application and the need for the proposed facility and shall, if it so elects, within 60 days of receipt of the application, issue its report thereon. A copy of the report shall be served on all parties to the proceeding. The persons responsible for preparation of the report shall be available for examination regarding the report by parties to the proceeding. The Agency may become a party to the proceeding by filing a notice of intervention pursuant to EA 506(a), but in any event, shall be deemed a party if it has exercised its option to issue a report pursuant to this section.

12. That proposed rule 505 is demonstrated on the record as a whole to be both needed and reasonable.

13. That proposed rule 506 is demonstrated upon the record as a whole to be both needed and reasonable if modified as hereinafter set forth.

That such modification consists of granting to the Director discretion to waive the time limit for submission of a notice of intervention or petition to intervene. Appropriate language effectuating that modification is contained in Appendix A hereto.

14. That proposed rule 507 is demonstrated upon the record as a whole to be both needed and reasonable if modified as hereinafter set forth.

That such modification consists of providing authority to consolidate parties in the interest of orderliness and efficiency without prejudice to any party. Appropriate language effectuating that modification is contained in Appendix A hereto.

15. That proposed rule 508 is demonstrated upon the record as a whole to be both needed and reasonable if modified as hereinafter set forth.

That such modification consists of placing the authority for consolidation of proceedings in the hands of the Director upon the Hearing Examiner's recommendation. Appropriate language effectuating that modification is contained in Appendix A hereto.

16. That proposed rule 509 is demonstrated upon the record as a whole to be both needed and reasonable if modified as hereinafter set forth.

That such modification consists of shortening the time period between a pre-trial order and the hearing and removing the reference to rule 504(b), no longer pertinent in view of the findings with respect to that rule. Appropriate language effectuating the modification is contained in Appendix A hereto.

17. That proposed rule 512 is demonstrated on the record as a whole to be both needed and reasonable if modified as hereinafter set forth.

That such modification consists of providing a deadline for response to pre-discovery requests for information. Appropriate language effectuating such modification is contained in Appendix A hereto.

18. That proposed rule 513 is demonstrated upon the record as a whole to be both needed and reasonable if modified as hereinafter set forth.

That such modification consists of certain limitations upon materials which may be sought and imposition of a penalty upon a party other than an applicant who fails to comply with a proper order for additional information. Appropriate language effectuating such modification is contained in Appendix A hereto.

19. In respect to proposed rule 514:

a. That proposed rule 514(a) is demonstrated upon the record as a whole to be both needed and reasonable.

b. That proposed rule 514(b) is demonstrated upon the record as a whole to be both needed and reasonable.

c. That proposed rule 514(c) is demonstrated upon the record as a whole to be both needed and reasonable if modified as hereinafter set forth.

That such modification consists of assuring that some person or persons with actual knowledge of the preparation of the application and of any Agency report be available for cross-examination, and further requiring post-hearing material to be submitted on oath or affirmation. Appropriate language effectuating such modification is contained in Appendix A hereto.

It is further found that suggestions to broaden this rule to include additional environmental information and other substantive matters goes beyond the notice of hearing and cannot be considered.

d. That proposed rule 514(d) is demonstrated upon the record as a whole to be both needed and reasonable if modified as hereinafter set forth.

That such modification consists of the deletion from 514(d)(3) of any reference to weight of proof. The Agency did not

present any evidence other than its own assertion that the "substantial evidence rule" should obtain. Under the circumstances, the required weight of evidence should be left for judicial review if a dispute arises.

e. That proposed rule 514(e) is demonstrated upon the record as a whole to be both needed and reasonable. The changes urged upon the Agency during the hearing had certain merit from the applicant's point of view, but to adopt them would run the risk of endangering the rights of unknown future parties.

f. That the proposed rule 514(f) is demonstrated upon the record as a whole to be both needed and reasonable.

20. That proposed rule 518 is demonstrated upon the record as a whole to be both needed and reasonable, if modified as hereinafter set forth.

That such modification consists of deleting the phrase "other than the advice of legal counsel." Language effectuating such modification is contained in Appendix A hereto.

21. That proposed rule 520 is demonstrated upon the record as a whole to be both needed and reasonable, if modified as hereinafter set forth;

That such modification consists of the inclusion of language to clarify the fact that the Director loses jurisdiction after 180 days and can thereafter no longer order a rehearing. Language effectuating such modification is contained in Appendix A hereto.

WITH RESPECT TO PROPOSED RULES GOVERNING APPLICATIONS
FOR CERTIFICATE OF NEED AND CRITERIA FOR ASSESSMENT OF NEED
(EA601-638)

22. That proposed rule 601 is demonstrated upon the record as a whole to be both needed and reasonable, if modified as hereinafter set forth.

That such modification consists of adopting certain amendments to definitions that are based upon the suggestions of interested parties at the hearing and accepted in principle by the Agency. Language effectuating such modification is contained in Appendix A hereto. It is further found needed and reasonable to define "ultimate consumers" and such modification is also effectuated.

23. That rule 611 is demonstrated upon the record as a whole to be both needed andreasonable, if modified as hereinafter set forth.

That such modification consists of incorporating changes agreed upon at the hearing between the interested parties present and the Agency. Language effectuating such modifications is contained is Appendix A hereto. All materials submitted prior to the opening of the hearing and during the 20-day period following the close of the hearing were duly considered. To the extent that suggestions therein made are not incorporated in Appendix A, such suggestions are found not to be needed.

24. That proposed rule 621 is demonstrated upon the whole record to be both needed and reasonable, except as hereinafter set forth.

That certain modifications for clarity of language and consistent reference to other rules are necessary in rule 621(a)(2) and rule 621(a)(2)(i).

That in proposed rule 621(a)(2)(ii) the word "transmission" should be inserted in front of the phrase "network in Minnesota" to accomodate agreement between the parties reached at the hearing.

That proposed rule 621(c) is demonstrated upon the record as a whole to be needed but not reasonable.

The fee schedule proposed in rule 621(c) as presented to the hearing requires a high initial fee, although the Agency admittedly has the power, and intends, to assess additional costs beyond the original application fee, depending upon the work and costs involved in processing the application.

The statutory authority contained in Minn.Stats. 1974, Sect.116H.13 Subd. 6 appears to the Hearing Examiner to be sufficiently broad to permit the scheme set forth by the Agency, i.e., an initial fee followed by specific billings for additional costs associated with the application, the total not to exceed $50,000.

The Agency in its presentation and in its Supplemental Submission argued the difficulty of segregating additional costs, and directed attention to Minn.Stats.1974, Sect.16A.128 which requires a six-month review of fee schedules to assure that total fees approximate total funds expended.

In the view of the Hearing Examiner, the initial fee schedule proposed by the Agency should be reduced in half: that is, the fee accompanying the application should be $5,000 plus $25 for each megawatt of plant capacity for LEGF's and $5,000 plus $20 per kilovolt of rated capacity for LHVTL's. If this is done, the rule becomes reasonable. If experience dictates a higher initial fee, the mandatory six-month review will permit it to be raised. If a raise is not needed, then the first applicants under these rules will not be disadvantaged by paying more than a fair share. If actual costs exceed the initial filing fee, the Agency can, under its own proposal, assess the additional costs as additional fees up to a maximum of $50,000.

Language incorporating all the modifications and suggested changes discussed in this Finding No. 24 has been incorporated in

Appendix A. hereto. It is specifically found that rule 621 in its entirety, as set forth in Appendix A, is both needed and reasonable.

25. That proposed rule 631 is demonstrated upon the record as a whole to be both needed and reasonable.

26. That proposed rule 632 is demonstrated upon the record as a whole to be both needed and reasonable, if modified as hereinafter set forth.

That such modification consists of granting the Director discretionary authority to waive the maximum length of the subject summary. That modification accomodates agreement between the Agency and parties reached at the hearing. Language incorporating such modification is contained in Appendix A hereto.

27. That proposed rule 633, as redrafted, is demonstrated upon the record as a whole to be both needed and reasonable. The proposed rule was redrafted in form to accomodate suggestions made to the Agency at the hearing, which effectively broaden the definition of type. Language effectuating such modification has been included in Appendix A hereto.

The Hearing Examiner finds further that testimony by the Minnesota Pollution Control Agency with respect to proposed rule 633 falls in the policy area. That submission asked that certain environmental information be required of applicants. It is the view of the Hearing Examiner that this is a policy proposal upon which he cannot make factual findings. The ideas there expressed, therefore, are commended to the Minnesota Energy Agency for future consideration if experience so dictates.

28. That proposed rule 634, as modified, is demonstrated upon the record as a whole to be both needed and reasonable. The

modification consists of changing the word "discussion" to "description" in the first lines, respectively, of 634(a) and 634(b), as agreed upon at the hearing. Language effectuating such modification is contained in Appendix A hereto.

It should be noted that the comments of the Hearing Examiner with respect to Pollution Control Agency testimony on rule 633 apply similarly to its testimony on rule 634.

29. In respect to proposed rule 635:

a. That proposed rule 635(a) is demonstrated upon the record as a whole to be both needed and reasonable.

b. That proposed rule 635(b)(1) is demonstrated upon the record as a whole to be both needed and reasonable.

c. That proposed rule 635(b)(2) is demonstrated upon the record as a whole to be both needed and reasonable.

d. That proposed rule 635(b)(3) is demonstrated upon the record as a whole to be both needed and reasonable, if modified as hereinafter set forth.

e. That proposed rule 635(c) is demonstrated upon the record as a whole to be both needed and reasonable.

Discussion and objection to proposed rule 635 centered on those provisions contained in 635(b), subparagraphs 1, 2 and 3.

Upon hearing the arguments and reviewing the extensive materials submitted by the Agency and the parties, the Hearing Examiner has been convinced that the requirements of 635(b)(1) and 635 (b)(2) can be met without undue imposition or burden upon the applicant. The Agency has shown adequate need for the rule, provided that collection and submission of the data is not an unreasonable demand upon the applicant.

However, with respect to proposed rule 635(b)(3), despite the persuasive arguments of the Agency, the Hearing Examiner is not convinced that accurate data can be required of the applicant. The Agency recommendation to amend the proposed rule to call for an estimate goes far to alleviate that burden. However, in the view of the Hearing Examiner, it may not go far enough. The

actual difficulties that will be encountered will not be known until work is begun on constructing such an estimate. Therefore, the Hearing Examiner believes that an additional provision must be included to permit the Director to waive some or all of the information requested under rule 635(b)(3) if the applicant shows undue burden or difficulty in providing the estimate requested. Language effectuating the Agency recommendation for an estimate and the Examiner's proposal for discretionary power have been incorporated in Appendix A hereto.

30. That proposed rule 636 is demonstrated upon the record as a whole to be both needed and reasonable.

31. That proposed rule 736 is demonstrated upon the record as a whole to be both needed and reasonable.

32. That proposed rule 638, submitted to the Agency at the hearing by an interested party, is demonstrated upon the record as a whole to be both needed and reasonable. The Agency and all parties have agreed upon proposed rule 638. There were no objections to it. Language setting forth the proposal has been incorporated in Appendix A hereto.

CONCLUSIONS

1. The agency has documented its statutory authority to act in the area addressed by the proposed rules.

2. The agency has fulfilled all relevant substantive and procedural requirements of law or rule.

3. The agency has fulfilled all notice requirements with respect to any modifications herein before recommended by the Hearing Examiner.

4. The agency has demonstrated by an affirmative presentation of facts both the need for and the reasonableness of its proposed rules as modified and contained in Appendix A, attached hereto.

5. The agency is authorized to issue and adopt proposed rules EA500 through EA520 and EA601 through EA638, as modified, and all of which are attached hereto in Appendix A.

RECOMMENDATION

It is hereby recommended that proposed rules EA500 through EA520, and EA601 through EA638, as modified and set forth in Appendix A, attached hereto, be adopted.

Respectfully submitted,

William F. Brooks Jr

William F. Brooks, Jr.
Hearing Examiner

Dated this 13th day of
September, 1975.

JUSTIFICATION FOR THE PROPOSED RULES OF PROCEDURE GOVERNING CERTIFICATE OF NEED PROGRAM AND FOR THE PROPOSED RULES GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATE OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE ELECTRIC GENERATING FACILITIES AND LARGE HIGH VOLTAGE TRANSMISSION LINES

By Richard Wallen

The following outline contains the justification for the proposed rules issued by the Minnesota Energy Agency governing the Certificate of Need program and governing the contents of applications and the criteria for the assessment of need for electric generating facilities and transmission lines.

This justification is divided into three major portions; the first of which is a general discussion of why the proposed rules are necessary, the second is a section by section discussion of the proposed rules of procedure issued by the Agency, and the third is a section by section discussion of the proposed rules issued by the Agency governing criteria and the contents of applications.

OVERALL JUSTIFICATION

The authority of the Agency is based on Minnesota Statutes Chapter 116H (1974), as amended by Minn. Laws 1975, Chapter 170, which gives the Minnesota Energy Agency the exclusive prerogative of the determination of need for major energy facilities (Minnesota Stat. § 116H.07, 116H.13 (1974)). According to Section 116H.13, Subd. 1, the director is required, pursuant to Chapter 15 and Sections 116H.01 to 116H.15, as amended by Minn. Laws 1975, Chapter 170, to promulgate assessment of need criteria to be used in the determination of need for large energy facilities. The assessment of need criteria for electric generating facilities

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and electric transmission lines are to be promulgated no later than September 15, 1975. According to Section 116H.13, Subd. 2, on and after the effective date of the assessment of need criteria, no large energy facility can be sited or constructed in Minnesota, unless the director issues a Certificate of Need.

The proposed rules provide a specific implementation scheme for the general legislative framework. The Legislature mandated that the Energy Agency promulgate criteria to be used in the determination of need. Criteria are proposed that provide a uniform measuring stick for evaluating the need for new large transmission lines and new large electric generating facilities. The proposed rules of procedure are designed to provide a uniform and fair process to be used in evaluating the need for large energy facilities. These rules are written to enable the Energy Agency to comply with the statutory time limit of six months for the examination of need. The proposed rules also require an applicant for a Certificate of Need to present its arguments and supporting documentation toward the need for the facility in its application. The purpose of such an application, in part, is to allow for the maximum use of the statutory time limit.

JUSTIFICATION OF THE PROPOSED RULES OF PROCEDURE
GOVERNING CERTIFICATE OF NEED PROGRAM

Timetable Under Proposed Rules.

The proposed rules are written so as to insure that the Agency can comply with the strict statutory timetable of six months in processing an application for Certificate of Need. The rules of procedure and the resulting timetable were designed to give the Agency and the hearing examiner as much scheduling flexibility as possible while maintaining the statutory time limit. This flexibility is necessary because of the high probability that the Agency will be processing a number of applications at the same time. This is especially likely during the first few months after the promulgation of the rules and regulations pertaining to the criteria and application for Certificate of Need for electric generating facilities and transmission lines.

EA 500. Purpose and Applicability.

Paragraph (a) relates the proposed rules to Minnesota Statutes, Chapter 116H (1974). Paragraph (b) reflects the Minnesota Energy Agency's policy that power plant siting procedure should not be stopped pending promulgation of the rules and regulations pertaining to Certificate of Need. The Agency believes that such a suspension could achieve little gain to Minnesota and, more importantly, might harm Minnesota's economy.

EA 501. Definitions.

Definitions included in these proposed rules follow from the definitions given in Minnesota Statute 116H.02 (1974), as amended by Minnesota Laws 1975, Chapter 170.

EA 502. Application for Certificate of Need.

This section describes the procedural requirements for filing an application.

EA 503. Hearing Examiner.

This section states what the Energy Agency considers the minimum qualifications for a person serving as a hearing examiner. It also spells out specifically the method for disqualification giving the director considerable discretion in restarting a proceeding after a disqualification of a hearing examiner.

EA 504. Action and Application.

EA 504 follows essentially from the timetable previously discussed. However, several sentences deserve additional comment. Paragraph (b), while not required by law, calls for the publication of the hearing notice in newspapers of general circularization throughout the state and such other manner the director may deem appropriate. This requirement insures that the notice of hearing receives the widest possible distribution throughout the State of Minnesota.

Paragraph (d) requires the Agency to issue a report on the application and allows the Agency to become a party to proceeding, if it so desires. The report, as envisioned, would be a detailed analysis of the strengths and weaknesses of the application and would examine the proposed facility in light of the state's overall energy supply picture. The major purpose of the report is to narrow the issues for hearing by resolving (if possible) peripheral issues and by highlighting the most critical questions regardless of whether the Agency becomes a party to the proceeding. The report writers will always be subject to cross-examination at the hearing.

The report would not present a position on the application unless the Agency decides to become a party to the proceeding. The Agency would become a party to the proceeding if it felt that the best interests of the people of Minnesota were not represented by the other parties to the proceeding. For example, the Agency would intervene if a proposed facility faced little public opposition, and the Energy Agency felt it was not needed to meet Minnesota's energy needs. In such a case, these rules would allow the Energy Agency to become a party to the proceeding and introduce into the proceeding the reasons why it believes the facility should not be built. Another example would be a situation in which the Energy Agency determines that it can bring significant information to bear on the question of need that otherwise would not be brought out by other participants in the hearing process. Finally, the Agency lacks the necessary human and financial resources to participate as a party in every Certificate of Need hearing. Thus, the Agency takes the position that by selectively becoming a party to specific hearings, that it can act in the best interest of the people in Minnesota.

EA 505. State Agency Participation.

This section is required by Minnesota Statute 116H.13, Subd. 7, which provides that certain state agencies must present their position to the director on an application.

EA 506. Intervention.

This section was written to conform to standard administrative law. This section gives state, federal and local agencies with

the authority to grant permits or certificate for siting, construction, for operation of large energy facilities, the right to become a party to the proceeding by filing a notice of intervention with the director. While such agencies are required by Minnesota Statute 116H.13, Subd. 7 to present their "position" regarding the need for a facility, they must formally intervene if they wish to become parties to the proceeding and have the rights of cross-examination, discovery, etc. Any other person may become a party to the proceeding if he can demonstrate that he will be materially affected by the outcome of the proceedings or that his intervention would materially advance the consideration of the need for the facility. These threshold tests, which should be easily met by anyone with a genuine stake in the proceeding, were included for several reasons. First, the Energy Agency has a limited amount of funds with which to process applications. Secondly, the Legislature stipulated that the final decision on an application must be made in six months. Without any threshold barriers to intervention, anyone could become a party to the proceeding and could cross-examine witnesses. There would be a high liklihood that both the time limit imposed by the Legislature and the maximum allowable fee to cover expenses of the proceeding, would be exceeded. (This prediction is based upon the experience of other state agencies, especially the Pollution Control Agency's experience with the Pig's Eye hearings.)

The imposition of these reasonable tests for intervention was not intended to exclude the public participation in the proceeding of the general public. Indeed, any person, whether a party or not, may give written and oral statements at the public hearing. (See EA 507 (c).) These statements will become a part of the public

record of the proceeding. However, the right to call and examine witnesses — the right whose exercise imposes the highest direct cost — is reserved exclusively to those parties who have demonstrated that they either will be materially affected by the outcome of the proceeding or that their participation will materially advance the consideration of the need for the facility.

EA 507. Parties.

This section requires that all parties to the proceeding be represented by counsel, unless the party can show good cause to the hearing examiner that he should be allowed to represent himself. This requirement was included in proposed rules primarily to cut down on the length of hearings for reasons stated above.

EA 508. Consolidation.

This section allows the consolidation of a number of applications, which present similar questions of law or factual issues.

EA 509. Prehearing Conference.

This section is included in the proposed rules to reduce the amount of time spend in public hearings by allowing the parties an opportunity to settle issues and exchange documentary evidence.

EA 510. Motions and EA 511. Service.

These sections represent standard administrative law procedures.

EA 512. Discovery.

This section also conforms to standard administrative law procedures. The second sentence in this section is intended to encourage voluntary exchanges of information between parties.

EA 513. Additional Information.

This section was included to give the hearing examiner the power to dismiss an application because of the failure of the applicant to comply with an order to supply additional information.

EA 514. The Hearing.

This section was written to conform with standard administrative law procedures. It was written to give the hearing examiner a great deal of discretion in directing the hearing, since the complexity of issues will differ from application to application. Paragraph (c) is important because written statements often will be extremely complicated and of a technical nature. Because of the possibility of disputes about the merits of the technical arguments presented in such statements, it is important that the preparer of such statements, as well as the preparer of the application and the preparer of the Agency report, be available for cross-examination. Paragraph (d) represents the standard rule of evidence in administrative hearings rather than that used in court proceedings.

EA 515. Proposed Findings and Briefs.

This section was included to allow parties to summarize their positions for the hearing examiner.

EA 516. Report of the Hearing Examiner.

This section requires the hearing examiner to give his recommendations to the director.

EA 517. Comments and Exceptions.

This section was included to allow the parties involved in the proceedings to comment on the hearing examiner's report.

EA 518. The Record.

This section represents standard administrative law procedure and provides that the director will have available to him all relevant information.

EA 519. Decision of the Director.

This section was included to comply with Chapter 116H.13, Subd. 5.

EA 520. Rehearing.

This section was included to provide for a rehearing in the case of discovery of errors or because of improper procedures.

JUSTIFICATION OF PROPOSED RULES GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATE OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE ELECTRIC GENERATING FACILITIES AND LARGE HIGH VOLTAGE TRANSMISSION LINES

EA 601. Definitions.

The definitions included in EA 601 follow either from the definitions in Minnesota Statute 116H or from definitions used by the Mid-Continent Area Power Pool (MAPP is a pooling agreement whose members are the utilities and co-ops in Minnesota and in neighboring states). These definitions are widely used by the utilities in Minnesota, and are essentially the same as definitions used throughout the United States and Canada.

EA 611. Criteria for Assessment of Need.

The criteria presented follow from Sections 116H.01 and 116H.13, Subd. 3. At least two parts of the criteria require explanations. First, an "unacceptable level of reliability" is intentionally left undefined and thus is open for discussion in the hearing process. The rationale for this is that an "unacceptable level of reliability" should be a matter for public decision rather than a priori definition by any one group within society. Secondly, under these proposed criteria an application could be granted because of the needs of ultimate consumers in neighboring states. This provision recognizes the reality of utility operation and planning, which is largely on a regional not a state-wide basis. Moreover, the position of the Energy Agency is that Minnesota cannot in good conscience plan for its energy needs to the exclusion of its neighbors.

"Reliablity" is the major criteria because utilities plan new facilities to maintain or achieve a certain level of reliability. Currently, the utilities in Minnesota plan their facility

development such that the probability of a major system power outage is less than once in ten years. The approval of an application for a Certificate of Need for either a transmission line or generating facility will increase the level of reliability of the applicant's system. Whether or not the level of reliability without the new facility would be acceptable to ultimate consumers of electricity, is a debatable issue and is therefore left to be determined in the hearing process.

EA 621. General Provisions.

Paragraph (a) introduces three classes of transmission lines in order to allow for the different informational requirements for transmission lines built for different reasons.

Paragraph (b) allows the applicant to use estimates when actual data is not available.

The authority to assess fees for processing applications is given to the director of the Energy Agency in Minnesota Stat. § 116H.13, Subd. 6. The fee schedule is set in order to assure a reasonable probability that the expenses attributable to processing applications for Certificate of Need are covered by the fees collected.

EA 631. Contents of Application.

This section should be perfectly clear and should not require further explanation.

EA 632. Need Summary.

This section was included so that every application will contain a section summarizing the applicant's justification for the need for the proposed facility. This summary is intended to permit the reader of the application to quickly gain a broad understanding of the arguments presented by the applicant as to

the need for the proposed facility.

EA 633. Description of Proposed Large Electric Generating Facility.

The information requested in this section represents the minimum amount of information concerning a proposed LEGF which the Energy Agency feels is required in order to assess the need for the proposed facility.

EA 634. Description of Proposed Large High Voltage Transmission Line.

The information requested in this section represents the minimum amount of information concerning a proposed LHVTL which the Energy Agency feels is required in the assessment of need for the proposed facility. Although the Energy Agency has no responsibility in the determination of a corridor or a route, the information requested concerning the approximate location of DC terminals or AC substations is important. This information will enable the Agency to determine where the proposed LHVTL will inter-connect with other transmission lines and/or generating facilities and thus how it relates to Minnesota's overall energy supply picture.

EA 635. Peak Demand and Annual Electrical Consumption Forecast.

The information requested in this section includes and expands upon the information requested in EA 206. The information requested in this section is deemed by the Agency to be necessary in the determination of need for a specific facility. Much of it was not included in EA 206 because to do so would place an excessive burden on those utilities and municipalities that will probably never file for a Certificate of Need.

Paragraph (b) requires the applicant to present its annual electrical consumption forecast and historical data in a number

of different categories. These categories are the same as used by utilities in filing Schedule 10 of the FPC 12 Reports with the Federal Power Commission with the exception that mining is separated from the industrial category. This separation was made because mining plays a very significant role in the demand for electricity in Northeast Minnesota. This data is needed to help to determine the overall effects of conservation programs, load management programs and other programs that will affect one sector of the economy more than others. It will also help the reader of the application understand how the various economic sectors contribute to the need for the facility.

The Federal Power Commission does not define the commercial or industrial categories. As a result the data reported by Minnesota based utilities to the FPC under these categories varies from one utility to another in the state. The definitions of these and other categories in the proposed rules are consistant with those set forth in EA 210 and the categories that are defined by the FPC. It is necessary to define all categories to insure that the data in these categories that is presented by different applicants is comparable.

The Agency realizes that while all utilities in the state report annually their annual electrical consumption to the FPC under the categories listed in paragraph (b), the data so reported may not conform exactly to the definition of these categories in paragraph (b), especially the data reported under industrial and commercial. It is also realized that the forecast data that is requested in these categories is probably not a component of the forecast of electrical consumption prepared by most utilities in the state. It is the Energy Agency's position that at

this time, applicants for a Certificate of Need are in a better position to make estimates of this information than is anyone else.

The applicant is also asked to present this same information for its system peak demand. This information is probably not available historically for most electric utilities in this state nor is it probably a component of most utilities' forecasts. This information is needed because a utility designs and builds its system to meet system peak demand and thus, to a large extent, this peak demand determines the need for new facilities. To determine the effect of various conservation programs, load management programs, and other programs on the applicant's system peak demand, it is important to be able to determine how such programs affect the applicant's system peak demand. Since most programs will affect one category of ultimate consumers more than another, it is important to be able to relate each specific users category to the applicant's system peak demand. The Agency realizes that for most applicants, any such statement of this type of information would be at best an estimate. However, at this time, an applicant for a Certificate of Need is in a better position to make such an estimate about his system than anyone else.

Data is also requested in paragraph (b) on the applicant's system peak demand by month. This data is important to aid in the understanding of the scheduling of maintenance outages and pooling or possible pooling between systems. Additionally, data is requested in this paragraph on system load factors. This data is required to examine the effect of potential load management programs.

The provisions in paragraph (c) are based on Minnesota Stat. § 116H.13, Subd. 3(1). In order to examine the accuracy of the demand forecast, it is important to understand how it was prepared, what assumptions were used in the preparation of the forecasts, and what data was used in preparing the forecasts.

EA 636. System Capacity.

The information and data requested in this section will provide the link between the energy forecasts required in EA 635 and the need for the proposed facility.

Under paragraph (a) the applicant is required to give information on its facility planning. This information in the application will help give the reader of the application insight into the way the applicant plans for additional facilities. In paragraphs (b) and (c) data is requested on the applicant's purchases and sales. This data will help provide a reader of the application an understanding of the applicant's power pooling with other systems.

The data requested in paragraph (d) will provide information on the applicant's ability to meet his projected forecasts without the proposed facility. The format for reporting this information is the same format the utilities use in reporting similar data to the Mid-Continent Area Power Pool. This format was chosen because it provides the necessary data and is a format that is already used by utilities in the State of Minnesota. In paragraph (e), the applicant is requested to give the same data required in paragraph (d) with the exception that the information requested includes data contingent upon the proposed facility. This information will help show how the proposed facility ties into the applicant's forecast presented in EA 635. In paragraph (f)

the applicant is requested to present data in the same format as in paragraph (d), except that data contingent upon all proposed facilities, is to be included in the table. The information requested in paragraph (f) is not absolutely necessary for the determination of need of the proposed facility, however, it will give the reader of the application an understanding of how the applicant intends to meet his projected forecast. The information requested in paragraph (g) is primarily for the benefit of those who are not associated with the Energy Agency or do not have direct contact with utilities. This information will help give everyone involved in the procedure a better understanding of when future applications of Certificate of Need will be received by the Agency. The information requested in paragraph (h) should help give the reader of the application an understanding of how the proposed facility will tie into the applicant's existing system.

The information requested in paragraph (i) is extremely important to the determination of need. The larger the reserve requirements of a system, the greater the capacity that will be required by its system to meet a given load.

EA 637. Consequences of Delay.

Information requested in this section is important to help determine the appropriateness of the timing of the proposed facility.