

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

RECEIVED
JUL 8 1977
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency 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 - Minn. Regs. EA 601-638

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule amendments be held in Room D of the Veterans Service Building, 20 West 12th Street and Columbus Avenue between Wabasha and Iglehart, Saint Paul, on August 4, 1977, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Dated: June 20, 1977

John P. Millhone
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Plants and Large High Voltage Transmission Lines, Minn. Regs. EA 601-638	)	DOCKET NO: EA-77-008-WS STATEMENT OF COMPLIANCE WITH MANUAL OF RULE-MAKING PROCEDURES

I, Special Assistant Attorney General Dwight S. Wagenius, do hereby declare that I have examined the proposed rule and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rulemaking Procedures has been followed.

DATED: December 15, 1977.

Dwight S. Wagenius

DWIGHT S. WAGENIUS
Special Assistant
Attorney General

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

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JUL 8 1977
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In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency 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, Minn. Regs. EA 601-638

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN THAT a public hearing in the above-entitled matter will be held in Room D of the Veterans Service Building, 20 West 12th Street and Columbus Avenue between Wabasha and Iglehart, Saint Paul, on August 4, 1977, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally or in writing at the hearing and written materials may be submitted by mail to William Seltzer, Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota, 55104, telephone (612) 296-8105, either before the hearing or within five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The proposed rule amendments, if adopted, would improve, make more precise, and expand upon the current rules governing contents of applications for certificates of need for large electric generating facilities and large high voltage transmission lines. Also, the criteria for assessment of need would be changed to allow greater consideration of (1) alternatives to a proposed facility, (2) relative costs of the proposed facility and alternatives, and (3) relative environmental effects of the proposed facility and alternatives. Certain rule amendments would clarify the purpose of the rules, the applicability of the rules, and the procedures for filing an application. The section of the rules considering alternatives

would be expanded to require information on a greater number of alternatives, especially those that have been suggested by intervenors in past certificate of need hearings. A section on conservation programs would be added to give more explicit consideration to this important topic, pursuant to Minn. Stat. § 116H.13 subd. 3(2) (1976). A section on environmental data would be added to provide the Agency with background information to prepare an environmental report pursuant to newly promulgated Minn. Reg. MEQC 25(g) and to evaluate the relative environmental consequences of the proposed facility and various alternatives. Finally, forecasting requirements would be modified slightly to more clearly require the information needed by the director to assess the accuracy of an applicant's forecast, pursuant to Minn. Stat. § 116H.13 subd. 3(1) (1976).

Copies of the proposed amended rules are now available and one free copy may be obtained by writing to the Minnesota Energy Agency, 740 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota, 55101. Copies will also be available at the door on the date of the hearing. The Agency's authority to promulgate the proposed amended rules is contained in Minn. Stat. §§ 116H.08(a) and 116H.13 (1976). A Statement of Need presenting facts showing the need for and reasonableness of the proposed amendments and a Statement of Evidence summarizing the evidence to be presented at the hearing in support of the proposed amendments will be filed at the Office of Hearing Examiners at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay

or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota, 55155, telephone (612) 296-5615.

Dated: June 20, 1977

John P. Millhone
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency 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 601-638	CERTIFICATE OF DELIVERY SECRETARY OF STATE LIST

I hereby certify that the attached 505 labels and 1 sheet constitute the complete list of persons, associations, and interested groups who as of 11:15 o'clock A.M., this 28th day of June, 1977, have requested pursuant to Minn. Stat. § 15.0412 (1976) 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 ANDERSON GROWE
Secretary of State
State of Minnesota

By Neil Dion

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency 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 601-638	AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S MAILING LIST

David L. Jacobson, being first duly sworn upon oath, deposes and says:

1) That he is an employee of the Minnesota Energy Agency of the State of Minnesota.

2) That on the 23rd day of June, 1977, he made of the Office of the Secretary of State of the State of Minnesota a request for 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 Minn. Stat. § 15.0412 (1976).

3) That on the 28th day of June, 1977, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference herein.

Further affiant sayeth not.

David L. Jacobson

Subscribed and sworn to before me this 28 day of June, 1977.

Susan K. Riedinger

Notary Public

SUSAN K. RIEDINGER
Notary Public, Ramsey Co., Minn.
My Commission Expires
Dec. 7, 1982

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency 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 601-638	AFFIDAVIT OF MAILING

Susan M. Carpenter, being first duly sworn upon oath, deposes and says:

That on the 29th day of June, 1977, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail a true and correct copy thereof, properly enveloped, with first class postage prepaid, to all persons and associations at the addresses listed in the attached Certificate of the Secretary of State.

Susan M Carpenter

Subscribed and sworn to before me
this 30 day of June, 1977.

Susan K. Riedinger
Notary Public

SUSAN K. RIEDINGER
Notary Public, Ramsey Co., Minn.
My Commission Expires
Dec. 7, 1982

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Pooler, Albert L., Minn. Gas Co., 733 Marq.Ave., Mpls.,MN. 55402

Sievert, Sandra J., Industrial Coatings, Inc., RT. 2 Box 63C Rogers,Mn. 55374

Simonson Cashway Co., Att: Glenn Lahm, 535 First St., N.E., St. Cloud 56301

Tegan, James, Brin Glass Co., 600 Washington Ave. N., Mpls. 55401

Stephen Rowley

whose address is 4305 16th Ave S.

Mpls, Mn. 55407

Ethel Schaen

whose address is 1745 University Ave.

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MPLS MN
55404

JENSEN ARTHUR,CITY CLK
2215 W OLD SHAKOPEE RD
BLOOMINGTON MN
55431

JENSEN CARL A
127 E MAIN ST
SLEEPY EYE MN
56085

JOHNSON & SANDERSON
ST MARYS HOSPITAL
ROCHESTER MN
55901

JOHNSON CLARENCE IBEW LU 292
3615 37TH AVE S
MPLS MN
55406

JOHNSON M.D. FRUNDT & FRUNDT

BLUE EARTH MN
56013

JOHNSON LANCE J
265 S LAFAYETTE RD
ST PAUL MN
55107

KAVANEY RICHARD
1220 NORTHERN FED BLDG
ST PAUL MN
55102

KEABLE MIKE
909 6TH AVE N
ST CLOUD MN
56301

KJERVIK DIANE
4302 POWEL HALL U OF M
MPLS MN

KLOSTER MARION PEAVEY CO
730 2ND AVE S
MPLS MN
55402

KNOPP TIMOTHY
COLLEGE FORESTRY U OF M
ST PAUL MN
55108

KNUTSON DR KEITH,BIOLOGY DPT
ST CLOUD STATE
ST CLOUD MN
56301

KOPP MRS VERNON
2050 65TH ST E
INVER GR HGHT MN
55075

KRAMER ERNEST W
717 DELAWARE ST SE
MPLS MN
55440

KROON H CLIFTON
210 E WALNUT
MANKATO MN
56001

KUHL CARL
4421 4TH ST NE
COL HEIGHTS MN
55421

HYDROLOGIST
CHIPPEWA NATL FOREST
CASS LAKE MN
56633

HYLAND DEAN
1501 W 50TH ST
MPLS MN
55419

INGEBRIGTSEN DR K H
23 SE 4TH ST
MPLS MN
55414

INGVALSON VERN MN.FARM BU
3110 WOODDALE DR PO 337
OST PAUL MN
55165

IUOE LOC 49 CHAS SWENSON
2580 UNIV AVE
ST PAUL MN
55101

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

JAIN NIRMAL ENIV PROCESS
1220 GLENWOOD AVE
MPLS MN
55405

JENOS INC
525 LAKE AVE SO
DULUTH MN
55801

JENSEN MRS GAYNOLD
111 WEST 107TH ST
MPLS MN
55420

JOHANSEN BUS SERV INC
19 DAYTON RD
CHAMPLIN MN
55316

JOHNSON G ROBERT
4344 IDS CENTER
MPLS MN
55402

JOHNSON LEROY
9939 BLUEBIRD ST NW
COON RAPIDS MN
55433

KABLE RICHARD W

BETHEL MN
55006

KEENAN RICHARD J
4444 IDS BLDG
MPLS MN
55402

KEILY DANILE
3549 V2 PLEASANT-AVE
MPLS MN
55408

KLUZ STEVEN J
1910 1ST NATL BK BLDG
MPLS MN
55402

KNAPP J A
RM 3 CAPITOL
ST PAUL MN
55155

KNUTSON R N GRANNIS ETAL
F J SCHULT BLDG
ST ST PAUL MN
55075

KOLLER MR & MRS ERWIN A
1568 DULUTH ST
ST PAUL MN
55108

KROEGER CHARLES
122 NW 7TH STREET
FARIBAULT MN
55021

KRONLOKKEN J E
10048 NORD RD
BLOOMINGTON MN
55437

KVB ENGINEERING INC
600 S CO RD 18
MPLS MN
55426

LABELLE JUANITA MRS
5816 AQUILA AVE NO
NEW HOPE MN
55428

LAKE SUPERIOR INDUSTRIAL BUR
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LANSING & OAKES
400 SIBLEY ST
ST PAUL MN
55101

LAPP LAZAR LAURIE ET AL
1200 BUILDERS EXCHANGE
MINNEAPOLIS MN
55402

LEAGUE MN MUNIC
300 HANOVER 480 CEDAR
ST PAUL MN
55101

LEAGUE WOMEN VOTERS OF MINN
555 WABASHA
ST PAUL MN
55102

LEAVEY THOS
829 22ND AVE SE
MPLS MN
55414

LEWIS DR.G.M JR.
ABBOTT 110 E 18TH ST
MPLS MN
55403

LOCKNER GARY
R R 1 BOX 23
BAUDETTE MN
56623

LOOS CALVIN J
6809 LYNDALE AVE SO
MPLS MN
55423

LYNCH DONALD SIBLEY CO
184 E 6TH ST
ST PAUL MN
55102

MAHCF RICK CARTER
2850 METRO DR SUITE 431
BLOOMINGTON MN
55420

MALECKI JAMES
1 SO STATE ST
NEW ULM MN
56073

MANKATO STATE STUDENT ASSN
BOX 58 MANKATO COLLEGE
MANKATO MN
56001

MANSFIELD LARRY HCARC
1800 CHICAGO AVE S
MPLS MN
55404

MASTOR & MATTSON LTD
315 PEAVEY BLDG
MPLS MN
55402

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MCDONALD PHILIP M
2077 SELBY AVE
ST PAUL MN
55104

MCFADDEN G H DISPATCH-PRESS
55 E 4TH ST
ST PAUL MN
55101

MET. WASTE CONTOL COMM.
350 METRO SQ BLG
ST PAUL MN
55101

MEIEROTTO, JOAN
1794 SO LEXINGTON
ST PAUL MN
55118

MEYER HERBERT
10824 ZENITH AVE S
BLOOMINGTON MN
55431

MEYERLE KATHLEEN
1528 GRAND AVE APT 4
ST PAUL MN
55105

LANAHAN E F - SIBLEY CO
184 E 6TH ST
ST PAUL MN
55101

LANGVIN DAVID
7500 80TH ST S
COTTAGE GROVE MN
55016

LARSON C L
3800 MINNEHAHA AVE SO
MPLS MN
55406

LARSON HANS P DIV HOSP SE
717 DELAWARE ST SE
MPLS MN
55440

LEG.REF.LIB-Z. DEWITT
RM 111 STATE CAPITOL
ST PAUL MN
55155

LEVEY JESS MET STATE UNIV
METRO SQ RM 121
ST PAUL MN
55101

LIBBEY LEONARD
BOX 17011 NOKOMIS STA
MPLS MN
55417

LINDALL & JONATHAN DEVELO
VILLAGE ONE CENTER
CHASKA MN
55318

LOWE DOUG
2701 N LEXINGTON AVE
ROSEVILLE MN
55113

LUTH SOC SERVICE OF MN
2414 PARK AVE
MPLS MN
55404

MADSON HUGH
AETNA 212 S 6TH ST
MPLS MN
55402

MALONE E I COMM LABOR & INDU
444 LAFAYETTE RD 5TH FL
ST PAUL MN
55101

MANKATO STAT STUDENT SENA
CENTENNIAL STUDENT UN
MANKATO MN
56001

MANTHEY T J PICKANDS MATHER
1100 SUPERIOR AVE
CLEVELAND OH
44114

MARRINAN MARGARET M
1117 COMMERCE BLDG
ST PAUL MN
55101

MAYO FOUNDATION G ORWOLL
200 FIRST AVE NW
ROCHESTER MN
55901

MCCLURG EUNICE
1061 109TH AVE NE
BLAINE MN
55434

MCKIBBON MRS SHIRLEY
11 EVERGREEN LN
BABBITT MN
55706

MCLELLAN LARKIN
215 ADM BLDG ST CAPITOL
ST PAUL MN
55101

MET TFR MEN ASSN A ROSENTHAL
1821 UNIV AVE
ST PAUL MN
55104

METROPOLITAN COUNCIL LIBR
300 METRO SQUARE
ST PAUL MN
55155

MIDLAND GLASS-HD SPURLING
PO BOX 69
SHAKOPEE MN
55379

MILLER PAUL J PHARMACY SE
ST MARYS HOSP
ROCHESTER MN
55901

MILLER RICHARD A
1020 PLYMOUTH BLDG
MPLS MN
55402

MILLER TOM
2311 PILLSBURY AVE S
MPLS MN
55404

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN ASSN ELEC COOPERATIVES
4901 W 77TH ST
MPLS MN
55435

MINN ASSN WATERSHED DIST'S

ACA MN
56510

MINN CHAP ASSOC BLDRS-CONTRS
7204 W 27TH ST
MPLS MN
55426

MINN COUNCIL STATE EMP NO 6
475 RICE ST
ST PAUL MN
55103

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
55440

MINN GOV ENG COUNCIL
2400 SHERWOOD HILL RD
MINNETONKA MN
55343

MINN HEREFORD-LJ SCHAFER

BUFFALO LAKE MN
55314

MINN HWYS MANAGEMENT SERVICE
407 HWY BLDG
ST PAUL MN
55101

MINN LAND USE COMMITTEE
4344 IDS CENTER
MPLS MN
55402

MINN.MTR.TRANSP. .J.N.DENN
1821 UNIV.
ST.PAUL MN
55104

MINN PETROLEUM COUNCIL
1020 NORTHERN FED BLDG
ST PAUL MN
55102

MN REP STATE CENTRAL COMM
555 WABASHA AVE
ST PAUL MN
55102

MINN RESTAURANT ASSN
2001 UNIVERSITY AVE.
ST PAUL MN
55104

MINN SOCIETY ARCHITECTS AIA
NW NATL BK BLDG
ST PAUL MN
55101

MINN SOC CERTIFIED PUB ACCTS
1102 WESLEY TEMPLE BLDG
MPLS MN
55403

MINN STATE MED ASSN
375 JACKSON ST
ST PAUL MN
55101

MINN STATE RETIREMENT SYSTEM
529 JACKSON ST
ST PAUL MN
55101

MINN.TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
55114

MINN VETERANS MED ASSN
2175 W HWY 36
ROSEVILLE MN
55113

MN AUTOMOBILE DEALERS ASSN
277 UNIV AVE
ST PAUL MN
55103

MN. ASN.C&IND H.D.PETERSON
480 CEDAR ST.
ST.PAUL MN
55101

MINN APT ASSN
GRIGGS-MIDWAY BLDG
ST PAUL MN
55104

MINN ASPHALT PAVEMENT ASS
555 WABASHA RM 209
ST PAUL MN
55102

MINN. ASSN. PET RETAILERS
1115 2ND AVE. SO.
MINNEAPOLIS MN
55403

MINN ASSN VOL SOC SERVICE
1821 UNIV SUITE 389
ST PAUL MN
55114

MINN COMM FOR HANDICAPPED
METRO SQ 492 7TH & ROBT
ST PAUL MN
55101

MINN COMMUNITY DEVELOP SE
512 ROSSMOR BLDG
ST PAUL MN
55101

MINN FARMERS UNION PRES OFF
1275 UNIV AVE
ST PAUL MN
55104

MINN FOOD RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN. HOTEL & MTR. ASSN
2001 UNIVERSITY AVE
ST PAUL MN

MINN HOUSING INST N T CAR
7801 METRO PKWY
MPLS MN
55420

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINNE MINE CREDIT UNION
3000 HUDSON PK S 100
ST PAUL MN
55119

MINN POLLUTION CONTROL AGCY
1935 W CO RD B2
ROSEVILLE MN
55113

MINN POULTRY & HATCHERY A
BOX 158
MADELIA MN
56062

MINN RETAIL FED INS
131 METRO SP
ST PAUL MN
55101

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MINN STATE BD PHARMACY
717 DELAWARE ST SE #351
MPLS MN
55414

MINN TEAMSTERS CREDIT UNION
2021 HENN AVE E
MPLS MN
55413

MINN TBR PRODUCERS ASSN
200 CHRISTIE BLDG
DULUTH MN
55802

MINN WATER RESOURCES BD
RM 206 555 WABASHA ST
ST PAUL MN
55102

MINN-WISC BOUNDARY AREA C
600 2ND ST
HUDSON WI
54016

MN AFL-CIO L.O. LASHOMB
175 AURORA
ST PAUL MN
55103

MN.BD OF NURSING
717 DELAWARE ST SE
MPLS MN
55414

MN ELECTRICAL ASSN
3100 HUMBOLT SO
MPLS MN
55408

MOFFITT R C
RM 301 M MPLS CITYHALL
MPLS MN
55415

MPIRG
BOX 45 ST MARYS COLLEGE
WINONA MN
55987

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

NASS GEO V HENN CO GEN HOSP
5TH AND PORTLAND AVE
MPLS MN
55415

NAT'L SOLID WASTES-R. GRASSO
1730 RHODE ISLAND AV.NW
WASHINGTON DC
20036

NEREN MADONNA
376 NEAL AVE S
AFTON MN
55001

NORTH CENTRAL ELEC ASSN
PO BOX 202
BATTLE LAKE MN
56515

NURSING HOME RES ADV CO.
111 E FRANKLIN S210
MPLS MN
55404

NYQUIST DEAN A
3707 53RD PL N
BROCKLYN CTR MN
55429

OLOFSON ARTHUR MBO & MAINC
927 SOO LINE BLDG
MPLS MN
55402

MN PUB INT RESEARCH GROUP
3036 UNIV AVE SE
MPLS MN
55414

MOOD R BLCOMINGTON HLTH DEPT
10200 PENN SO
BLOOMINGTON MN
55431

MPLS ASSN RETARDED CITIZENS
3100 W LAKE ST
MPLS MN
55416

MT OLIVET ROLLING ACRES
R 1 BOX 576
EXCELSIOR MN
55331

NATL CAR RENTAL ATT D MITZEL
5501 GREEN VALLEY DR
MPLS MN
55437

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NEUMAN RALPH W
RT 2 BOX 125
EMBARRASS MN
55732

NUGENT, CYNTHIA L.
3581 OWASSO ST #209
ST PAUL MN
55112

NUTTER JULIA
743 W MONTANA
ST PAUL MN
55117

OLSON KATHLEEN
192 SEYMOUR AVE SE
MPLS MN
55414

PATTISON ORVIS
BOX 645
WILLMAR MN
56201

MN SOC SERV ASS J HOOD
614 PORTLAND
ST PAUL MN
55102

MN STATE SER BLIND-K NATA
1745 UNIVERSITY AVE
ST PAUL MN
55104

MORTON BUILDINGS INC
R #1
FOLEY MN
56329

MOTOR VEHICLE MFRS ASSN
411 MAIN ST (215)
ST PAUL MN
55102

MPLS CITY ATTORNEY
325M CITY HALL
MPLS MN
55415

MPLS STAR PRESS ROOM
STATE CAPITOL
ST PAUL MN
55101

MURPHY DIANA E
4200 IDS-LINDQUIST VENN
MPLS MN
55402

NATL COUNCIL JEWISH WOMEN
4330 CEDAR LK RD
MPLS MN
55416

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NEDELL HAROLD - MEINEKE
6300 W LOOP S SUITE 200
BELLAIRE TX
77401

NELSON JOHN
4809 180TH ST N
HUGO MN
55038

NIELSEN STOCK & BLACKBURN
415 730 BLDG
MPLS MN

NO SUB MONTESSORI-S SADDL
2487 HELEN COURT
NO ST PAUL MN
55109

NW COUNTRY ELEVATOR ASSN
802 GRAIN EXCH BLDG
MPLS MN
55415

NURSING HOME ADMRS BD EXA
RM 340 717 DELAWARE SE
MPLS MN
55414

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

NW REG. DEV. COMM
425 WOODLAND AVE
CROOKSTON MN
56716

O'BRIEN J.DENNIS
1100 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

OSTRUM DONALD E
PO BOX 33163
COON RAPIDS MN
55433

OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

PAYNE COL ALVIN

DEGRAFF MN
56233

PAYNE WM B
2400 FIRST NATL BK BLDG
MPLS MN
55402

PETERSON GARY
854 MIDLAND BK BLDG
MPLS MN
55401

PFEIFER AND SHULTZ, INC
1433 UTICA AVE S
MPLS MN
55416

PINNETTI NICK M HALEY & ASS.
40 CENTRAL PARK S
NEW YORK NY
10019

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORT AUTH CITY OF ST PAUL
330 MINNESOTA BLDG
ST PAUL MN
55101

POSS DONALD G
6301 SHINGLE CREEK PKWY
BROOKLYN CTR MN
55430

PROCTOR&GAMBLE L THEOHAROUS
IVORYDALE TECH CENTER
CINCINNATI OH
45217

PULSCHER RBT SPRINGSTED INC
813 OSBORN BLDG
ST PAUL MN
55102

RADMAN RICHARD-LABOR TEMPLE
418 AUDITORIUM
ST PAUL MN
55102

RALPH BURKE ASSOCIATES
7710 COMPUTER #S101
MPLS MN
55435

REAGAN MICHAEL
% MINN LEARNING CTR
BRAINERD MN
56401

REARDON MRS HELEN
1125 S E 6TH ST
WILLMAR MN
56201

REGION FIVE REG. DEV. COMM.
102 6TH ST N
STAPLES MN
56479

REGION NINE DEV. COMM.
709 N FRONT ST
MANKATO MN
56001

RENQUIST ARTHUR NSP CO
414 NICOLLET MALL
MPLS MN
55401

RICHARDSON THOS
7851 METRO PKWY S 103
MPLS MN
55420

ROE DAVID
175 AURORA
ST PAUL MN
55103

ROBBIE JOSEPH
904 CARGILL BLDG NO CTR
MPLS MN
55402

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

ROSS ROY J
CLK TREAS
LITCHFIELD MN
55355

SAN SIMEON DEVELOP CORP
OLD 1ST STATE BK BLDG
PAYNESVILLE MN

SANFORD S M
7000 PORTLAND AVE
RICHFIELD MN
55423

ST PAUL BUR HLTH DR P COX
555 CEDAR ST
ST PAUL MN
55101

ST PAUL FOOD RETAILERS ASSN
1220 ARCADE
ST PAUL MN
55106

PHAR MFGRS ASSN WM D PATTON
1155 15TH ST NW
WASHINGTON DC DC
20005

PHILLIPS LEGISLATIVE SERV
459 RICE ST
ST PAUL MN
55103

PORTER DAVID
~~3002~~ 27TH AVE S
MPLS MN
55406

PORTER LYLE O

TRACY MN
56175

POYZER ROBT
BOX 675
FERGUS FALLS MN
56357

PRAUSE JOS.C.
2220 105TH AVE.N.W.
COON RAPIDS MN
55433

RAMSEY CO MEDICAL SOC
908 AM NATL BK BLDG
ST PAUL MN
55101

RAUENHORST CORP-C ANDERSO
7900 XERXES S. S-2200
MPLS MN
55431

REID DAVID H
6469 N GRAHAM RD
INDIANAPOLIS IN
46220

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

REINO O LAINE 3M COMPANY
3M CENTER
ST PAUL MN
55101

RENNER R.H. ST PAUL AREA
300 OSBORN BLDG.
ST PAUL MN
55102

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

RIEKE DAVID R
P O BX ~~502~~ 9311.
~~THIEF RIV FLS~~ MN
~~56701~~ 55440 MPLS

ROBERTS DR ALAN
BOX 297 MAYO U OF M
MPLS MN
55455

ROBERTS DAVID E
1260 NW NATL BK BLDG
ST PAUL MN
55101

RUDY FLOYD
118 AVE C
CLOQUET MN
55720

SAX DOVE & STENSON
310 ENDICOTT BLDG
ST PAUL MN
55101

SE MN REG DEV COMM
301 MARQ BK BLDG
ROCHESTER MN
55901

SW REGIONAL DEV COMM
2811 BDWY
SLAYTON MN
56172

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHLICHT REV ROBT
611 W MAIN ST
BELLE PLAINE MN
56011

SCHMIDT D R MN ASSN REALTORS
6101 WAYZATA BLVD
MPLS MN
55416

SCHMIDT WARREN WELLCOME MH5
GARDEN CITY
MN
56034

SCHNEIDER MAHLON
GREEN GIANT
LESUEUR MN
56058

SCHWERMAN EARL JR
1535 8TH AVE SE
ROCHESTER MN
55901

SCHWINN ROBT.P.
1400 SOO LINE BLDG.
MPLS. MN
55402

SELECTVISION INC FR VALENTIN
~~245 PARK AVE~~ / DAG HAMMARSKJOLD PL
NEW YORK NY
10017

SEMHSA R C MELIN
1903 S BDWY
ROCHESTER MN
55901

SENATE GOV OP COMM
RM 303 STATE CAPITOL
ST PAUL MN
55155

SHABATURA EUGENE H
2833 LAKE AVE SO
DULUTH MN
55811

SILVERMAN JUDITH
8545 W 28TH ST
ST LOUIS PARK MN
55426

SITE ENGINEERS INC
900 REDWELL LANE
APPLE VALLEY MN
55124

SIX W REG. DEV. COMM
128 W SORENSON
APPLETON MN
56208

SMERIKA WN.
BOISE CASCADE PAPERS
INTL FALLS MN
56649

SNYDER, R.W. U OF M
RM 248C CLASS OFF BLDG.
ST PAUL MN
55108

SODERBERG HAROLD J
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

STATE BD VETERINARY EXAMINER
C/O DR A C SPANNAUS DVM
WACONIA MN

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

STEELWORKERS CREDIT UNION
BOX 250
BABBITT MN
55706

SULLIVAN J KIRK
PO BOX 200
BOISE ID
83701

SULLIVAN JEANETTE
CDIC SW STATE UNIV
MARSHALL MN
56258

SWANSON BURT E
W-2162 1ST NATL BK BLDG
ST PAUL MN
55101

SWANSON DALE
P O BOX 339
FOREST LAKE MN
55025

SCHMIDT H W TCHRS RETIREMENT
302 CAPITOL SQ BLDG
ST PAUL MN
55101

SCHMIDT LARRY WCCO-TV NEW
50 S 9TH ST
MPLS MN
55402

SCHUTZ LINDA
RM 328 CAPITOL BLDG
ST PAUL MN
55155

SCHWARTAU NEAL METH HOSP
201 W CENTER ST
ROCHESTER MN
55901

SCHNEIDER & NEESER
706 1ST ST SO PO BX 876
WILLMAR MN
56201

SCHROEDER ALFRED H
2172 CARROLL AVE
ST PAUL MN
55104

SENATE COUN OFF ROOM 24
STATE CAPITOL
ST PAUL MN
55101

SENATE FINANCE COMMITTEE
113 STATE CAPITOL
ST PAUL MN
55101

SHARP BOB
4125 HIGHWOOD RD
ST LOUIS PK MN
55416

SHAW ROBERT M
616 MOBIL OIL BLDG
MPLS MN
55402

SITE ENGINEER INC
12 OLD DEERFIELD RD
WELCH MN
55089

SIX EAST REG. DEV. COMM.
311 W 6TH ST
WILLMAR MN
56201

SMITH MICHAEL
318 HARVARD ST SE
MPLS MN
55414

SNELL LYN
BOX 314
EDEN VALLEY MN
55329

SODERMAN ANTHONY
1414 FOSHAY TOWER
MPLS MN
55402

STANSFIELD ARLENE LAND O
PO BOX 116
MPLS MN
55440

STATE & FED ASSOCIATES
1101 15TH ST NW S 309
WASHINGTON DC
20005

STATE REGISTER
95 SHERBURNE, RM 208
ST PAUL MN
55103

STOLPESTAD BROWN & SMITH
1550 NW BK BLDG
ST PAUL MN
55101

STUPKA & MOREM
MIDTOWN BLDG
AUSTIN MN
55912

SUMMIT NATL BANK D L MORRILL
205 AURORA AVE
ST PAUL MN
55103

SUSSEL CO.ATTN:TED SCHWEN
1850 COMO AVE.
ST PAUL MN
55108

SWANSON GERALD H
212 CITY HALL
ROCHESTER MN
55901

SWANSON MORTIMER C
5824 FRANCE AVE S
EDINA MN
55410

THOMPSON CONRAD
1107 23RD ST NW
ROCHESTER MN
55901

THOMPSON HESSIAN ET AL
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

TWIN CITIES PIPING IND ASSN
2829 UNIV SE SUITE 304
MPLS MN
55414

TWIN CITY RETAIL DRUGGIST
2388 UNIV AVE
ST PAUL MN
55104

UTLEY JOHN
4610 IDS CENTER
MPLS MN
55402

VAN EVERA MUNDT ET AL
700 TORREY BLDG
DULUTH MN
55802

VERRILL JOHN E
DEPT SECONDARY ED UOF M
DULUTH MN
55812

VOSS REV GORDON O
11120 NE 7TH ST
BLAINE MN
55434

VOS LEROY
2137 BURNS AVE
ST PAUL MN
55119

WALTERS THOS H
4510 W 77TH ST STE 235
MPLS MN
55435

WANQUIST ALLEN
RM 252 FEDERAL BLDG
ST PAUL MN
55101

WELLINGTON R R SKELLY OIL
PO BOX 1650
TULSA OK
75102

WEST CENTRAL REG. DEV.
ADM BLDG,COMMUNITY COLL
FERGUS FALLS MN
56537

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WILCOX J PATRICK
1220 NORTHERN FED BLDG
ST PAUL MN
55102

WILLIAMS THOMAS
7505 W HWY 7
ST LOUIS PK MN
55426

WILSON R GARY PPG INDUST
1 GATEWAY CENTER
PITTSBURGH PA
15222

WOZNIAK D D
401 FIRST FED BLDG
ST PAUL MN
55101

WYANT CLINTON W ATTY

ATKIN MN
56431

ZIMMERMAN & OFFERMAN
CAMBRIDGE STATE HOSP
CAMBRIDGE MN
55008

TATE VERN 3M CO
3M CENTER 220/6W
ST PAUL MN
55101

TIMESAVERS INC ATT R S VOLD
5270 HANSON COURT
MPLS MN
55422

TOUCHE ROSS & CO K H STCCKE
780 NORTHSTAR CNTR
MPLS MN
55402

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

VANDERVOORT T J MET WASTE
350 METRO SQUARE BLDG
ST PAUL MN
55101

VAN DRAKE STEPHEN R
BOX 353
PELICAN RAPID MN
56572

VIITALA, W.C. HONEYWELL
HONEYWELL PLAZA
MPLS MN
55408

VILLAGE OF WOODBURY
2100 RADIO DRIVE
WOODBURY MN
55042

WALD JEAN
5746 SANDER DR
MPLS MN
55417

WATERS, DONNA M.
110506 WINDMILL COURT
CHASKA MN
55318

WELK G V NORTHERN STATES
414 NICOLLET MALL
MPLS MN
55401

WESTIN CHAS W
220 MEDICAL ARTS BLDG
DULUTH MN
55802

WHITING RALPH
555 WABASHA SUITE 204
ST PAUL MN
55102

WM.MITCHEL COLLEGE LAW LIB.
2100 SUMMIT AVE.
ST.PAUL MN
55105

WILEY ENTERPRISES
101 5TH AVE SE
OSSEO MN
55369

WIS FEEDER PIG MARKET CO-OP

FRANCIS CREEK WI

WOLKERSTORTER THEODORE
676 17TH AVE NW
NEW BRIGHTON MN
55112

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency 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 601-638.)	Docket No. EA-77-008-WS STATEMENT OF NEED

The above-captioned rules are amendments to existing rules of the Minnesota Energy Agency. The rules were adopted on September 30, 1975, and have not previously been amended.

The need to adopt rules specifying criteria for assessment of need and governing the contents of applications for certificates of need arises, in part, from legislative mandate.

It shall be the duty of the director to:

. . .

(f) Require certificate of need for construction of large energy facilities;

Minn. Stat. § 116H.07 subd. 1(f) (1976).

Subdivision 1. The director shall, pursuant to chapter 15 and sections 116H.01 to 116H.15, promulgate assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section. The assessment of need criteria for electric generation facilities and electric transmission lines shall be promulgated no later than September 15, 1975. The assessment of need criteria for all other large energy facilities shall be promulgated no later than July 1, 1976.

Subd. 2. On and after the effective date of the assessment of need criteria adopted pursuant to subdivision 1, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the director pursuant to sections 116H.01 to 116H.15 and consistent with the criteria for assessment of need.

Minn. Stat. § 116H.13 subds. 1-2 (1976). (Emphasis added.) It is further provided that "[t]he application shall be on forms and in a manner established by the director." Minn. Stat. § 116H.13 subd. 4 (1976).

EA DEP. EX. 4
DATE 8-4-77 B.J.L. BJL

It is further provided in the Rules of Procedure Governing Certificate of Need Program that

> 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 . . . . The application shall contain the information required in the applicable substantive rules . . . .

Minn. Reg. EA 502(a). "Large energy facility" is defined to include

> . . . [a]ny electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more, or any facility of 5,000 kilowatts or more which requires oil, natural gas, or natural gas liquids as a fuel and for which an installation permit has not been applied for by May 19, 1977, pursuant to Minn. Reg. APC 3(a) . . . [and]
>
> . . . [a]ny high voltage transmission line with a capacity of 200 kilovolts or more with more than 50 miles of its length in Minnesota; or, any high voltage transmission line with a capacity of 300 kilovolts or more with more than 25 miles of its length in Minnesota . . .

Minn. Stat. § 116H.02 subd. 5 (1976), as amended by Minn. Laws 1977 ch. 381 § 8.

The need to adopt a rule providing for inclusion of environmental data in applications for certificates of need arises from legislative mandate in the Energy Agency Act, Minnesota Statutes chapter 116H, the Minnesota Environmental Policy Act, Minnesota Statutes chapter 116D, and 6 MCAR § 3.025 G., which read, in part, as follows:

> FINDINGS AND PURPOSE. The legislature finds and declares that the present rapid growth in demand for energy is in part due to unnecessary energy use; that a continuation of this trend will result in serious depletion of finite quantities of fuels, land and water resources, and threats to the state's environmental quality; that the state must insure consideration of urban expansion, transit systems, economic development, energy conservation and environmental protection in planning for large energy facilities; that there is a need to carry out energy conservation measures; and that energy planning, protection of environmental values, development of Minnesota energy sources, and conservation of energy require expanded authority and technical capability and a unified, coordinated response within state government.

> The legislature seeks to encourage thrift in the use of energy, and to maximize use of energy-efficient systems, thereby reducing the rate of growth of energy consumption, prudently conserving energy resources, and assuring statewide environmental protection consistent with an adequate, reliable supply of energy.

Minn. Stat. § 116H.01 (1976).

> No proposed large energy facility shall be certified for construction unless the applicant has justified its need. In assessing need, the director shall evaluate:
>
> . . . .
>
> (5) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;
> (6) The effects of the facility in inducing future development;
> (7) Possible alternatives for satisfying the energy demand including but not limited to potential for increased efficiency of existing energy generation facilities;
> (8) The policies, rules and regulations of other state and federal agencies and local governments.

Minn. Stat. § 116H.13 subd. 3 (1976).

> ACTION BY STATE AGENCIES. Subdivision 1. The legislature authorizes and directs that, to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06.
>
> Subd. 2. All departments and agencies of the state government shall:
>
> . . . .
>
> (c) Identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations;
> (d) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
> (e) Recognize the worldwide and long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize interstate, national and international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;
> (f) Make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, Chapter 412;

(g) Initiate the gathering and utilization of ecological information in the planning and development of resource oriented projects . . . .

Minn. Stat. § 116D.03 (1976).

. . . Environmental report on certificates of need.

(1) Preparation. The Minnesota Energy Agency shall prepare an Environmental Report when it receives an application for a certificate of need for a proposed LEPGP or HVTL.
(2) Content. The Environmental Report on the certificate of need shall include, but not be limited to:
(a) A summary of the information provided in the application.
(b) A brief analysis of alternatives to the proposed facility, which analysis shall include: a discussion of the economic and environmental feasibility of each alternative including the alternative of a different sized facility, an estimate of the time it would take to implement each alternative, the projected availability of each alternative, and the estimated reliability of each alternative.
(c) An evaluation of the environmental and economic impact of the proposed facility, each reasonable alternative thereto, and the alternative of no facility.
(d) An evaluation of:
(i) the environmental impact of the proposed action, including any pollution, impairment, or destruction of the air, water, land, or other natural resources located within the state;
(ii) any direct or indirect adverse environmental, economic, and employment effects that cannot be avoided should the proposal be implemented;
(iii) alternatives to the proposed action;
(iv) the relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity, including the environmental impact of predictable increased future development of an area because of the existence of a proposal, if approved;
(v) any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented;
(vi) the impact on state government of any federal controls asscciated with proposed actions; and
(vii) the multi-state responsibilities associated with proposed actions.
(3) The report shall not be as exhaustive or detailed as an EIS, since an exhaustive and lengthy discussion of site-differentiating factors and detailed design information would be inappropriate and is not available at the certificate of need stage . . . .

6 MCAR § 3.025 G.

The rules are needed to inform each applicant for a certificate of need for a large electric generating facility

or a large high voltage transmission line of the application procedures, the filing fees which must accompany the application, the criteria by which the need for the proposed facility shall be assessed, and the data elements which must appear in the application. The proposed amendments to these rules are needed to further clarify the procedures to be followed, to require additional data on alternatives and environmental data, and to reflect experience gained in the six certificate of need hearings held to date pursuant to these rules.

In the amendments to the existing rules, division of rule sections according to the format specified by Minn. Reg. RGSTR 6 D has been accomplished without indication of that change. However, all other changes have been indicated in the prescribed manner - deletions by crossing out the words or characters to be deleted and additions by underlining the words or characters to be added.

The justification of the need for and reasonableness of each of the amendments to the rules is as follows:

EA 601 DEFINITIONS:

Four substantive amendments to the definition section are proposed.

The first amendment adds the definition to "Adjusted Net Capability." This amendment is needed to correct an oversight when the rules were adopted, because the term is used in Minn. Reg. EA 636 D.

The second amendment changes the primary measure of efficiency of an electric generating plant from "annual plant efficiency" to "heat rate." The latter measure more clearly addresses the issue of the amount of input energy that is necessary to obtain one kilowatt-hour from the plant. It is a simple matter to calculate the plant efficiency from the heat rate. Since the reference to annual plant efficiency has been

removed in the proposed amendment to rule EA 633, the Agency staff recommends that the existing definition EA 601(e) be deleted from the rules. This deletion necessitates relettering the other definitions to maintain alphabetical order.

The third amendment conforms the definitions of "Large Electric Generating Facility" and "Large High Voltage Transmission Line" with the amended definition of "Large Energy Facility" given in section 8 of chapter 381, 1977 Laws of Minnesota. The amendment also introduces the use of the metric system for length of a transmission line. One hundred miles is approximately equivalent to 160.9 kilometres. The Director of the Agency, in consonance with public policy, has directed that metric units be implemented in Agency publications whenever practicable. On December 23, 1975, President Gerald R. Ford signed the Metric Conversion Act of 1975 as Public Law 94-168. This law makes it national policy to coordinate the increasing use of the metric system in the United States.

The fourth amendment changes the wording of "Summer Months" and "Winter Months" to "Summer Season" and "Winter Season," respectively. This change is necessary and reasonable because the rest of the rules more often use the term "seasonal" than some variation of the term "months."

The rest of the proposed amendments of this rule are very minor and are needed for the sake of clarity, consistency, or grammar.

EA 602 PURPOSE OF RULES:

This rule is a new one initially proposed for adoption in these proceedings. It is needed to clarify the applicability of these rules to the contents of applications for certificates of need submitted for large electric generating facilities and large high voltage transmission lines. Further, this rule indicates that the set of rules specifies the criteria by which the director will assess the need for the proposed facility.

EA 603 APPLICABILITY OF RULES:

This rule is a new rule which is proposed for adoption. It is a necessary and reasonable addition which would clearly identify the certificate of need applicants who must comply with these rules.

EA 604 APPLICATION PROCEDURES AND TIMING:

This rule is a new rule which is proposed for adoption. It responds to the statutory mandate that applications for certificates of need "shall be on forms and in a manner established by the director." Minn. Stat. § 116H.13 subd. 4 (1976). This rule provides the basic procedures that would be followed during the certificate of need process, i.e., the number of copies of an application that are required, the form and size of documents filed, cover letter and index requirements, correction procedures, maximum processing duration, procedures for applications which are not substantially complete, and procedures for exempting an applicant from a specific information requirement.

Since the Agency has only six months to review and approve or deny an application for a certificate of need, it is important and reasonable that the form and content of the application are clearly defined, that an adequate number of copies are filed, and that the application as filed is substantially complete. These requirements will help to avoid untimely delays due to a lack of understanding of what is expected from the applicant. Further, it will standardize the applications, thereby reducing the time required by the Agency to review and become familiar with the applicant's proposal.

Proposed amendment EA 604 H would allow the applicant to request an exemption from specified requirements of the rest of the rules. This amendment is reasonable and necessary because no set of rules, no matter how well written, can take account of every possible situation that may arise. This

amendment would allow an applicant and the Director to ensure that an application contains the information most appropriate for the particular circumstances involved.

EA 605 FILING FEES AND PAYMENT SCHEDULE:

This rule is a new rule which is proposed for adoption. The filing fees are currently specified in rule EA 621. Because of the importance of this particular subject, the Agency staff believes that it is reasonable that the entirety of one rule be devoted to fees and the payment schedule. The fees specified in EA 621 remain the same and none of the other information has been altered in any significant way.

As previously indicated, the authority to assess fees for processing applications is given to the director of the Agency in Minn. Stat. § 116H.13 subd. 6 (1976). Subdivision 6 provides two general factors to be considered in establishing a fee schedule: (1) the size or output of the facility and (2) the difficulty of assessment of need. In addition, Minn. Stat. § 16A.128 (1976) requires that the fee schedule be set so that the total fees received approximate the amount appropriated by the legislature, which implies that the Certificate of Need Program must be self-supporting.

The fee schedule has been set in accordance with these factors. Based upon the applications to date, the Agency staff does not believe the fee schedule should be changed at this time.

EA 611 CRITERIA FOR ASSESSMENT OF NEED:

The Agency staff proposes that the existing EA 611 be replaced in its entirety with the new proposed EA 611. The need for a rule specifying criteria for assessment of need for proposed large energy facilities arises from legislative mandate.

> Subdivision 1. <u>The director shall</u>, pursuant to chapter 15 and sections 116H.01 to 116H.15,

> promulgate assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section. The assessment of need criteria for electric generation facilities and electric transmission lines shall be promulgated no later than September 15, 1975. The assessment of need criteria for all other large energy facilities shall be promulgated no later than July 1, 1976.
>
> Subd. 2. On and after the effective date of the assessment of need criteria adopted pursuant to subdivision 1, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the director pursuant to sections 116H.01 to 116H.15 and consistent with the criteria for assessment of need.

Minn. Stat. § 116H.13 subds. 1-2 (1976). (Emphasis added.) Criteria is generally defined to mean standards on which a judgment or decision may be based, or standards by which to judge the correctness of a judgment or conclusion. The listing in Minn. Stat. § 116H.13 subd. 3 (1976) of eight items which the director shall evaluate in assessing need is not a listing of criteria. Rather, it is a nonexclusive list of factors which can be, and have been, incorporated into the certificate of need process.

The need to include environmental considerations in the criteria arises from legislative mandate in the Energy Agency Act, Minnesota Statutes chapter 116H, and the Minnesota Environmental Policy Act, Minnesota Statutes chapter 116D, which read, in part, as follows:

> FINDINGS AND PURPOSE. The legislature finds and declares that the present rapid growth in demand for energy is in part due to unnecessary energy use; that a continuation of this trend will result in serious depletion of finite quantities of fuels, land and water resources, and threats to the state's environmental quality; that the state must insure consideration of urban expansion, transit systems, economic development, energy conservation and environmental protection in planning for large energy facilities; that there is a need to carry out energy conservation measures; and that energy planning, protection of environmental values, development of Minnesota energy sources, and conservation of energy require expanded authority and technical capability and a unified, coordinated response within state government.
>
> The legislature seeks to encourage thrift in the use of energy, and to maximize use of energy-

> efficient systems, thereby reducing the rate of growth of energy consumption, prudently conserving energy resources, and assuring statewide environmental protection consistent with an adequate, reliable supply of energy.

Minn. Stat. § 116H.01 (1976). (Emphasis added.) See also

Minn. Stat. § 116H.13 subd. 3(5)-(8) (1976).

> ACTION BY STATE AGENCIES. Subdivision 1. The legislature authorizes and directs that, to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06.
>
> Subd. 2. All departments and agencies of the state government shall:
>
> . . . .
>
> (c) Identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations;
> (d) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
> (e) Recognize the worldwide and long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolution, and programs designed to maximize interstate, national and international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;
> (f) Make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, Chapter 412;
> (g) Initiate the gathering and utilization of ecological information in the planning and development of resource oriented projects . . . .

Minn. Stat. § 116D.03 (1976).

Proposed rule EA 611 establishes four criteria or standards upon all of which the director must make an affirmative determination before a certificate of need may be granted. The standards expressed in the criteria were developed after numerous discussions among the certificate of need staff and with the director, after reflecting upon the experience gained in the prior certificate of need hearings, and after a careful examination of the statutes cited above. They include and reflect the eight

statutory factors, listed in Minn. Stat. § 116H.13 subd. 3 (1976), that the director must evaluate in determining the need for the proposed facility and other factors the director considers relevant to the determination of need for a proposed facility.

The first criterion provides the standard which the director will use to measure the validity of the applicant's asserted need for a new energy facility. Part of the Minnesota Energy Agency's charge from the legislature is to ". . . maximize use of energy-efficient systems . . ." thereby ". . . assuring statewide environmental protection consistent with an adequate reliable supply of energy." Minn. Stat. § 116H.01 (1976). (Emphasis added.) In addition to items (1), (2), and (4), of subd. 3 of section 116H.13, which appear in the rule as factors a, b, and c, the director deems it important to consider two other factors in determining need. Factor d, the ability of current facilities and planned facilities not requiring a certificate of need to meet future demand, has been, and, in the opinion of Agency staff, will continue to be, a major factor considered in determining the need for proposed large energy facilities. Factor e follows from a close reading of sections 116H.01 and 116D.03. In addition, it allows the director to consider arguments for the granting of a certificate not related to adequacy of supply. The Agency foresees, for example, applications for facilities needed to meet pollution control requirements and for facilities to replace outmoded or less efficient ones.

The second criterion is based upon Minn. Stat. § 116H.13 subd. 3(7) (1976) which requires the director to evaluate "[p]ossible alternatives for satisfying the energy demand . . . ." If there is an alternative more reasonable or prudent than the proposed facility, such a showing must be made on the record by parties other than the applicant. The director could deny a certificate of need to the applicant based upon such a showing.

In examining whether or not a more reasonable and prudent alternative has been demonstrated, the proposed rule requires the director to consider four factors. Each of these factors deals with the reasonableness of alternatives compared to the proposed facility. All four have been points of contention in previous certificate of need proceedings and are foreseen to be objects of contention in future proceedings pursuant to these rules.

The third criterion is met if the director determines that the consequences of granting the certificate of need are more favorable than the consequences of denying the certificate. This is a reasonable standard because no large energy facility should be built in Minnesota if it can be demonstrated that it is not in the best interests of the people of Minnesota. In making this determination, the director is required to consider four factors. The first, third, and fourth factors correspond, respectively, to items (3), (6), and (5) of Minn. Stat. § 116H.13 subd. 3 (1976). The second factor requires that the impact of the proposed facility on the natural and socioeconomic environments be compared to the impact of not building the facility. This factor is based, to a large extent, upon a close reading of sections 116H.01 and 116D.03. Specifically, subdivision 2 of section 116D.03 stated, "All departments and agencies of the state government shall: . . . (c) identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations . . . ."

The fourth criterion requires that the director find that it has not been shown on the record of a particular proceeding that granting the certificate of need would be inconsistent with policies, rules, and regulations of other state and federal agencies and local governments. It is reasonable that the director would not grant a certificate of

need if it is known to be inconsistent with applicable rules and regulations. However, all necessary information to make this determination may not be available at the certificate of need stage. In addition, the director has no authority to grant certificates subject to unknown or later-developed requirements. Therefore, the director can only ascertain whether the granting of the certificate is consistent with the applicable rules and regulations considered during the certificate of need process.

It should be noted that virtually identical criteria have been incorporated into other rules for certificate of need application recently adopted, i.e., Minn. Regs. EA 801 et seq., Minn. Regs. EA 901 et seq., and Minn. Regs. EA 1001 et seq. The director prefers to have one set of criteria by which to assess the need for all types of large energy facilities, analyzing in a particular case only those factors which are applicable to that type of facility, as is explained in proposed EA 611 A. The Agency staff contends for the aforementioned reasons that the amended rule EA 611 is both necessary and reasonable.

EA 621 GENERAL PROVISIONS:

This rule should be deleted in its entirety. Its content, with reasonable and necessary changes, is entirely contained in proposed amended rules EA 605, EA 631 and EA 635.

EA 631 CONTENTS OF APPLICATION:

The amended rule combines the language of existing rules EA 621 and 631. In addition, this amendment simplifies and clarifies the language contained in rule EA 621 A.

An intended change from the existing rule EA 621 A 2 would require the applicant to provide data for a particular load center in response to rule EA 635, rather than data for the entire system, in the event that a large high voltage

transmission line is proposed to deliver power to that load center. The Agency staff believes that system data only tends to confuse the issue of need when the pertinent questions relate to a much smaller geographic area. However, if the proposed transmission line also had substantial need implications for the entire system, the Agency staff would also expect the applicant to include in its application data for the entire system in response to rule EA 635.

A second change is that joint applicants would no longer be required to submit combined data in addition to that for their individual systems. The Agency staff believes it is preferable to evaluate each individual applicant's need for its portion of a proposed facility. Also, some of the data from joint applicants is misleading when combined because of the noncoincident nature of different systems' loads.

A final change would require a utility to be a joint applicant if it were to receive at least 50 megawatts of power from the proposed facility on a long-term basis, even if it were not to be a joint owner. Clearly, the intent of the Energy Act is for the Agency to look at the need for system expansions in the context of customer demands. This would be impossible if data were not supplied for customers outside the service areas of the joint owners. The 50-megawatt cutoff has been chosen by the Agency staff because it is consonant with the legislative definition of a large electric generating facility.

EA 632 NEED SUMMARY AND ADDITIONAL CONSIDERATIONS:

The existing rule EA 632 remains unchanged as amended rule EA 632 A and will therefore not be addressed.

The director in his assessment of need is required by Minn. Stat. § 116H.13 subd. 3 (4)-(6) (1974) to consider "promotional activities" leading to demand for the proposed facility, "socially beneficial uses of the output of this facility," and "effects of the facility in inducing future

development." Subdivision B of the amended rule requires the applicant to provide information on those three points, since specific information on them would not necessarily be provided in response to any other of the rules.

EA 633 DESCRIPTION OF PROPOSED LARGE ELECTRIC GENERATING FACILITY AND ALTERNATIVES:

The first amendment of this rule explicitly would require the applicant to provide the expected annual capacity factor for a proposed facility. Some of the applications to date have not included this information. Because the expected capacity factor is indicative of the extent to which the facility would be used, the Agency staff believes it should be provided in the application.

The second proposed amendment of this rule substitutes the words "anticipated heat rate of the facility" for "anticipated annual plant efficiency" in subdivision A 4. This amendment is consistent with the proposed change in the definition section of these rules and is therefore necessary and reasonable.

The third amendment, occurring in subdivision B, more explicitly details the types of alternatives that should be considered by the applicant. Specifically, the applicant would be required to consider new transmission lines and upgrading of existing transmission lines as alternatives to new Minnesota-based generation facilities. The relative merits of each of these choices should be discussed in nearly every certificate of need hearing. The applicant would also be required to consider new generation by other technologies. The Agency would expect every application for a coal-fired plant to discuss both nuclear power and generation by emergent technologies such as solar power, wind generation, magnetohydrodynamics and fuel cells. Since the director specifies size, type and timing in granting a certificate of need, the reason for adequately

addressing alternatives to the proposed facility is immediately obvious. Since the electric utility industry is a party to most research on each of these alternatives, it is reasonable and appropriate that each certificate of need application contain such relevant information on available alternatives.

The fourth amendment to the rule is the addition of section C, which requires the applicant to discuss the economics of each viable alternative. Information required by this subdivision includes the service life of the proposed facility or alternative, the expected availability of the capacity in order to meet the alleged level of need, its capacity costs, its variable and maintenance costs, and the total cost of a kilowatt hour provided by it under normal conditions. The assumptions underlying these estimates are also required, because they are essential in formulating the estimate and in determining the credibility of the estimate. Because economic considerations are an integral part of the revised criteria for assessment of need, it is necessary that information of an economic nature be considered on the record. Further, since the electric utility is in the best position to provide such information, it is reasonable and appropriate that it be included in the application.

The final amendment of this rule, occurring in subdivision E, requests the applicant to provide other relevent information not specifically required by the amended rule, not only for the proposed facility but also for each alternative. The Agency staff believes it is essential that the applicant have an opportunity to provide such information.

The amended rule in its entirety is needed to aid the director in determining whether a proposed facility is the most reasonable and prudent alternative available to the applicant, its customers, and the citizens of Minnesota and neighboring states. Furthermore, the amended rule is reasonable, because it addresses issues that not only would be discussed

at the public hearing but would also be considered by management of a utility in choosing among alternatives.

EA 634 DESCRIPTION OF PROPOSED LARGE HIGH VOLTAGE TRANSMISSION LINE AND ALTERNATIVES:

The first proposed amendment of this rule substitutes the number, size and type of conductors for a proposed facility for the design power capability. In a previous rulemaking hearing the electric utilities argued successfully that design power capability is an ambiguous term and would elicit varying responses from applicants. On the other hand, the number, size and type of conductors are specific terms from which power-transfer capability can be calculated.

The second proposed amendment is related to the first. A transmission line may be designed for use under conditions requiring varying currents and voltages. Therefore, the staff believes it would be better to require expected losses under a specific condition - in this case, projected maximum loading.

Other amendments, occurring in subdivision B, more explicitly detail the types of alternatives that should be considered by an applicant. The amended rule requires the applicant to provide a discussion of the relative merits of AC and DC transmission for its needs, as well as the relative merits of overhead and underground transmission. The amendments also require the applicant to consider different voltages; different numbers, sizes and types of conductors; different terminal or substation locations; and double circuiting of existing lines. The desirability of considering each of these options is manifested by the public controversy that has been aroused by proposed electric power lines. The information is needed to enable the proper choice to be made and to demonstrate to the public that the choice is proper.

The next set of proposed amendments is the addition of section C, which requires the applicant to discuss the economics

of each viable alternative. Information required includes the service life of the alternative, its expected availability, its estimated operating and maintenance costs, and its total cost. The assumptions underlying these estimates are also required, because they are essential in formulating the estimate and in determining the credibility of the estimate. Because economic considerations are an integral part of the revised criteria for assessment of need, it is necessary that information of an economic nature be considered on the record. Further, since the electric industry is in the best position to provide such information, it is reasonable and appropriate that it be included in the application.

The final amendment of this rule, occurring in subdivision E, requests the applicant to provide other relevant information not specifically required by the amended rule, not only for the proposed facility but also for each alternative. The Agency staff believes it is essential that the applicant have an opportunity to provide such information.

The amended rule in its entirety is needed to aid the director in determining whether a proposed facility is the most reasonable and prudent alternative available to the applicant, its customers, and the citizens of Minnesota and neighboring states. Furthermore, the amended rule is reasonable, because it addresses issues that not only would be discussed at the public hearing but would also be considered by management of a utility in choosing among alternatives.

EA 635 PEAK DEMAND AND ANNUAL ELECTRICAL CONSUMPTION FORECAST

Subdivision A has been amended to include explanatory language with regard to estimates and the distinction between historical and projected data. The addition is necessary for the sake of clarity. The first sentence of the addition is essentially the same as existing rule EA 621 B.

The proposed amendment to subdivision B 2 requires an

applicant to provide not only the electricity consumption by the various categories, but also the number of customers in each category. This added information would provide important data for preparation of a forecast by end-use categories and could provide important insights into the customer groups requiring the addition of the new facility.

The proposed amendment to subdivision B 3 is primarily a restatement of the existing rule. The specific waiver to this section "if unnecessarily burdensome" has been removed. Not only does the Agency staff believe that the requirement is unnecessary, but the waiver is redundant with the addition of rule EA 604 H.

Subdivision B has also been amended to require load factor data only for weekdays. From previous certificate of need proceedings it has become obvious that weekday load factors are far more critical in need determination and that weekend load factors, and therefore load factors for the entire week, need not be included in the application. Should weekend load factors become a factor in a particular proceeding, such information could be presented voluntarily in the application or be requested at the public hearing.

The Agency staff recommends that the heading of subdivision C be changed from "Forecast Documentation" to "Forecast Justification." The purpose of the subdivision is not merely to have the applicant explain the forecast methodology but also to justify it as reasonable and accurate. The amendment also points out that any data supplied by the applicant should be capable of withstanding tests of "accuracy, reasonableness and consistency." The Agency staff believes that these changes, in conjunction with the addition of the phrase "as well as a description of their derivation," will cause greater attention to be paid to subdivision C 1 e. An estimate of the probable forecast error is an important part of the justification of any forecast, and a certificate of need

application should not be considered "substantially complete" if it does not include such information.

The other proposed changes are made for reasons of clarity and style and have no impact on the substance of the existing or amended rules.

EA 636 SYSTEM CAPACITY:

The proposed amendments to subdivisions D through G of rule EA 636 have been made to clarify the information to be supplied by an applicant and its format. The Agency staff intends that the tables provided in response to subdivisions D through F, respectively, would indicate the applicant's supply/demand situation without the proposed facility, with the proposed facility, and with all projected facilities. The tables should include the effects of retirements that are planned. Since subdivision G asks for detailed retirement and addition data, minor modifications to tables D through F to reflect changes in retirements and additions could be made by any reader of the application.

Subdivision H has been amended to make it more meaningful to individuals studying an application. It is clearer and more intuitively acceptable that the effects of maintenance outages be subtracted from adjusted net capability rather than added to monthly adjusted net demand. The Agency staff therefore believes the proposed change is necessary and reasonable.

Subdivision I has been amended to require a discussion of the appropriateness of system reserve margins in addition to the method of determining those margins. Reserves are not understood by the public and the change is directed toward eliminating that misunderstanding.

Other minor changes to this rule for reasons of clarity and style have no impact on the substance of the existing or amended rules.

EA 637 CONSERVATION PROGRAMS:

The director in his assessment of need is required by Minn. Stat. § 116H.13 subd. 3 (2) (1976) to consider the effect of existing or possible energy conservation programs. Data submitted in response to this rule will provide the director with an understanding of those specific conservation or energy efficiency programs which have been studied or implemented by the applicant. This information is needed by the director to help determine whether reasonable additional conservation measures by the applicant would affect the applicant's need for the proposed facility.

EA 638 ENVIRONMENTAL DATA:

This rule is a new rule which is proposed for adoption. It recognizes that decisions made by the Director of the Energy Agency on the size, type and timing of large electric energy facilities have environmental implications. The proposed rule responds to the statutory mandates of the Environmental Policy Act and the Energy Agency Act that environmental values be considered in the Agency's decision-making process.

The proposed rule also responds to 6 MCAR § 3.025 G.2.a. which requires the Energy Agency to prepare environmental reports on certificate of need applications for large electric energy facilities. Rule 6 MCAR § 3.025 G. requires an evaluation of the environmental impact of the proposal, of reasonable alternatives and of the alternative of no facility.

Rule 6 MCAR § 3.025 G. also requires distribution of the environmental report at least twenty days before the start of public hearings on the application. The report must be released no later than sixty days after receipt of the application to meet this requirement.

This schedule affords little time for extensive research by the Agency or for requests for additional information from the applicant after receipt of the application. It is necessary

and reasonable to require submission of environmental data in the application to assure preparation of an adequate environmental report and to avoid untimely delays in the process.

The proposed rule is limited to the resource requirements and outputs of the proposed facility and alternatives. It is reasonable to require the applicant to submit these data because: the applicant often has experience managing the resource requirements and outputs of the alternatives; the applicant must consider many of these factors before deciding to favor one alternative over others; and these data are available to the applicant in the literature and through an exchange of information within the industry.

The proposed rule would not require the applicant to submit an evaluation of the resource requirements and outputs. This evaluation would be more appropriately prepared by the other state agencies coordinated by the Energy Agency based on the environmental data submitted in the application.

It is important for the applicant to have a clear understanding of the requirements to assure the production of an adequate environmental report and to avoid untimely delays in the certificate of need process. To standardize applications, the proposed rules clearly specify the units and special assumptions for reporting the data. The specificity of units and assumptions should not obscure the general nature of the data that would be required by the proposed rules. It is understood that the detailed design and location of the proposal are often not known at the certificate of need stage. The rules would require the applicant to make reasonable generalizations to describe the differences between the proposal and other alternatives.

The standardization of the application also will help minimize the time required to prepare the environmental reports. The Agency intends to prepare generic documents on the environmental impacts of high voltage transmission lines and large electric power generating plants that will be the basis for

environmental reports. After receipt of an application, the environmental data collected would be distributed to other state agencies. The other agencies and the Energy Agency would review the data for accuracy and completeness. The agencies would then evaluate the environmental impacts of the proposal and alternatives. The data submitted by the applicant and the evaluations of environmental impacts would be incorporated into the generic draft to produce an environmental report. It is important that the rules specify units and the assumptions underlying the data to minimize the effort required to adapt the generic draft to a particular application.

Rule EA 638 A 1 would require estimates of land-use requirements. The amount of land taken for generating facilities has an important impact that may differ for alternatives considered in the environmental report. For example, the combined land requirements for several small plants may exceed the requirement for a larger plant.

Rule EA 638 A 2 would require estimates of traffic generated by the facility. It is important to consider the impacts of traffic in environmental reports because it interferes with other land uses and affects air quality, water quality and noise levels. Traffic requirements may differ for alternatives considered in the environmental report. For example, the traffic requirements of a fossil-fueled plant are very different from the requirements for a nuclear plant.

Rule EA 638 A 3 would require data on the fuel requirements for fossil-fueled facilities. It is necessary to consider the expected sources of fuel in the environmental report. These data may differ for alternatives considered in the environmental report. For example, the environmental impacts of mining and shipping western coal differ greatly from the impacts of mining peat.

It is necessary to consider fuel requirements in the environmental report to comply with 6 MCAR § 3.025 G. Data

on the hourly fuel requirements are necessary to estimate the emission rates of airborne pollutants. Data on annual fuel requirements are necessary to consider the impacts of obtaining and transporting the fuel and the impacts of solid waste generation.

Data on the minimum and expected heat value of the fuel are necessary to estimate the emission rates of airborne pollutants. These data may differ for alternatives considered in the environmental report. For example, greater stack emissions from lignite-burning plants per unit of electrical output are attributable to the lower heat value of lignite compared to sub-bituminous coal.

It is important to generally characterize fuel in the environmental report. General data on sulfur content indicate the level of pollution control that would be necessary to meet air quality standards.

Rule EA 638 A 4 would require data on the airborne stack emissions from fossil-fueled facilities. Airborne emissions are among the most serious impacts of a fossil-fueled facility. It is necessary to consider the effect of these emissions in the environmental report to comply with 6 MCAR § 3.025 G.

Part a of the rule would require estimates of the emission rates for several pollutants. The emission limits for sulfur dioxide, nitrogen oxides, and particulates are expressed in terms of pounds of pollutants per million Btu input as fuel to the boiler. To compute the maximum emission rates allowed by the standards, it is necessary to know the hourly fuel requirement and the heat value of the fuel. To predict the emission rates of trace elements, for which there are no standards, it is also necessary to know the concentration of these elements in the fuel and the percentages of each element retained by the ash during combustion. Airborne emissions may be a major differentiating factor between alternatives considered in the environmental report. For example, the

emission standards allow greater emission rates from a mine-mouth plant burning lignite than from a load-center plant of similar size burning western coal, because of the higher heat rate of the lignite-burning facility.

Part b of the rule would require the preparation of isopleths showing contributions to ground-level concentrations of sulfur dioxide, nitrogen oxides and particulates attributable to the facility. The isopleths are necessary to relate stack emissions to ground-level concentrations. These contributions attributable to the facility can be added to the background concentrations of the pollutants to yield estimates of the expected ambient conditions. The expected ambient concentrations can be compared to the ambient air quality standards.

The isopleths may be prepared with standard mathematical models. The models require information on the emission rates of pollutants (required by part a of this rule) and information on meteorological conditions, stack dimensions and flue gas characteristics. For the purposes of this evaluation, worst-case meteorological data can be generalized for three areas of the state: the North Shore, the northern third of the state and the remainder of the state. For the purposes of this evaluation, standard stack dimensions and flue-gas characteristics can also be generalized. It is recognized that local meteorological conditions and design features affect the dispersion of stack emissions. However, the isopleths are a valuable way to present important differences between alternatives considered in the environmental reports. For example, the ambient concentrations contributed by a large plant may be no greater than those contributed by a smaller plant but may extend over a significantly broader area.

Rule EA 638 A 5 would require estimates of water use for generating facilities. Water use is among the most serious impacts of a generating facility. It is important to consider

the impacts of water appropriation, as well as the impacts of water consumption to comply with 6 MCAR § 3.025 G. These data may be important to distinguish between alternatives considered by the environmental report. For example, a nuclear facility may require significantly more water than a fossil-fueled facility of the same size.

Rule EA 638 A 6 through 9 would require data on the discharges to water, radioactive releases, solid wastes and audible noise attributable to alternative facilities. These are all important wastes produced by generating facilities. These data may distinguish between alternatives considered by the environmental report. For example, most of these wastes would be significantly different for a fossil-fueled plant compared to a nuclear plant.

Rule EA 638 A 10 would require data on the work force needed for the facility. These data are important to consider the socioeconomic impacts of construction and operation of the facility.

Rule EA 638 A 11 would require data on the transmission facilities associated with the generating facility. There is much public concern about the impacts of transmission lines on the human and natural environment. It is important to consider the environmental impacts of associated transmission facilities in the environmental report. A minimum number and size of circuits are needed to provide outlets for the generating facility and for reliability purposes. Additional circuits may be added to a site since a large plant site often serves as a substation for other circuits. The data on transmission requirements may differ for alternatives considered in the environmental report. For example, the transmission requirements of a large mine-mouth plant differs significantly from the requirements of several smaller load-center plants.

Rule EA 638 A 12 would require a description of mitigating measures and equipment to reduce the environmental impact of

the facility. It is important to consider these factors to place other environmental impacts in perspective. It is understood that these design features will be considered in greater detail at later stages of facility planning and that other regulatory agencies may impose conditions on the facility design. These data may differ for alternatives considered in the environmental report. For example, pollution control measures that are included in a large plant may not be feasible or necessary for a smaller plant.

Rule EA 638 B 1 would require data on the support structures and electric fields attributable to overhead transmission facilities. Part a requires schematic diagrams of the major types of support structures and conductor configurations that may be used. These data are important to consider the range of aesthetic impacts and impacts on land uses attributable to the support structures.

Part b and c of the rule would require data on the intensity of the electric fields attributable to the transmission facilities. There is much public concern about the impacts of electric fields on human health, livestock and vegetation. The isopleths of electric fields are important to relate the research on the effects of electric fields to the alternatives considered in a particular proceeding. These data may differ for alternatives considered in the environmental report. For example, the patterns and intensity of electric fields attributable to AC circuits are significantly different from those attributable to DC circuits.

Rule EA 638 B 2 and B 5 would require data on the emission of nitrogen oxides and ozone, radio and television interference and production of audible noise attributable to overhead facilities. These effects are all caused by corona discharge from the conductor. These data may differ for alternatives considered in the environmental report. For example, a conductor operating at a lower voltage will release less corona than a

conductor of similar design operating at a greater voltage under similar conditions.

Rule EA 638 B 3 would require data on underground transmission facilities. It is important to consider underground transmission facilities in the environmental report because of the great public interest in underground transmission facilities as an alternative to overhead facilities. Part a would require a description of the types and sizes of the cable systems. These data are important to consider the resource requirements for the facility, and the level of disruption necessary for construction of the facility. Part b would require a description of the types and quantities of materials required for insulation and cooling of the cable system. These data are important to consider the resource requirements of the facility and the impacts of a rupture in the pipe. Part c would require information on the heat released by the cable system. This data is important to consider the impacts of reject heat on soil and vegetation. This data would distinguish the alternatives of underground systems from the alternatives of overhead facilities in the environmental report.

Rule EA 638 B 4 would require estimates of the width of the right-of-way needed for the facility. These data are important to indicate the extent of interference between the transmission facility and other land uses. The data may differ for alternatives considered in the environmental report. For example, an underground transmission facility may require a smaller right-of-way than an overhead facility of similar size. A small difference in right-of-way requirements may seem insignificant but may affect many landowners.

Rules EA 638 B 6 and 7 would require a description of practices for the construction, operation and maintenance of the transmission facility. This information is needed to consider the impact of these practices on land uses and the natural environment. It is understood that alternative practices may be considered during later stages of facility planning and

that other agencies have authority to regulate these practices. However, this data may differ for alternatives considered in the environmental report. For example, a description of construction practices for alternate facilities may reveal that construction of an underground facility has a greater impact on water quality at stream crossings than the construction of an overhead facility.

Rule EA 638 B 8 would require data on the work force required for the facility. These data are important for an evaluation of the socioeconomic effects of construction and operation of the facility.

Rule EA 638 B 9 would require a description of the region between proposed endpoints. These data are necessary to compare the environmental impacts of the proposed endpoints with alternative endpoints and the alternative of no facility. These data will be especially important when there are distinctly different regions between alternative endpoints. The description should emphasize the area within three miles of proposed endpoints which is often more intensely affected by other transmission lines. The description should include hydrologic features because these often present major obstacles to routing and because transmission facilities may diminish the aesthetic value of these areas. The description should include natural vegetation and physiographic regions because the impacts of transmission facilities may be affected by these factors. For example, a transmission facility may be more conspicuous running across flat prairie than across rolling woodland. The description should also consider alternative land uses because the impact of a transmission facility depends largely on the uses of the land it crosses. For example, the impacts of a transmission line through a suburban area are very different from the impacts through cultivated land.

Rule EA 638 C would require a description of the resource requirements and outputs of the alternative of no facility.

Rule 6 MCAR § 3.025 G. requires that the environmental report include an evaluation of the environmental impact of the alternative of no facility. The alternative of no facility may have serious environmental impacts. For example, deferring installation of a new generating plant may delay the retirement of older plants that are more inefficient and that are required to meet less stringent pollution control standards than new plants. The requirements of this rule parallel the requirements of rules EA 638 A and B, to facilitate a thorough comparison of the alternative of no facility with other alternatives treated in the application.

In summary, proposed rule EA 638 is necessary and reasonable because the applicants have access to the data required by the rule, because providing the data would not be unreasonably burdensome, and because the information is needed to comply with 6 MCAR § 3.025 G. in the limited time available.

EA 639 CONSEQUENCES OF DELAY:

No changes have been made in this rule (other than the rule numbers).

EA 641 CERTIFICATE OF NEED MODIFICATIONS:

Subdivision A of this rule has been amended to make it conform more closely with Minn. Stat. § 116H.13 subd. 5 (1976). Modifications may be made by the director, and it is necessary and reasonable that this be stated in the rules. Also, it seems inappropriate to the Agency staff that the director state what changes would be necessary to insure "compliance with the standards." Such an act by the director would be tantamount to prejudging a revised application.

Subdivision C has been amended to reflect new legislation. The corridor process has been eliminated, so subdivision C 2 b no longer has any meaning. Subdivision C 2 a has merely been relabeled as subdivision C 2.

Other minor changes in this rule have been made for reasons of style and grammar, but none of these changes have any impact upon the substance of the existing or amended rules.

Dated: July 8, 1977

Richard A. Wallen
Director
Certificate of Need Program
Minnesota Energy Agency

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency 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, Minn. Regs. EA 601 - 638.	REPORT OF HEARING EXAMINER

The above-entitled matter came duly on for hearing before William Seltzer, Hearing Examiner, on the 4th day of August, 1977, in Conference Room D, Veterans Service Building, Saint Paul, Minnesota, commencing at approximately 9:30 a.m. Said hearing was duly recessed and reconvened at the same location at approximately 9:30 a.m. on the 5th day of August, 1977, and the 31st day of August, 1977.

Dwight Wagenius, Special Assistant Attorney General, appeared for and on behalf of the Minnesota Energy Agency Staff (hereinafter sometimes referred to as "Agency Staff") in support of the within considered proposed rules.

Appearances were duly noted for the record by Gary R. Macomber, Esq., 4344 IDS Center, Minneapolis, Minnesota 55402, on behalf of Northern States Power Company; Phillip Halverson, Esq., 30 West Superior Street, Duluth, Minnesota, for Minnesota Power and Light Company; and Keith Kozloff, 1012 Argyle Street, Saint Paul, Minnesota, on behalf of Clear Air-Clear Water Unlimited.

All interested persons, representatives of individuals or associations, and other interested groups present at the hearing had an opportunity to present evidence and question witnesses.

The record of the proceedings remained open through the 20th day of September, 1977.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1976), this Report shall be available for review to all affected individuals upon request for at least ten days. The Minnesota Energy Agency

shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order to the Chief Hearing Examiner no earlier than ten days subsequent to the receipt of this Report. Such submission shall also clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his Report to the Minnesota Energy Agency on the issue of substantial changes, if any, in the proposed rules within ten calendar days after receipt of the Findings and Order of the Director of the Minnesota Energy Agency. Thereafter, the Minnesota Energy Agency shall be responsible for filing the rules with the Attorney General.

The proposed rule amendments were offered by Agency Staff on their belief that the proposed amendments would improve, make more precise, and expand upon the current rules governing contents of applications for certificates of need for large electric generating facilities and large high voltage transmission lines. Agency Staff also asserts that the "Criteria for Assessment of Need" (EA 611) would be changed to allow greater consideration of (1) alternatives to a proposed facility, (2) relative costs of the proposed facility and alternatives, and (3) relative environmental affects of the proposed facility and alternatives. Finally, Agency Staff asserted that certain other rule amendments would clarify the purpose of the rules, the applicability of the rules, and the procedures for filing an application.

The Hearing Examiner, upon all records, files, evidence, arguments of counsel, and written comments filed before the close of the record, hereby makes and issues the following Findings of Fact, Conclusions and Recommendations:

FINDINGS OF FACT

1. That the Order for Hearing issued on the 20th day of June, 1977, was in all respects proper in form, content, execution and filing.

2. That due, timely and adequate Notice of Hearing as or-

dered by the Minnesota Energy Agency was properly served and filed on the 20th day of June, 1977. Notice of intent to solicit outside opinion appeared at 1 State Register 487 on September 21, 1976, and 1 State Register 1706 on May 31, 1977. The Notice of hearing appeared pursuant to Rule and Statute at 1 State Register 1852 on July 5, 1977; and a copy of the rules as proposed appeared at 1 State Register 1853 through 1865 on July 5, 1977. All other relevant, substantive and procedural requirements of statute or rule have been complied with for the purposes of establishing jurisdiction of the subject matter to proceed to public hearing pursuant to law.

3. That the authority of the Minnesota Energy Agency to promulgate the above-entitled proposed rule amendments is contained in Minn. Stat. §§ 116H.08 (a) and 116H.13 (1976).

4. (EA 601) Proposed rule EA 601 is the definitional section of the proposed amended chapter.

A definition for "Adjusted Net Capacity" is added to correct an oversight when the original rules were adopted.

Another amendment changes the primary measure of efficiency of an electrical generation plant from "annual plant efficiency" to "heat rate." The latter measure more clearly addresses the issue of the amount of input energy that is necessary to obtain one kilowatt-hour from a generating plant. This amendment requires the deletion of the existing definition of "annual plant efficiency" in rule EA 601 E and the inclusion of a new definition for "heat rate." In order to appropriately utilize this definitional change, proposed amended rule EA 633 must be adopted so as to remove references to "annual plant efficiency" and substitute the term "heat rate."

The next proposed amendment to EA 601 conforms the definition of "large electric generating facility" and "large high voltage transmission line" with the amended definition of "large energy facility" given in section 8 of chapter 381, 1977 Laws of Minnesota. The amendment also introduces the use of the metric system for the length of a transmission line.

Northern States Power Company suggested that EA 601 K be adopted with the word "unit" in place of the word "plant." The Energy Agency Staff agrees with Northern States Power Company because the generating unit is really the key element in the generating system, while "plant" is subject ot various interpretations by agencies and individuals. Thus, the substituted word change is reasonable and necessary.

Northern States Power Company suggested that the word "normal" be deleted from the phrase, "normal six summer months or six winter months" in amended rule EA 601 W. Agency Staff agrees the word serves no useful purpose and should be deleted. However, Agency Staff also believes that the phrase, "six summer months or six winter months" should be replaced with the phrase, "summer season or winter season," which would bring the definition into conformance with amended rules EA 601 X and CC.

Agency Staff also agrees with the suggestion of Northern States Power Company that the word "geographic" should be replaced with the word "service" in proposed amended rule EA 601 Y. This suggestion is reasonable.

Finally, Clear Air-Clear Water suggested that a definition for the term "promotional practices" should be added to proposed amended rule EA 601 because the term has been a source of disagreement in past certificate of need activities. Agency Staff does not vigorously object to defining promotional practices in the rules. However, Agency Staff asserted that the proposed definition could be construed as reflecting negatively upon certain legitimate and essential functions of utilities, including some that are permitted or mandated by statute or by the Public Service Commission. As an example, Agency Staff cited the situation of connecting a new customer to the system which would clearly lead to increased demand, although a utility is required to provide such service. Accordingly, the Hearing Examiner finds it to be reasonable and necessary to include a definition for the term "promotional practices" as follows:

"Promotional Practices" means any actions or policies by an applicant, except those actions or policies which are permitted or mandated by statute or rule, which directly or indirectly give rise to the demand for the facility including, but not limited to, advertising, billing practices, promotion of increased use of electrical energy, and other marketing activities.

It is found that it is reasonable and necessary to adopt EA 601 with the amendments specified above.

Northern States Power Company also suggested that in the definition of a LHVTL (amended rule EA 601 L) the word "conductor" should be replaced with the phrase "transmission line." However, the suggested change is not warranted. Any transmission line includes the conductor and associated facilities. Northern States Power Company's terminology would seem to imply that associated facilities are not necessarily a part of a transmission line (unless that transmission line is a LHVTL).

5. (EA 602) No substantial comments or criticisms were made regarding proposed rule EA 602, and the rule is found to be reasonable and necessary and should be adopted for the reasons stated in the Statement of Need. [Tr. 30-31] EA 602 designates the "Purpose of [the] Rules."

6. (EA 603) Proposed amended rule EA 603 is reasonable and necessary to clearly identify the certificate of need applicants who must comply with these rules. No substantial comments were made regarding proposed amended rule EA 603, and it should therefore be adopted for the reasons stated in the Statement of Need with the exception noted hereinbelow. [Tr. 267]

The correction that is necessary before adoption concerns the reference to the definitions of LEGP and LHVTL. Thus, the last sentence of the proposed rule should read: "either rule EA 601 K or rule EA 601 L."

7. (EA 604) This newly proposed rule responds to the statutory mandate that applications for certificates of need "shall be on forms and in a manner established by the director." Minn. Stat. § 116H.13, subd. 4 (1976).

A witness for Minnesota Power and Light Company testified

concerning EA 604 B and indicated that typing the date and applicant's name on each page of the application is burdensome and unnecessary. Agency Staff agrees. [Tr. 268-269] Furthermore, United Power Association appropriately indicated that portions of an application may be prepared well in advance of the application date. Therefore, EA 604 B should be adopted so as to require typing of the date and applicant's name on the title page only of the application and the title page of each document submitted with the application.

Proposed rule EA 604 D provides, in part, that the cover letter transmitting the application shall specify the "...rules and subdivisions thereof to which the applicant has responded." If the proposed rules themselves are to be considered reasonable and necessary, it must generally be expected that an applicant will respond to a majority, if not all, of the provisions in chapter 600. Therefore, it would be more reasonable to require an applicant to only specify the rules and subdivisions thereof to which applicant has <u>not</u> responded, stating the reasons. Accordingly, proposed rule EA 604 D should be adopted by inserting the word "not" before the word "responded", and by adding the phrase, "stating the reasons therefore" after the word "responded."

It is found that it is necessary and reasonable to adopt EA 604 with the amendments specified above.

Proposed amended rule EA 604 E states that public hearings shall be held "...in accordance with Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program...and the Hearing Examiner's Rules for Contested Case Procedures...." United Power Association asked which rules will prevail in the event there is a conflict between the rules of the Minnesota Energy Agency and the Minnesota Office of Hearing Examiners. It is found that the rules of the Minnesota Office of Hearing Examiners shall prevail in any instance of conflict.

Clear Air-Clear Water suggested that amended rule EA 604 G should be changed to allow public input on the completeness of an application. However, this is an issue which should be addressed

at the public hearing on the amendment of rules EA 500-520 to be held at a later date. It is noted that Agency Staff distributes copies of applications to all individuals, libraries, or agencies on its distribution list within a few days after receiving the application. In addition, a press release is sent to radio stations and newspapers indicating that an application has been received by the Minnesota Energy Agency. [Tr. 269-271]

Mr. Richard Kirkham presented strong and convincing testimony on behalf of the Minnesota Municipal Utilities Association indicating general concerns of that Association as to how they would be affected by the rule. [Tr. 229, et seq.] The substance of Mr. Kirkham's testimony was (1) that the amended rules are designed for larger utilities, (2) that complying with the rules would be burdensome in time and cost for municipal systems, and (3) that special procedures should be developed for certificate of need applications by such smaller systems. Agency Staff expressed their agreement that in certain situations, the data requirements of the amended rules could be burdensome to a small municipal system. Amended rule EA 604 H, provides for waiving or substituting data requirements upon good cause shown and can be utilized in the situations presented by Mr. Kirkham. By its submission dated August 12, 1977, the Association recommended that rather than attempting to rewrite the rules as they apply to large generating facilities in order to accommodate the much smaller facilities, that separate rules be developed and adopted for that purpose. Naturally, it is not within the province of the Hearing Examiner to propose a complete set of rules for such smaller utilities. However, the Hearing Examiner finds that Mr. Kirkham has presented adequate persuasion to cause the Energy Agency to promulgate a separate set of rules for small municipal facilities. In the interim, the waiver provision of proposed rule EA 604 H should be utilized by small municipal facilities to be excused from the extensive data requirements of the rules.

8. (EA 605) Proposed amended rule EA 605 is a new rule which is proposed to cover the subject of filing fees and payment schedules.

Minnesota Power and Light Company suggested that for transmission lines the fee should be set "per kilovolt of design voltage" rather than "per kilovolt of rated capacity." Agency Staff agrees with the suggestion of Minnesota Power and Light Company. [Tr. 272-273]

United Power Association inquired as to how the fee of "$40 per kilovolt" would be applied to direct current transmission facilities. It is assumed that the established fee "per kilovolt of design voltage" will apply similarly to both direct and alternating current transmission facilities.

It is noted that the authority to assess fees for processing applications is given to the director of the Minnesota Energy Agency in Minn. Stat. § 116H.13, subd. 6 (1976). Subdivision 6 provides two general factors to be considered in establishing a fee schedule: (1) the size or output of the facility and (2) the difficulty of assessment of need. In addition, Minn. Stat. § 16A.128 (1976) requires that the fee schedule be set so that the total fees received approximate the amount appropriated by the Legislature, which implies that the Certificate of Need Program must be self-supporting.

It is found that the fee schedule has been set in accordance with these factors. It is further found that it is reasonable and necessary to adopt EA 605 in accordance with this Paragraph 8 of the Hearing Examiner's Report.

9. (EA 611) Agency Staff proposed that existing EA 611 be replaced in its entirety with a new proposed EA 611. Rule EA 611 pertains to the criteria for assessment of need and, therefore, contains the heart of the entire program. A great deal of discussion took place at the hearings with respect to this rule. Agency Staff is of the opinion that the proposed rule will expand on the existing rule to require more information on a greater number of alternatives, especially the type of information which has been requested by intervenors in past certificate of need hearings.

General support for the adoption of the new criteria was expressed by witnesses from the Society Concerned About a Ravaged

Environment and the Minnesota Pollution Control Agency. [Tr. 121, 173-174] The Minnesota Pollution Control Agency is of the opinion that newly proposed EA 611 represents a rational framework within which to balance the factors which must be considered in determining whether an electrical energy facility is needed. Of particular concern to the Pollution Control Agency are those factors which relate to the impact of a proposed facility upon the natural environment. That Agency foresees that future impact of large electric facilities on the natural environment will increase so that the possibility of mitigation or better alternatives must weigh more and more heavily in the balance with other considerations.

On the other hand, criticism and adverse comment in opposition to proposed amended EA 611 was made by the regulated industry and others. Meritorious opposition and comments will be incorporated hereinbelow in the Findings which pertain to this proposed rule.

Mr. John Hynes, Acting Manager of the Power Plant Siting Staff, raised a question regarding the extent of the Energy Agency's authority with regard to Certificates of Need for electric power plants and transmission lines. Mr. Hynes stated that in his opinion "facility" in the content of power plants or transmission lines means "the capacity to deliver energy," rather than a physical structure. Therefore, he stated, the criteria should be reworded to limit the factors considered in the following ways:

(1) Consider only the affect of a proposed facility in making more efficient use of "energy" resources (Rule EA 611 B 1 e);

(2) Consider only the appropriateness of the "fuel" type for an electric power plant and make no consideration of type for a transmission line (Rule EA 611 B 2 a);

(3) Consider reliability only with respect to reliability standards (Rule EA 611 B 2 d);

(4) Consider only the affects of "the capacity" of a proposed facility upon natural and socioeconomic environments (Rule EA 611 B 3 b); and

(5) Give no consideration to either the affects of a proposed facility in inducing future development or the socially

beneficial uses of its output (Rule EA 611 B 3 c and d). [Tr. 108-113, 115-121]

The changes recommended by Mr. Hynes are found to be inappropriate. The legislative definition of "facility" clearly refers to the entire physical structure, not just the energy capacity. Also, the legislative mandate cited in the Statement of Need clearly indicates that the director should take into account the factors other than those posed by Mr. Hynes. Unquestionably, there are areas where the Energy Agency's statutory authority overlaps that of the siting agencies. However, the remedy for such overlap of authority should not be sought through administrative rule. Rather, when statutory overlaps exist, interested agencies must act in a cooperative spirit since it would not be in the best interests of the state for any particular agency to disregard its statutory responsibilities in areas of potential conflict with other state agencies.

While addressing the issue of overlapping authority, it must be noted that various segments of the need, siting and permit process for a large energy facility require environmental considerations (i.e., the Energy Agency, the Power Plant Siting Staff, the Minnesota Pollution Control Agency). However, environmental considerations should be viewed at different levels during each segment of the entire process. Although, in the past, industry asserted that at the Certificate of Need stage, the exact site of a power plant or high voltage transmission line is not known, it must be assumed that a responsible corporate entity has at least a general idea of where a planned facility will be located. Nevertheless, such general idea of siting location will not permit the specific environmental inquiries that can be made at later stages when specific sites are proposed. Therefore, at the Certificate of Need stage, environmental considerations must be of a more general nature than will be the case as the process advances to the siting and construction permit stages.

Proposed amended rule EA 611 establishes four criteria or standards upon which the director must make an affirmative deter-

mination before a Certificate of Need may be granted. The standards expressed in the criteria include and reflect the eight statutory factors [Minn. Stat. § 116H.13, subd. 3 (1976)] that the director must evaluate in determining the need for the proposed facility and also includes other factors relevant to the determination of need for a proposed facility.

The first criterion provides the standard which the director will use to measure the validity of an applicant's asserted need for a new energy facility. Here, the director is to determine whether the probable result of denial of a Certificate of Need would be an adverse effect upon the future adequacy, reliability or efficiency of energy supply. In making such determination, the director is to consider the accuracy of the applicant's forecast, the effects of applicant's conservation programs, promotional practices and of the proposed facility in making more efficient uses of resources and, the ability of current facilities and plan facilities not requiring Certificates of Need to meet the future demand. The first criterion includes the factors specified as items (1), (2), and (4) of subdivision 3 of Section 116H.13.

The second criterion is based upon Minn. Stat. § 116H.13, subd. 3 (7) (1976), which requires the director to evaluate "possible alternatives for satisfying the energy demand...."

The third criterion requires the director to make a determination that the consequences of granting a Certificate of Need are more favorable than the consequences of denying the Certificate before issuing the Certificate. In making this determination, the director is required to consider certain factors which correspond respectively to items (3), (6), and (5) of Minn. Stat. § 116H.13, subd. 3 (1976). Additional factors in this, the third criterion, are, to a large extent, based on Minn. Stat. § 116H.01 and Minn. Stat. § 116D.03.

The fourth criterion requires that the director find that it has not been shown on the record of a particular proceeding that granting the Certificate of Need would not be inconsistent with policies, rules and regulations of other state and federal agencies and local governments.

Regulated industry requested that the rule clearly set forth an affirmative responsibility on the director to make a specific finding on each of the four criteria set forth in EA 611. Although Agency Staff agrees that the director should make such specific findings, they believe that the current structure of the rule permits only that interpretation and therefore no amendments or changes are necessary to accomplish that end. However certain Agency Staff is that the current structure of EA 611 complies with this desire of industry, it is evident by the expressed concerns of industry that specific language is in order to rest the obvious reservations of industry. The request on the part of industry is neither unreasonable nor improper. It is sensible to add the additional necessary language in order to allay the fears of the regulated industry as expressed by the major electrical utilities in the state, including Northern States Power Company and Cooperative Power Association. Therefore, it is found that EA 611 A should be adopted with the following final sentence:

> The director shall make a specific written finding for each criterion set forth herein at EA 611 B.

It is found that proposed EA 611 A is reasonable and necessary and should be adopted with the language specified hereinabove.

FIRST CRITERION

Northern States Power Company suggested that in proposed rule EA 611 B 1 c only promotional practices "of the applicant" should be considered. This change is consistent with the language in other Energy Agency rules, and Agency Staff has agreed to such change. [Tr. 79, 88, 89] The Hearing Examiner finds that proposed rule EA 611 B 1 c should be modified to include the term "of the applicant" after the word "practices" and before the word "which."

In the same rule, Clear Air-Clear Water suggested the deletion of the phrase, "particularly promotional practices wich occurred since 1974." It is found that that phrase should not be deleted because 1974 was the year when energy conservation legislation was passed in Minnesota. However, it should be noted that promotional activities prior to 1974 could affect a utility's

forecast and, therefore, should be considered relevant in appropriate cases. [Tr. 69, 308]

Northern States Power Company requested deletion of the word "more" in proposed rule EA 611 B 1 e on the theory that "it contains no frame of reference against which that determination is to be made." Agency Staff agrees, and the Hearing Examiner finds that the use of that word is not entirely clear and should be deleted. [Tr. 89]

It is found that proposed EA 611 B 1 and subparts are reasonable and necessary and should be adopted in accordance with the Findings hereinabove.

SECOND CRITERION

Northern States Power Company, Cooperative Power Association and others requested that the criterion put forth in proposed rule EA 611 B 2 specify the party or person that is responsible for proposing or advancing "alternatives" and the party or person upon whom the burden of persuasion rests. In addition, the regulated utilities desire the rule to specify the quantum of proof necessary to carry the burden of persuasion when the issue of alternatives is raised. Agency Staff dismisses the expressed concerns of the regulated utilities and believes that the addition of appropriate wording would be redundant and unnecessary. Agency Staff's position is that it is obvious from the proposed rule that the quantum of proof necessary is "by a preponderance of the evidence" and that it is a party or person other than the applicant which must propose a viable alternative.

The Hearing Examiner finds that the rule is not clear with regard to these expressed concerns as raised by the regulated utilities. For example, what is the meaning of the term "a more reasonable and prudent alternative to the proposed facility"? Do the words "reasonable" and "prudent" indicate the quantum of proof? The rule is not precisely clear in designating who is to propose alternatives. It is not clear as to when the proposed alternatives are to be made. What are the minimum standards or criteria which such a proposer must meet in order for the proposal to be considered

prima facie viable? Is the proposer of an alternative to support his proposal applying the same standards or criteria as apply to the utility applicant?

The Hearing Examiner finds that in order to provide a reviewing court with sufficient guidance, the burden of proof regarding alternatives should be specifically stated in the rule. Additionally, specifying the burden of proof will clearly establish some necessary guidelines for any person proposing an alternative. Furthermore, as Agency Staff asserted, it is unlikely that an applicant would desire to show an alternative to be preferable to its own proposal. Thus, it is clear that logic suggests that viable alternatives would have to be proposed by parties or persons other than an applicant. Accordingly, the language of proposed rule EA 611 B 2 should read as follows:

> A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant....

However, the hereinabove suggested language change will not by itself remedy the defects of EA 611 B 2.

Another shortcoming of the rule is its failure to specify when in the hearing process a proposed alternative is to be made. It is clear that such a proposed alternative should not be made in written form submitted to the Hearing Examiner the day of the close of the record because such procedure would deny an applicant due process to respond. Although it is highly unlikely that such a last minute submission could carry the requisite quantum of proof to carry the burden of persuasion, it is possible that such a situation could arise. The rule should be properly drafted at this time to avoid such possibility and clearly specify the time frames in which a proposed alternative can be made. Therefore, the Hearing Examiner finds that additional language should be added to the proposed rule dictating that: (1) suggestions for a superior alternative to the proposed facility be made during the public hearing process which would thereby enable the Hearing Examiner to schedule additional public hearings if the alternative proposal necessitates further public hearing to accord due process to the

applicant and other participants or, (2) at any time before the close of the record providing there is a specified mechanism available to the applicant to respond to valid alternative suggestions so as to avoid a due process violation.

Proposed rule EA 611 B 2 does not provide any guidelines for a person to follow if the person elects to propose an alternative. Similarly, there are no guidelines for the decision maker in determining the reasonableness and validity of a proposed alternative so that it may be considered at least prima facie viable. Without objective guidelines, a hearing examiner or the decision maker (director) could subjectively and arbitrarily disregard an alternative suggestion as frivolous based on that person's particular bias and viewpoint. This places everyone at a disadvantage: the proposer of an alternative who could have his suggestion dismissed at the whim of the decision maker; an applicant that does not have guidance to determine the ground rules by which the decision makers will consider proposed alternatives and thereby be prevented from knowing how to present a rebuttal case or even if one is necessary.

The Hearing Examiner finds that proposed rule EA 611 B 2, as currently proposed, is vague, indefinite and incomplete and should not be adopted unless sufficient standards and guidelines are set forth to specifically inform all parties and interested persons of applicable time frames and the minimum standards or criteria which will be applied in determining whether a proposed alternative is reasonable and prudent. A determination cannot be made at this time as to whether or not language changes curing these defects will amount to a "substantial change" necessitating further public hearing.

Another valid criticism of EA 611 B 2 is that at subsection (c), it speaks in terms of the "impact of the proposed facility upon the natural and socioeconomic environments." While this is also the same language recommended by this Hearing Examiner and adopted by the Energy Agency with respect to prior Certificate of Need rules (Chapters 800, 900 and 1000), there is a difference with respect to large electric power generating plants and large high voltage transmission lines.

Facilities subject to the previously adopted chapter 800, 900 and 1000 rules are largely facilities which are not subject to the siting and routing jurisdiction of the Minnesota Environmental Quality Board. Typically, those facilities will move directly from the Certificate of Need hearing to a series of hearings on installation and operating permits from agencies such as the Minnesota Pollution Control Agency. Under such circumstances, it is possible to respond to the rule requiring an evaluation of the "impact of the proposed facility" since the applicant is free to select a site at the Certificate of Need stage. Indeed, the typical applicant for such facilities should include a description of the facility at a particular site.

With respect to large electric generating plants and large high voltage transmission lines, however, those facilities are not sited at the Certificate of Need stage. In fact, it is the obvious statutory intent that an applicant secure a Certificate of Need prior to proceeding into the siting or routing stages of the process under the jurisdiction of the Minnesota Environmental Quality Board. Thus, it is impossible to fully evaluate the "impact of the proposed facility" upon the natural environment as requested by proposed rule EA 611 B 2 c, for power plants and transmission lines. However, it is possible and, indeed, required by statute, that at the Certificate of Need process, environmental considerations should be evaluated in a general or generic sense.

That issue was the subject of extensive testimony and briefing by affected parties in the rulemaking hearing of the Minnesota Environmental Quality Board on proposed Rule MEQC 25(g). That matter was docketed by the Minnesota Office of Hearing Examiners as EQC-76-003-WS, and the Hearing Examiner's Report was issued August 9, 1976. Therein, this Hearing Examiner prepared extensive findings of fact, conclusions and recommendations. The Hearing Examiner's Report found:

> That after the Energy Agency has issued a Certificate of Need, alternate considerations of size, type and timing are precluded from consideration during the public hearing process initiated by agencies such as the Pollution Control Agency, Department of Natural Resources, Highway Department and the Minnesota Environmental Quality Council. Thus, after the issuance

> of a Certificate of Need, a significant step has been taken toward an end result which will have a significant environmental effect. The type of environmental effect will differ depending upon the decision made by the Energy Agency. For example, the environmental effect of a high voltage transmission line running from the State of North Dakota to the Twin Cities is different than the environmental effect of the construction of a LEPGP in northern Minnesota with an associated HVTL running into the Twin Cities area. The resulting additional available megawatts in the Twin Cities area would be the same, but the method of accomplishing that goal is entirely different with differing environmental effects. Therefore, it is specifically found that environmental considerations are necessary and proper at the Certificate of Need stage.

In that Report, this Hearing Examiner further found, at Page 5, the following:

> Therefore, all [involved] state agencies are to consider environmental amenities and values and the MEQC has primary responsibility for the environmental impact statement program. With respect to Large Electric Power Generating Plants and High Voltage Transmission Lines, the elements of a detailed environmental impact statement as statutorily required by Minn. Stat. § 116D.04, subd. 1(a) through (g), is not available at the Certificate of Need stage. Although, some information is available at that early stage in the sequential review process. A logical approach is to provide for a segmented, sequention environmental assessment process where each segment deals only with matters appropriate for resolution at the particular stage of the sequential licensure process.

The Minnesota Energy Agency's Statement of Need recognizes that "detailed design and location of the proposal are often not known at the Certificate of Need stage" (Page 22). Therefore, the Hearing Examiner finds that proposed rule EA 611 B 2 c contains language which must be modified when a rule is finally adopted. Such language change has been agreed to by Agency Staff and is as follows:

> The ~~impact~~ effects of the proposed facility upon the natural and socioeconomic environments compared to the ~~impacts~~ effects of reasonable alternatives; and

Similarly, such language modification would be necessary in proposed rule EA 611 B 3 b. However, as will be discussed hereinbelow, the Hearing Examiner will find that EA 611 B 3 b should not be adopted in the manner proposed by Agency Staff.

THIRD CRITERION

Northern States Power Company asserted that the third criterion

(EA 611 B 3) is too subjective and lacking a definable standard to determine whether or not this criterion has been met and that the factors listed under the criterion should be evaluated elsewhere or handled differently. Agency Staff responded in their post-hearing submission that it is their belief that the criterion is reasonable, but believed, however, that the language could be changed slightly to bring the criterion into conformity with the language of other criterion and to clarify its intent. The Hearing Examiner finds that the position of Northern States Power Company is correct.

Rule EA 611 B 3 as finally submitted in the Energy Agency Staff's Post-Hearing Statement is:

> It has not been demonstrated on the record that the consequences of granting the certificate of need are less favorable than the consequences of denying the certificate, considering:....

Reading the entire rule as finally proposed and paraphrasing, it is concluded that the rule can be interpreted to read as follows: A CERTIFICATE SHALL BE GRANTED IF THE DIRECTOR DETERMINES THAT IT HAS NOT BEEN DEMONSTRATED THAT THE CONSEQUENCES OF GRANTING THE CERTIFICATE ARE LESS FAVORABLE THAN THE CONSEQUENCES OF DENYING THE CERTIFICATE. Thus, the proposed rule would force the director into the unfavorable position of having to make a negative finding to support the positive action of granting a certificate of need. It is very hard to determine that something has not been demonstrated on the record. By what measuring stick can the director make such determination? Is the director to determine that such showing has not been made on the record by a preponderance of the evidence; by a scintilla of evidence or; is the decision to be made by applying strictly subjective visceral considerations? It is found that the language of EA 611 B 3 is circuitous and confusing.

The Hearing Examiner also finds EA 611 B 3 is vague and discretionary, entirely too subjective and lacking a definable standard.

For example, the director is to grant a certificate if he determines that the consequences of granting the certificate are less favorable than the consequences of denying the certificate. The term "consequences" are specific consequences set forth in

subsections a, b, c, and d. However, the criterion of "less favorable" is without guidelines and completely subjective. Favorable to whom? Favorable in the mind of the director with his particular opinions; favorable to the applicant; favorable to the applicant's end use customers; favorable to the applicant's investors; favorable to special interest groups; or favorable to the general population of Minnesota?

For the above reasons, proposed rule EA 611 B 3 should not be adopted as originally or as finally proposed. However, subsections a, b, c, and d are relevant factors which should be considered by the director in making his determinations. Subsection a of EA 611 B 3 corresponds to Minn. Stat. § 116H.13, subd. 3(3). Similarly, the factors in subsections c and d are derived from Minn. Stat. § 116H.13, subd. 3(5) and (6). Thus, it is found that the factors listed in subsections a, b, c, and d be integrated into the regulation in a fashion other than as proposed by Agency Staff.

If the rule is reworded or its contents integrated elsewhere in the regulation when and if adopted; the issue of substantial change will have to be determined by the Chief Hearing Examiner.

FOURTH CRITERION

Proposed rule EA 611 B 4 is derived from Minn. Stat. § 116H.13, subd. 3(8). The rule is found to be reasonable and necessary.

In this rule, Agency Staff has, as in its previous certificate of need rules, recognized that the applicant cannot make an affirmative showing that a facility "is consistent with" all policies, rules and regulations of governmental agencies. The rule as now proposed would require the director to make a finding on the absence of any determination that the facility would not comply with relevant policies, rules and regulations of other governmental agencies. Although the director is forced to make a negative determination, the making of such negative determination is found to be easier and more prudent than causing an applicant to make an affirmative showing that the facility will comply

with all relevant policies, rules and regulations of other governmental agencies.

Northern States Power Company suggested that the rule should be altered by deletion of the words "the design, construction or operation of." The term in question adds specificity to the rule and there may in fact be instances where the design, construction and operation of a proposed facility, or some parts thereof, will be known at the certificate of need stage. [Tr. 40, 41, 87]

10. (EA 631) Proposed rule EA 631 pertains to the "Contents of an Application."

The only substantial comment with respect to this rule concerned the requirement, that when a utility applies for a Certificate of Need for a transmission line to serve a specific load center, that the utility supply forecast data for the load center rather than for the system as a whole. Northern States Power Company stated that the provision is inappropriate because some of the forecast information required by rule EA 635 is not relevant for transmission lines, because there is less forecast uncertainty for transmission lines than for generating facilities due to the shorter lead times, and because of the lack of available data. Although the contentions of Northern States Power Company may be true in some cases, it is noted that the amended rule relaxes the requirement of the existing rule, which calls for forecast data for the load center and for the system as a whole. Additionally, if a proposed transmission line is to serve a particular area, it is clearly the load forecast for that area that is of paramount importance, even if the data supplied is of lesser accuracy then could be supplied for the system as a whole. Finally, while not every data element listed in rule EA 635 is of equal importance and relevance for every certificate of need application, parties to the hearing and the public are entitled to a certain amount of information regarding future loads and rule EA 635 includes those data elements that are reasonable and necessary in the majority of cases. On the other hand, in situations where gathering data for the specific load center would be overly burdensome, proposed rule

EA 604 H has been designed to take such considerations into account. [Tr. 274-278, 281-283]

In addition, Northern States Power Company stated that if the rule requires forecast data for a specific load center, the rule should also require system capacity data (amended rule EA 636) for that load center rather than for the entire system. Agency Staff considered that change when drafting the amendments, but appropriately rejected it because of the nature of the data requirements of rule EA 636. First, data in response to EA 636 would give the public a general description of an applicant's electricity supply/demand picture. More importantly, complying with rule EA 636 for a specific load center would be extremely difficult and ambiguous. Generation capability is simply not concentrated in or allocated to particular load centers the way demand is; that large high voltage transmission lines are built to transfer electricity over considerable distances is evident by that fact. [Tr. 283, 284]

It is found that proposed rule EA 631 should be adopted for the reasons stated in the Statement of Need. [Tr. 42-43]

11. (EA 632) This proposed rule concerns the "Need Summary and Additional Considerations." It is found that EA 632 is reasonable and necessary. No adverse comments were made regarding amended rule EA 632, and it should therefore be adopted for the reasons stated in the Statement of Need. [Tr. 43, 44]

12. (EA 633) This rule concerns the "Description of Proposed Large Electric Generating Facility and Alternatives."

Clear Air-Clear Water suggested that "diseconomies of scale" should be discussed by an applicant in response to rule EA 633 A 1. However, diseconomies should be discussed in connection with "economies of scale," and therefore, no change in this rule is necessary.

Ms. Kris Hasskamp of the Power Plant Siting Advisory Committee stated that rule EA 633 A should be amended to require submission of the "anticipated areas where the proposed facility could be located "to the extent that such information is available."

The Hearing Examiner finds the change reasonable. In many cases, a utility may not have this information at the certificate of need stage, at least until an inventory of potential sites is completed. However, for certain smaller generating units, the location may well be known at an early date. [Tr. 11]

Clear Air-Clear Water stated that in rule EA 611 B a fifth alternative, "increased levels of energy conservation," should be added. It is found that the rule should only discuss facilities for supplying power. Discussion of the impact of conservation programs should be included in the response to the conservation section (amended rule EA 637) or the forecasting section (amended rule EA 635). Further, an applicant should be required to supply information relating only to alternatives that are available to the applicant. [Tr. 138-143, 309, 310]

Clear Air-Clear Water also recommended that an applicant be required to provide information regarding the aggregate capability of the alternatives discussed to meet the anticipated demand for electricity. The Agency Staff acknowledges that the director should consider this factor in his decisions and believes the recommendation has merit. However, the Agency Staff believes the following wording is clearer and more consistent with the rest of the rules: "a combination of the alternatives listed in rule EA 633 B 1 through 4." The Staff believes that inclusion of this alternative could in some cases complicate an applicant's response to rule EA 633 C, but also believes that an applicant could generally provide a response that would be acceptable to all persons. [Tr. 143-147, 310, 311] It is found that the Agency Staff position should be adopted.

Minnesota Power and Light Company stated that in amended rules EA 633 C and 634 C the information on cost is site-dependent and that the rules should therefore call for "generic information" only. Minnesota Power and Light Company said that it would be possible to provide a range of estimates. However, it is found that the amended rules do permit the utility to provide a range of estimates where appropriate, and therefore a change in the rules is not necessary. [Tr. 159-161]

Clear Air-Clear Water suggested changing amended rule EA 633 C to require submission of additional data regarding costs. The Hearing Examiner does not believe the additions would be beneficial, because rule EA 633 C already requires sufficient data to allow a present value analysis on each of the alternatives. [Tr. 147-151, 311, 312]

Clear Air-Clear Water advocated inclusion in amended rule EA 633 C of a discussion of the energy efficiency of various alternatives. Northern States Power Company stated that the discussion would have to be in broad terms to be applicable to all the alternatives. The Hearing Examiner agrees that such an addition would improve the rule. Exhibit A of the Staff's Post-Hearing Submission includes a data requirement whereby an applicant provides the heat rate for a generating facility and the expected losses for a transmission line. This information is the same that is required for proposed generating facilities and transmission lines under amended rules EA 633 A 4 and 634 A 3, respectively.

Finally, Clear Air-Clear Water proposed that for each alternative discussed in response to amended rule EA 633 C, an applicant explain "its promotion of the development of Minnesota energy resources." The Hearing Examiner does not know how an applicant could respond to this requirement and does not believe this addition is necessary or beneficial. [Tr. 154, 155, 313, 314]

The revised rule, including the changes given in Exhibit A of the Staff's Post-Hearing Submission should be adopted for the reasons stated herein and in the Statement of Need. [Tr. 44-46]

13. (EA 634) This rule concerns the "Description of Proposed Large High Voltage Transmission Line and Alternatives."

Northern States Power Company stated that in subdivision A 3, the losses should be for estimated average loading rather than for projected maximum loading. Northern States Power Company agreed with the suggestion that losses be provided for both average loading and maximum loading, and the Hearing Examiner finds that the proposed Agency Staff change as found in Exhibit A of their Post-Hearing Submission should be adopted. [Tr. 125-126]

Northern States Power Company also stated that losses should be given for alternatives. Agency Staff agreed and has added as rule EA 634 c 5 the requirement discussed earlier that has been added as rule EA 633 c 6. [Tr. 125-126] The Hearing Examiner finds the addition reasonable.

The Power Plant Siting Advisory Committee suggested that this rule require a listing of "all counties reasonably likely to be affected by construction and installation of the proposed line." Agency Staff took the position that such addition is unnecessary because the location of terminals is already required by rule and asserted that it would be a simple matter for one to draw a line on a map between indicated points. However, the Hearing Examiner is cognizant of the attempts of the Minnesota Legislature to increase and improve public participation during the processes leading to the installation of electrical facilities. Further, certain areas of contention between the electric utilities and segments of the Minnesota population is unquestionably evident from time to time. Thus, it is found that reasonable methods to encourage public participation at the earliest stage possible is in the best interests of the State of Minnesota. It is common knowledge that individuals have appeared during various siting processes and raised objections that were more appropriate at the need stage. Such individuals often allege that they had no knowledge of the prior certificate of need proceedings. Therefore, it is found that the suggestion of the Power Plant Siting Advisory Committee should be adopted so as to increase notification to the public of a planned electric utility facility at the earliest stage possible.

Northern States Power Company stated that rule EA 634 B 2 should cover only those facilities "not requiring a certificate of need." The Company also stated that amended rule EA 634 B 5 should be deleted. It is the Company's contention that upgrading of lines and double-circuiting are within the routing process and should not be part of the need process. The Hearing Examiner disagrees with both changes, because the public continually raises

the issue of upgrading existing lines and double-circuiting could have reliability implications. Unquestionably, both alternatives are involved in routing decisions, but it is not in the best interests of the public to exclude discussion of alternatives at the early need stage merely for the sake of an uncomplicated process. [Tr. 126-136]

Similarly, Minnesota Power and Light Company asserted that the question of double-circuiting a line is a siting issue. Minnesota Power and Light Company made written submission which, in part, stated the following:

> ...The rationale given for this information request is that the MEA would determine whether double-circuiting should be ruled out as unreliable. However, it is unwise to make blanket prescription against any double-circuiting. When a route is planned, it may appear wise to double-circuit the line for a few towers in a congested area. This would have little affect on reliability....

The Energy Agency is cognizant of the example posed by Minnesota Power and Light Company, and both the public hearing process and the certificate itself can take such factors into consideration.

Minnesota Power and Light Company also stated that the factor "estimated annual reliability" (amended rule EA 634 c 3) is not really applicable to most transmission lines, because maintenance is done while the line is "hot." The assertions of Minnesota Power and Light Company are true. However, complying with the data requirement is inconsequential in such a case, and there are other alternatives for which availability would be less than 100 percent.

The Hearing Examiner finds that the rule as finally proposed by the Staff's Post-Hearing Submission is reasonable and necessary and should be adopted with a provision requiring the listing of all counties reasonably likely to be affected by construction and installation of a proposed high voltage transmission line.

14. (EA 635) This rule pertains to "Peak Demand and Annual Electric Consumption Forecast."

Northern States Power Company stated that the last sentence in rule EA 635 A should be deleted. The last two sentences read as follows:

> The application shall clearly indicate which data are historical and which are projected. It is expected that data provided by the applicant should be reasonable and internally consistent.

The last sentence merely advises the applicant that the Energy Agency has an expectation and it is found that the expectation is perfectly reasonable and logical.

Northern States Power Company asserted that the requirement in rule EA 635 B 2 of providing projected numbers of customers for the categories listed is burdensome and not pertinent to the Company's forecast. Minnesota Power and Light Company also stated that it does not forecast by the categories given in the rule. The Hearing Examiner finds that it should not be difficult for either one of those corporate entities to provide estimates of the number of customers in each category. It would be hard to imagine that either entity operates without at least a rough estimate of the number of customers in each one of the designated categories. Northern States Power Company already projects the number of residential customers as part of its forecast methodology, and a large portion of Minnesota Power and Light Company's load is related to a few large mining customers. Furthermore, there are other utilities in the state who do forecast essentially by the categories listed. Additionally, the data will provide a check on the reasonableness of the components of the load forecast. Therefore, the objections to EA 635 B 2 are not valid and the rule should be adopted with the term "estimates of" between the words "categories" and "the."

Northern States Power Company suggested a slight modification of the wording in rule EA 635 B 3. The Hearing Examiner finds it is reasonable to adopt the rule with the language changes suggested by Agency Staff in its Post-Hearing Submission.

Northern States Power Company also suggested that rule EA 635 B 5 be clarified to read: "The applicant's weekday load factor by month." The suggested change is reasonable and it is found in Exhibit A of the Staff's Post-Hearing Submission. [Tr. 281, 293]

Finally, in response to a comment by Mr. Hartfeldt, Agency

Staff inserted a new amendment to rule EA 635 B which is reasonable and necessary. This data element was added in response to the comment that the rules included "no requirement for the analysis of price increases on demand." The added requirement does not relate prices to demand, because it was not established that the Agency should require every utility to submit a forecast with price as one of the variables. However, it is reasonable to believe that the price of electricity affects demand and that projected electricity prices are therefore important data. Additionally, past certificate of need hearings have shown that intervenors are very interested in the price of electricity. [Tr. 162, 165-167] This amendment, is designated at EA 635 B 5, and reads as follows: The estimated annual revenue requirement per kilowatt-hour; and. Originally proposed EA 635 B 5 is now designated EA 635 B 6.

The Hearing Examiner finds that proposed EA 635 is reasonable and necessary and should be adopted in accordance with the Findings of this Paragraph.

15. (EA 636) This rule pertains to "System Capacity."

No substantive changes or criticisms to this rule are reflected in the record of proceedings. The Hearing Examiner finds the rule to be reasonable and necessary, and should therefore be adopted for the reasons stated in the Statement of Need. [Tr. 51-52]

16. (EA 637) This rule pertains to "Conservation Programs."

Clear Air-Clear Water suggested that amended rule EA 637 C be augmented by requiring an applicant to supply information regarding the costs of its conservation efforts and their effects in reducing the need for new generation facilities. It is found that the suggested data elements are reasonable and necessary. The Hearing Examiner agrees with Agency Staff that the amendment more properly belongs in rule EA 637 F. The main difference between the Agency Staff's approach and that of Clear Air-Clear Water is that the latter's language would require cost and effect information on conservation programs not implemented by the utility. Agency

Staff believes the data on costs and effects would not be as accurate for programs not implemented. However, Agency Staff believes that an applicant should give its reasons for rejecting conservation programs it has considered.

Additionally, Clear Air-Clear Water also advocated a change in amended rule EA 637 E which would require an applicant to describe its future conservation plans "through the forecast period." Agency Staff and the Hearing Examiner believe this change is consistent and reasonable within the context of the rest of the rules. Accordingly, EA 637 C, E, and F should be adopted respectively with the following changes:

> C. A description of the specific energy conservation programs the applicant has considered, ~~and~~ a list of those which have been implemented, and the reasons why the other programs have not been implemented;
>
> E. A description of the applicant's future plans through the forecast years with respect to energy conservation and energy efficiency; and
>
> F. A quantification of the manner by which these programs affect or help determine the forecast provided in response to rule EA 635 B, a list of their total costs by program, and a discussion of their expected effects in reducing the need for new generating facilities.

The Hearing Examiner finds that EA 638 is reasonable and necessary and should be adopted with the changes indicated hereinabove.

17. (EA 638) This rule pertains to "Environmental Data."

One argument which must be finally put to rest is whether or not the Energy Agency can include environmental considerations in the determinations which must be made by the director in issuing or denying a Certificate of Need. It is specifically found that the Energy Agency has statutory authority which is clear and unambiguous in making its determinations of need. The clear and unambiguous statutory authority is found in the Energy Agency Act and the Minnesota Environmental Policy Act are as follows:

> FINDINGS AND PURPOSE. The legislature finds and declares that the present rapid growth in demand for energy is in part due to unnecessary energy use; that a continuation of this trend will result in serious depletion of finite quantities of fuels, land and water resources, and threats to the state's environmental quality; that the state must insure consideration of urban expansion, transit systems,

economic development, energy conservation and environmental protection in planning for large energy facilities; that there is a need to carry out energy conservation measures; and that energy planning, protection of environmental values, development of Minnesota energy sources, and conservation of energy require expanded authority and technical capability and a unified, coordinated response within state government.

The legislature seeks to encourage thrift in the use of energy, and to maximize use of energy-efficient systems, thereby reducing the rate of growth of energy consumption, prudently conserving energy resources, and assuring statewide environmental protection consistent with an adequate, reliable supply of energy.

Minn. Stat. § 116H.01 (1976). (Emphasis added) See also Minn. Stat. § 116H.13, subd. 3(5)-(8) (1976).

ACTION BY STATE AGENCIES. Subdivision 1. The legislature authorizes and directs that, to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06.

Subd. 2. All departments and agencies of the state government shall:

. . . .

(c) Identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations;

(d) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unreasolved conflicts concerning alternative uses of available resources;

(e) Recognize the worldwide and long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolution, and programs designed to maximize interstate, national and international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(f) Make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, Chapter 412;

(g) Initiate the gathering and utilization of ecological information in the planning and development of resource oriented projects....

Minn. Stat. § 116D.03 (1976).

It is clear from the body of Minnesota law that the Legislature

is seeking to prevent further degradation and to improve the environment of the State of Minnesota. It is equally clear that electrical generating facilities including electrical generating plants and high voltage transmission lines have an impact upon the environment of this state. Therefore, it would be ludicrous to adopt a position that environmental considerations should not be applied in Certificate of Need processes for power plants or high voltage transmission lines since the issuance of a Certificate of Need is the first substantial and practically irreversible step in a process that concludes with the construction of a large electrical energy facility.

Rule 6 MCAR § 3.025 G 2 a establishes a sequential process of environmental review for large electric generating facilities and high voltage transmission lines. The rule requires the Energy Agency to prepare an environmental report when it receives an application for a large electric facility. The regulation acknowledges that decisions made by the director of the Energy Agency on size, type and timing of a large electric energy facility have environmental implications.

The sequential approval process for transmission lines and generating plants, by and large, precludes consideration of issues determined at the need stage from further review at later stages. However, there are certain instances when what might be considered as a determination by the Energy Agency is not necessarily a consideration precluded from review by sister agencies. It is firmly established by the Legislature that other state agency permits are still required under the Power Plant Siting Act. Thus, the Certificate of Need cannot preempt other state agencies' standards and regulations which must be met in connection with construction and operation of the facility. To a degree, site selection, design and engineering are subject to the requirements of other regulatory agencies and will be considered in proceedings before such agencies. One example would be a situation wherein a utility applies for a Certificate of Need for a high voltage transmission line. The application may indicate that the support structures are to be wooden

H-frame structures. If a Certificate of Need is granted, the question should be asked as to whether or not single pole steel structures can be ordered during the routing process for environmental reasons. Issues such as this have not been sufficiently addressed in the within considered proceeding, and the Hearing Examiner cannot make a specific finding thereon. However, the Hearing Examiner notes that in his opinion and utilizing his experience as a Hearing Examiner, it would be reasonable to allow the routing agency to designate the type of support structure which will best complement environmental concerns expressed during the routing proceeding. It is also the opinion of the Hearing Examiner that such things as the type of support structure used is not necessarily within the sole province of the Energy Agency since it will effect primarily only economic and environmental factors and not necessarily the sum and substance of either the proposed facility or those areas of expertise within the Energy Agency.

The regulatory process described above warrants sequential environmental review as decisions are made, so that relevant issues are considered before alternatives are foreclosed in those instances when such issues are permanently foreclosed from further examination. The purpose of the Environmental Policy Act would not be served by skipping review of viable alternatives or by conducting review after these alternatives are foreclosed.

An environmental data rule is necessary for the Energy Agency to comply with the requirements of 6 MCAR § 3.025 G 2 a. The strict time constraints imposed by the rule and by the Certificate of Need process leave little time for preparation of the environmental report after an application is received. Environmental data are needed to prepare the environmental report within the prescribed time.

It is reasonable to require an applicant to submit the environmental data because the applicant often has experience managing the resource requirements and outputs of the alternatives; the applicant must consider many of these factors before deciding to favor one

alternative over others; and these data are available to the applicant in the literature and through an exchange of information within the industry.

Throughout the record of proceedings, it is evident that industry maintains the position that at the need stage, a utility does not have specific information regarding site or facility design. Therefore, industry requests that all environmental type information be of a general nature while the specifics will be developed during the segmented, sequential process which concludes with the issuance of construction and operating permits.

Northern States Power Company and Minnesota Power and Light Company have suggested the addition of several qualifying words throughout the proposed rule. [Tr. 190, 193-207, 336] Accordingly, it is found that the addition of the words "estimated" or "potential" is reasonable and necessary to parts EA 638 A 1, A 2, A 4, A 5, A 6, A 7 b, A 8, A 9, A 10, B 3 and B 6. Additionally, it is found reasonable and necessary to substitute the word "typical" for the word "expected" in parts EA 638 A 3 d, 3 e, and 7.

It is found that the need for data on load requirements, as required by rule EA 638 A 1, is adequately demonstrated in the record of proceedings. However, industry appropriately pointed out that the rule as originally proposed required specifics which are not known until the later routing and siting procedures. Agency Staff appropriately acknowledged this valid concern of industry by revising the rule in Exhibit A of its Post-Hearing Submission, and the Hearing Examiner finds the new language reasonable and necessary and recommends its adoption. [Tr. 56, 193-194, 210-214]

The need for data on fuel requirements for fossel-fueled facilities, as required by EA 638 A 3, is demonstrated in the Statement of Need. [Tr. 56-57, 214-216] Agency Staff supports the requested addition of the word "regional" in part 3 a to clarify the original intent. Agency Staff proposed deletion of the word "maximum" in part 3 b since data on "typical" fuel requirements will be sufficient for environmental review at the need stage. The suggestions are reasonable and should be adopted.

Agency Staff correctly supports the addition of data on heat input for the facility as suggested by Northern States Power Company. These data are necessary to calculate maximum emissions of sulphur dioxide, nitrogen oxides and particulates, based on emission standards which are expressed in terms of pounds per million Btu input to the boiler. Thus, the following language should be adopted as EA 638 A 3 c: The expected rate of heat input for the facility in Btu per hour during operation at rated capacity.

Agency Staff also supports Northern States Power Company's suggestion to require data on fuel characteristics in part 3 e to be expressed as ranges instead of discreet values, since the content of these fuel components varies. The suggestion is reasonable and necessary and should be adopted for EA 638 A 3 e.

The need for data on the emission rates of air pollutants, as required by EA 638 A 4, is adequately demonstrated in the Statement of Need. [Tr. 57-58] Northern States Power Company suggested alternative language for this provision. [Tr. 196] The revised rule in Exhibit A deletes the requirement for estimates of typical emissions as suggested by Northern States Power Company, since the Agency Staff is persuaded that estimates of maximum emissions will suffice for environmental review at the needed stage. This position is correct and the finally proposed rule is reasonable and necessary.

Northern States Power Company proposed deletion of the requirement for estimates of trace element emissions. [Tr. 355-360] However, the Hearing Examiner finds that trace element emissions are a very important effect of generating plants which must be treated in the environmental report. United Power Association asserted that EA 638 A 4 a and A 4 b are examples of rules that could potentially produce public misunderstanding. That utility stated that the maximum emissions and contributions to 24-hour ground level concentrations of pollutants are theoretically the existing federal and state standards. The utility went on to state that: "While the law allows operation up to the standards,

no utility ever operates such that standards are continually approached....They are used by the utility industry as input perimeters to design a facility such that even under extreme conditions which occur very infrequently, if ever, the standards will not be violated." Thereafter, United Power Association suggested elimination of the word "maximum" and requested only a "estimated range of typical emissions." The Hearing Examiner finds that it is reasonable and necessary to adopt EA 636 A 4 a in accordance with the final submission of the Agency Staff in its Post-Hearing Submission which provides for both estimates and maximum emissions.

The need for data on the contribution of air pollutants to ambient concentrations, as required by EA 638 4 b, is demonstrated in the Statement of Need. [Tr. 58-59] It is found that these data are very important to link emission rates to ambient concentrations which can be compared meaningfully to ambient air quality standards. Industry proposed deletion of this provision and stated that ambient concentrations cannot be predicted without knowledge of the meteorology of the site and the design of the facility. [Tr. 365-367] Agency Staff was persuaded that these data need not be supplied in the form of isopleths. However, the Staff believes and the Hearing Examiner finds, that these data should be presented as a range of contributions to ambient concentrations. Industry suggested that this range would be too broad to be meaningful. [Tr. 368] However, the range should be narrowed where appropriate by making reasonable generalization about facility design and meteorology, to distinguish between alternatives considered in the environmental report. [Tr. 335, 367] Thus, the Hearing Examiner finds that rule EA 638 A 4 b is reasonable and necessary and should be adopted as finally proposed in the Agency Staff's Post-Hearing Submission.

The need for data on water use, as required by rule EA 638 A 5, was adequately demonstrated in the Agency's Statement of Need. [Tr. 59-60] Northern States Power Company and the Department of Natural Resources (hereinafter "DNR") proposed alternative language

for this provision. [Tr. 197, 349-351] DNR suggested that estimates of ground-water appropriation be expressed in different units, consistent with common use by the Department. DNR also support the requirement for data on annual water consumption. The Hearing Examiner finds it reasonable to include DNR's suggested changes to this provision to facilitate the Department's participation in need proceedings.

The need for data on radioactive releases, as required by rule EA 638 A 7 is found to be reasonable and necessary. Northern States Power Company presented testimony on the difficulty of estimating radioactive releases from fossil-fueled facilities. [Tr. 373, 374] The Hearing Examiner finds that radioactive releases from fossil-fueled facilities should be treated in the environmental report. However, less data are available on the radionuclides released by fossil-fueled facilities than on the releases from nuclear facilities. The Hearing Examiner finds that estimates of radioactivity released by fossil-fueled facilities be expressed as ranges, to acknowledge the greater uncertainty about radionuclide emissions from fossil-fueled plants.

The need for data on noise emissions, as required by rule EA 638 A 9 is reasonable and necessary. [Tr. 60] Northern States Power Company suggested alternative language for this provision. [Tr. 199] The Hearing Examiner supports substitution of the word "types" for the word "levels" to acknowledge the uncertainty of noise estimates without detailed information on facility design and site.

The need for data on the transmission requirements of a generating facility, as required by rule EA 638 A 11, was adequately demonstrated in the Agency's Statement of Need. Northern States Power Company suggested alternative language for this provision. [Tr. 199, 200]

The Staff's revision in Exhibit A deletes the requirement for estimates of the "expected" number of transmission facilities required by a generating facility. The expected number of transmission facilities depends on the proximity to the generating site

of other transmission facilities and local loads. Agency Staff also proposes addition of the words "to provide a reliable outlet for the generating facility" to clarify the meaning of the word "minimum" in this context. The Hearing Examiner finds the changes reasonable and necessary.

The Agency Staff proposed inclusion of data on the equipment and measures used to reduce the environmental impact of alternatives in rule EA 638 A 12 of Energy Agency Exhibit 1. The Staff's revised wording in Exhibit A deletes this provision from the rule. The Hearing Examiner finds this provision is unnecessary because the information will remain the same for most applications.

The need for data on electric fields attributable to transmission facilities, as required by rule EA 638 B 1 b, was demonstrated in the Agency's Statement of Need. Northern States Power Company proposed alternative language for this provision. [Tr. 202] The Agency Staff believes and it is found that it is important to present a clear discussion of electric fields in the environmental report because of the high level of public interest in this issue. Isopleths of field strengths are a clear way to present this information to the interested public, as well as to the decision-maker. However, Northern States Power Company has offered to provide the isopleth data for a variety of transmission alternatives, as described in rule EA 638 B 1 b and c of Energy Agency Exhibit 1. With these data from Northern States Power Company, isopleths of electric field strengths are not necessary in each application. The Staff's revised rule deletes the requirement for isopleth data and substitutes a requirement for a general discussion of the strength and distribution of electric fields.

Mr. Robert Banks, representing the Health Department, testified that air ions contribute to the electric fields of DC transmission lines. [Tr. 401] The Hearing Examiner finds it reasonable to incorporate this concern in the rule as done in Exhibit A of the Post-Hearing Submission.

The Hearing Examiner finds the data on electric fields need be supplied for each transmission alternative but not for each type of support structure that may be used.

The need for data on ozone and nitrogen oxide emissions from transmission facilities, as required by rule EA 638 B 1 c, was demonstrated in the Agency's Statement of Need and at the hearings. [Tr. 62] Northern States Power Company suggested alternative language for this provision. [Tr. 202] The Hearing Examiner finds that these emissions must be treated in the environmental report because of the high level of public interest in this issue. The Hearing Examiner adopts the Staff's revised rule in Exhibit A because a general treatment of ozone and nitrogen oxide emissions is sufficient at the need stage.

The need for data on noise emissions attributable to transmission facilities, as required by rule EA 638 B 1 e, was demonstrated in the Agency's Statement of Need and at the hearings. [Tr. 62] Northern States Power Company suggested alternative language for this provision. [Tr. 202] The Hearing Examiner finds that the Agency needs more information than the design criteria for noise emissions (and other effects attributable to corona loss) as suggested by Northern States Power Company. The Staff requires an estimated range of noise emission, if possible, with a discussion of the factors that influence these levels, to distinguish between alternatives considered in the environmental report. [Tr. 378-379]

Mr. Banks also testified that rule EA 638 B 1 e should be relaxed and that the reference to decibels (A scale) should be deleted. [Tr. 401, 402] The Hearing Examiner supports his suggested language for this provision.

The need for data on underground transmission facilities, as required by rule EA 638 B 2, was demonstrated in the Agency's Statement of Need and at the hearings. [Tr. 62, 63] Northern States Power Company proposed alternative language for this provision. [Tr. 203] The Hearing Examiner finds that estimates of the materials needed to insulate and cool the cable should be required, as well as estimates of other materials required for the cable system.

The need for a description of the region between the endpoints

of a transmission facility, as required by rule EA 638 B 7, was demonstrated in the Agency's Statement of Need and at the hearing. [Tr. 64, 65] Northern States Power Company proposed alternative language for this provision. [Tr. 204, 205] The Staff supports and the Hearing Examiner finds the addition of the words "major features" and "where applicable" as suggested by Northern States Power Company to clarify the Staff's intent.

The need for data on the alternative of no facility, as required by rule EA 638 C, was demonstrated in the Agency's Statement of Need and at the hearings. [Tr. 65, 66] The revised proposal substitutes the word "committed" for the word "planned" in part 1 to clarify the Staff's intent to collect data on those facilities that will be in operation before the proposed in-service date.

Northern States Power Company suggested deletion of part 3 of EA 638 C for the same reasons that the Staff has proposed to delete similar language from rule EA 638 A 12 of Exhibit 1. Unlike part A of the rule, however, this data will not remain the same for each application. Therefore, the Staff continues to support inclusion of part 3 of EA 638 C in the rule and it is found to be reasonable and necessary.

Clear Air-Clear Water proposed several additions to the environmental data rule. Clear Air-Clear Water suggested that the rule include "a description of the complete fuel cycle and its anticipated environmental impacts." [Tr. 218, 315] The Hearing Examiner agrees that consideration of the environmental effects of the fuel cycle is appropriate at the need stage when commitments to fuel types are considered. However, this provision is not necessary, since data on the fuel cycle will remain the same for each application. [Tr. 219]

Clear Air-Clear Water proposed that the rule require "a description of any other large electric generating facilities for which certificates of need have not yet been requested including size, type and timing." [Tr. 315] This provision is unnecessary, since the utilities are required to submit 15-year facility forecasts to the Environmental Quality Board and the Energy Agency.

Clear Air-Clear Water also proposed that the rule require "a discussion of non-site specific social and economic impacts including, but not limited to, impacts on employment, consumption of economic resources, and demands on community services and facilities." [Tr. 255, 316] The Agency Staff and Hearing Examiner agree that the environmental report must consider the socioeconomic effects of the proposal and alternatives. Data on the cost of alternatives would be required by proposed rule EA 633 C and EA 634 C. Data on the work force required to construct and operate the alternatives would be required by proposed rule EA 638 A 10 and B 6. However, additional data need not be required from the applicant to prepare a generic discussion of socioeconomic effects. [Tr. 226]

The Hearing Examiner finds that it is reasonable and necessary to adopt proposed rule EA 638 in its entirety and in accordance with the Findings in this Paragraph No. 17.

18. (EA 639) This rule pertains to the "Consequences of Delay."

No changes in this rule were suggested during the hearing process. EA 639 is found to be reasonable and necessary and should be adopted.

19. (EA 641) The proposed rule pertains to "Certificate of Need Modifications."

Northern States Power Company pointed out that EA 641 C could pose a problem for a utility if transmission line route modifications by the Environmental Quality Board cause a proposed line to exceed the length specified by amended rule EA 601 L. The utility would then be required to obtain a Certificate of Need. Northern States Power Company asserted that provision should be made for such eventuality. The Hearing Examiner finds the position of Northern States Power Company to be correct. The defect has been remedied in rule EA 641 C 2 b of Exhibit A of the Agency Staff's Post-Hearing Submission.

As revised, the rule is reasonable and necessary and should be adopted.

CONCLUSIONS

A. That the Minnesota Energy Agency and the Hearing Examiner duly acquired and now have jurisdiction over the within proceedings.

B. That all relevant, legal and procedural requirements of statute and regulation have been properly complied with.

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: That the director of the Minnesota Energy Agency adopt the within subject rules, in accordance with the Findings hereinabove. Any language changes, deletions or additions necessitated by the Findings hereinabove will be reviewed by the Chief Hearing Examiner when determining the issue of "substantial change."

Dated: November 14, 1977.

WILLIAM SELTZER
Hearing Examiner

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency 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, Minn. Regs. EA 601-638.	Docket No. EA-77-008-WS DIRECTOR'S FINDINGS OF FACT, CONCLUSIONS AND DECISION

The hearing in the above-captioned matter was ordered on June 20, 1977, and was convened for the Minnesota Energy Agency (hereinafter "Agency") by Hearing Examiner William Seltzer of the Minnesota Office of Hearing Examiners at 9:30 a.m. on August 4, 1977, in Conference Room D of the Veterans Service Building, Saint Paul, Minnesota, and was continued and reconvened at 9:30 a.m. on August 5, 1977, and on August 31, 1977, in the same room.

The hearing examiner made and issued his Report of Hearing Examiner on November 14, 1977. The hearing examiner recommended to the Agency that it adopt the Agency's proposed amendments incorporating the language changes suggested by him.

Northern States Power Company (hereinafter "NSP") submitted comments to the director with respect to the Report of the Hearing Examiner. NSP's statement covered three areas - the criteria, the definition of "promotional practices," and the environmental section. The comments by NSP were considered by the director and will be discussed further herein.

The crossouts and underlinings in the rules that are included below indicate changes from the rules as originally proposed for amendment.

The director of the Agency, upon the record certified to him by the hearing examiner, the Report of Hearing Examiner, and the comments received from NSP, hereby makes and issues the following Findings of Fact, Conclusions and Decision.

FINDINGS OF FACT

1. In general, the hearing examiner did a reasonable and thorough job of presenting his Findings of Fact in the above-captioned matter. The hearing examiner's Findings 1-3, 5, 6, 8, 10, 11, 15, and 18 are hereby adopted as Findings of the director.

2. The director agrees with hearing examiner's Finding 4 with respect to proposed rule EA 601. However, the director believes the following introduction should be added at the beginning of the rule:

> For purposes of these rules, the following definitions shall apply:

This addition conforms with other Agency definitional rules. Further, it is necessary to stress that the definitions pertain to all of these rules and only to these rules.

NSP, in its comments, questioned the definition of "promotional practices." The company is concerned that "[a]ctions or policies such as providing reliable energy service or conducting business operations responsibly may indirectly cause an increase in the use of energy" and may therefore be construed as unwarranted or impermissible. The director understands NSP's concern. However, the director believes that the phrase added by the hearing examiner, "except those actions or policies which are permitted or mandated by statute or rule," should prevent any misunderstanding or misapplication of the definition. By statute a public utility is required to provide "adequate and reliable services at reasonable rates" and "safe, adequate, efficient, and reasonable service." Minn. Stat. §§ 216B.01 and 216B.04 (1976).

With the addition and this further elaboration, hearing examiner's Finding 4 is also adopted as a Finding of the director.

3. The director agrees with the substance of the hearing examiner's Finding 7 with respect to proposed rule EA 604. However, the director does not agree with the hearing examiner's suggested modification of rule EA 604 D to require a list of rules "to which the applicant has not responded." Several of the EA 600 series rules are informational and require no response. Therefore, the language proposed by the hearing examiner may cause confusion as to which rules should be listed. In fact, the language originally proposed by the Agency staff may well cause the same confusion. Since the application is thoroughly examined for compliance anyway, the director believes that this particular requirement can be dropped with little or no loss in efficiency.

In addition, the director believes that two other word changes should be made in this rule. In the third sentence of rule EA 604 B, the director has changed the word "must" to the word "shall," which conforms the rule to the accepted style for rules and statutes in Minnesota. See Minn. Stat. § 645.45 subds. 15, 16 (1976). In the first line of rule EA 604 E, the director has changed the word "appointed" to the word "assigned," which is consistent with changes proposed by the Office of Hearing Examiners in Minn. Reg. HE 203.

With these small changes and additions, hearing examiner's Finding 7 is also adopted as a Finding of the director.

4. The director agrees with the substance of hearing examiner's Finding 9 with respect to proposed rule EA 611. The following discussion will examine each of the areas of controversy pointed out by the hearing examiner and resolved by the director.

The first change suggested by the hearing examiner is that the director should make a specific finding with respect to each of the criteria whenever a decision is made on an application received pursuant to these rules. The director agrees that this should be done and has made the following change in proposed rule EA 611 A:

> A. Purpose of the Criteria. The criteria for assessment of need shall be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. §§ 116H.01 through 116H.15. The factors listed under each of the criteria ~~below~~ set forth herein at rule EA 611 C shall be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules. The director shall make a specific written finding with respect to each of the criteria.

The hearing examiner made several suggestions regarding the proposed second criterion, the consideration of alternatives. The director accepts the hearing examiner's argument with respect to the burden of proof in the second criterion and has changed the criterion as recommended. With regard to the timing and specificity of alternatives, the director believes addition of the following introductory paragraph as rule EA 611 B will resolve the issues:

> B. Consideration of Alternatives. The director shall consider only those alternatives proposed before the close of the public hearing and for which there exists substantial evidence on the record with respect to each of the criteria listed in rule EA 611 C.

With respect to the third criterion, the hearing examiner has raised two points. First, the burden of proof with respect to showing that a proposed facility is beneficial to society must rest with the proponent of the facility. That is, a certificate of need should not be granted merely for lack of a showing that the proposed facility is detrimental to society and the environment. The director agrees and has shifted the

burden of proof back to the applicant in the third criterion as adopted.

Second, the hearing examiner found that the third criterion as proposed and reworded by the Agency staff is "vague and discretionary, entirely too subjective and lacking a definable standard." The director agrees that the language can be made more precise and understandable to those involved in the process. It must be realized, however, that all decisions of this type require a certain amount of discretion on the part of the decision-maker. The director believes that the third criterion is improved by substitution of the following language:

> 3. ~~the consequences of granting the certificate of need are more favorable than the consequences of denying the certificate~~ it has been demonstrated by a preponderance of the evidence on the record that the proposed facility, or a suitable modification thereof, will provide benefits to society in a manner compatible with protection of the natural and socioeconomic environments, including human health, considering:

The director believes that this language correctly places the burden of proof, provides the measure of the amount of evidence that is required to make an affirmative finding on the criterion, and is consistent with the language and meaning of the Minnesota Environmental Rights Law (Minn. Stat. ch. 116B) and State Environmental Policy (Minn. Stat. ch. 116D). The director believes it also correctly expresses the intent of the Agency staff's proposed language and the understanding of that proposed language as evidenced by the statements of the Minnesota Pollution Control Agency and Society Concerned About a Ravaged Environment. Finally, it clearly is in

harmony with the legislature's goal of "assuring statewide environmental protection consistent with an adequate, reliable supply of energy." Minn. Stat. § 116H.01 (1976).

The director has inserted the phrase "or a suitable modification thereof" into the third criterion, the factors listed under the third criterion, and one factor listed under the first criterion. The director believes this phrase is necessary to correct a defect in the proposed criteria. If the director certified a modification of the proposed facility, the third criterion and accompanying factors as proposed would be irrelevant to the decision without the proposed addition.

In addition to the aforementioned changes made as a result of the hearing examiner's Findings, the director has made one other change in the criteria worthy of note. The phrase "which have been considered during the hearing process" in the proposed fourth criterion has been deleted as totally unnecessary. It is impossible for anything to be "demonstrated on the record" without having been "considered during the hearing process."

With these small changes and additions, hearing examiner's Finding 9 is adopted as a Finding of the director.

5. The director agrees with the substance of hearing examiner's Finding 12 with respect to proposed rule EA 633. However, rule EA 633 B 5 has been changed slightly to read:

> 5. any reasonable combinations of the alternatives listed in rule EA 633 B 1 through 4;

The reason for changing "a" to "any reasonable" is to acknowledge that in some cases no combination may be reasonable while in other cases more than one combination may be reasonable and should therefore be considered.

With this minor change, hearing examiner's Finding 12 is adopted as a Finding of the director.

6. The director agrees with the substance of hearing examiner's Finding 13 with respect to proposed rule EA 634. However, rule EA 634 B 8 has been changed in the same way and for the same reason given in director's Finding 5.

With this small change, hearing examiner's Finding 13 is adopted as a Finding of the director.

7. The director agrees with the substance of hearing examiner's Finding 14 with respect to proposed rule EA 635. One minor addition has been made to clarify the meaning of the proposed rules. In proposed rule EA 635 C 1 g, the word "applicant's" has been inserted before the phrase "previous certificate of need proceedings." While it is not likely that the meaning of the proposed language could be misconstrued, it is clear that an applicant should only be held accountable for its own previous certificate of need forecasts.

With this small change, hearing examiner's Finding 14 is adopted as a Finding of the director.

8. The director agrees with the substance of hearing examiner's Finding 16 with respect to proposed rule EA 637. However, the director has made one minor language change, which appears several times in the adopted rule. The phrase "energy conservation and efficiency" has been inserted into the rule at five different locations wherein that phrase expresses the obvious intent of the various phrases used in the proposed rule.

With these small changes, hearing examiner's Finding 16 is adopted as a Finding of the director.

9. The director agrees with the substance of hearing examiner's Finding 17 with respect to proposed rule EA 638. However, NSP's statement raised questions with respect to subdivisions A 4 b and A 5, and the director believes that these questions should be addressed.

NSP suggested deletion of the words "ranges of" from subdivision A 4 b. The reason given indicates a different interpretation of the intent of the requirement. The director adopts the following language to clarify the provision:

> the estimated range of maximum contributions to 24-hour average ground level concentrations ~~described as isopleths~~ of sulfur dioxide, nitrogen oxides and particulates in micrograms per cubic meter at specified distances from the stack during operation at rated capacity and assuming generalized worst-case meteorological conditions;

The original rule proposed for adoption by the Agency staff required the applicant to submit isopleths of the maximum contributions of pollutants to ambient concentrations. The industry proposed deletion of that provision, stating that ambient concentrations cannot be predicted without knowledge of the meteorology of the site and the design of the facility.

The Agency staff was persuaded that these data need not be submitted in the form of isopleths. However, the director finds that it is reasonable and necessary to require the applicant to submit data on the range of contributions of pollutants to ambient concentrations at different distances from the stack. An indication of the extent of the area affected by stack emissions is necessary to distinguish alternatives considered in the environmental report. For example, ambient concentrations contributed by a large plant may be no greater than those contributed by a smaller plant, but may extend over a significantly broader area.

NSP also suggested deletion from the same subdivision of the phrase "during operation at rated capacity and assuming generalized worst-case meteorological conditions." The Agency staff testified that the proposed rules should clearly specify the units and special assumptions for reporting the data to standardize applications. Standardization of applications is necessary to minimize the time required to prepare

environmental reports.

NSP recommended modification of the information required by subdivision A 5 on water use by a proposed large electric generating facility and by each alternative considered. NSP cited inconsistencies in the uses of the words "estimated" and "maximum." The director does not totally agree with NSP's argument but believes the rule as written could cause confusion with respect to maximum use and annual use.

The director accepts the arguments by the staffs of the Agency and the Department of Natural Resources (hereinafter "DNR") that the environmental data section should treat the impacts of water appropriation as well as water consumption. The director also agrees that "maximum use" is needed to provide an indication of the constraints imposed by water requirements on siting of various alternatives without water storage or significant groundwater augmentation.

NSP also stated that it would be inappropriate to break down water use into surface and ground sources because this would depend upon relative water availability, water quality, plant design and DNR appropriation policies. The company argued that it would be difficult or impossible to provide a detailed breakdown of water sources early in the regulatory process and before a site designation.

However, the director agrees with the Agency staff that an applicant could, with relatively little effort, present different scenarios depending on groundwater availability which would consider the alternatives of different site locations. For example, one scenario would require surface water for large-volume uses, while groundwater would be used only for service or similar low-volume purposes where water purity is of great importance. An applicant can reasonably be required to describe what uses it expects to make of surface water and groundwater under appropriate assumptions.

The director therefore concludes that subdivision A 5 should be changed to read as follows:

> ~~the maximum~~ water use by the facility ~~during operation at rated capacity~~ for alternate cooling systems, ~~in cubic feet per second for appropriation from groundwater, appropriation from surface water, and consumptive losses~~ including:
>
> a. the estimated maximum use, including the groundwater pumping rate in gallons per minute and surface water appropriation in cubic feet per second;
>
> b. the estimated groundwater appropriation in million gallons per year; and
>
> c. the estimated annual consumption in acre-feet;

With the changes identified above for rule EA 638 and with this further elaboration, hearing examiner's Finding 17 is adopted as a Finding of the director.

10. The director agrees with the substance of hearing examiner's Finding 19 with respect to proposed rule EA 641. However, the director has made minor revisions in subdivisions A, B 2, and D in order to remove the pronoun "he" from the rules.

With this small addition, hearing examiner's Finding 19 is adopted as a Finding of the director.

11. Certain other very minor changes have been made to the rules as proposed or revised. These changes include relettering in rule EA 601 to accommodate the added definition, making more precise the references in a rule to other portions of the rule, and adding, deleting or substituting a word for the sake of grammar, clarification, or consistency.

CONCLUSIONS

A. The Minnesota Energy Agency has duly acquired and now has jurisdiction over the subject proceeding.

B. All relevant legal and procedural requirements of statute and rule have been properly considered.

C. The Minnesota Energy Agency has statutory authority to amend the subject rules.

D. The proposed amendments to the rules are reasonable and necessary for the purposes of improving the data base and the assessment of need criteria to be used by the Agency and its director in making the determination whether to issue a certificate of need. Furthermore, the proposed rule amendments are reasonable and necessary to supply the requisite data base for other state agencies to participate in the certificate of need process as required by statute.

E. In making the language changes suggested by the hearing examiner and those additional changes believed to be necessary and reasonable, and in reviewing the adopted rules as compared to the originally proposed amendments, consideration was given to Minn. Reg. HE 108, which sets forth the criteria necessary to determine whether a rule, as finally adopted, is substantially different from the rule as originally proposed. In the event it is determined that a substantial change has been made, the proposing Agency must either withdraw the proposed final rule or reconvene the rules hearing. The director concludes that the amendments, additions and language changes suggested by the hearing examiner and made by the director do not result in a substantial change from the rules as proposed for amendment.

DECISION

The director accepts the recommendation of the hearing examiner to adopt the revised rules and in a separate order adopts rules EA 601-641, incorporating the hearing examiner's changes as modified by the changes indicated in the director's Findings. A copy of rules EA 601-641, as adopted, and indicating changes from the rules as proposed for amendment, is attached.

Dated: December 9, 1977

John P. Millhone
Director

MINNESOTA ENERGY AGENCY
720 AMERICAN CENTER BUILDING
150 EAST KELLOGG BOULEVARD
ST. PAUL, MINNESOTA 55101

612-296-5120

December 9, 1977

Mr. Duane L. Harves
Chief Hearing Examiner
State of Minnesota
Office of Hearing Examiners
Room 300
1745 University Avenue
Saint Paul, Minnesota 55104

Re: In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency, EA 601-638. Docket No. EA-77-008-WS

Dear Mr. Harves:

The hearing examiner's report in subject proceeding was received by the Agency on November 14, 1977. The director proposes to adopt the rules as recommended by the hearing examiner with some small changes as set out in his Findings, Conclusions and Decision.

The complete hearing record, including the rules as proposed, as revised and as adopted by the Agency are enclosed for your review pursuant to Minn. Stat. § 15.052 subd. 4 (1976) and Minn. Reg. HE 107.

Sincerely,

Dwight S. Wagenius

DWIGHT S. WAGENIUS
Special Assistant
Attorney General

DSW:sc
Enc.

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency 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, Minn. Regs. EA 601-638.	Docket No. EA-77-008-WS ORDER ADOPTING RULES

The above-entitled matter came on for hearing before William Seltzer of the Minnesota Office of Hearing Examiners for the Director of the Minnesota Energy Agency at 9:30 a.m. on August 4, 1977, in Conference Room D of the Veterans Service Building, Saint Paul, Minnesota, and in a continuation of the hearing at the same time and same location on August 5, 1977, and August 31, 1977. Proper notice required by Minn. Stat. § 15.0412 (1976) 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 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 and the reasonableness thereof,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minn. Regs. EA 601-641 are adopted as amended this 9th day of December, 1977, pursuant to authority vested in me by Minn. Stat. § 116H.08(a) (1976).

STATE OF MINNESOTA
MINNESOTA ENERGY AGENCY

John P. Millhone
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency 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, Minn. Regs. EA 601-638.	Docket No. EA-77-008-WS DIRECTOR'S FINDINGS OF FACT, CONCLUSIONS AND DECISION

The hearing in the above-captioned matter was ordered on June 20, 1977, and was convened for the Minnesota Energy Agency (hereinafter "Agency") by Hearing Examiner William Seltzer of the Minnesota Office of Hearing Examiners at 9:30 a.m. on August 4, 1977, in Conference Room D of the Veterans Service Building, Saint Paul, Minnesota, and was continued and reconvened at 9:30 a.m. on August 5, 1977, and on August 31, 1977, in the same room.

The hearing examiner made and issued his Report of Hearing Examiner on November 14, 1977. The hearing examiner recommended to the Agency that it adopt the Agency's proposed amendments incorporating the language changes suggested by him.

Northern States Power Company (hereinafter "NSP") submitted comments to the director with respect to the Report of the Hearing Examiner. NSP's statement covered three areas - the criteria, the definition of "promotional practices," and the environmental section. The comments by NSP were considered by the director and will be discussed further herein.

The crossouts and underlinings in the rules that are included below indicate changes from the rules as originally proposed for amendment.

The director of the Agency, upon the record certified to him by the hearing examiner, the Report of Hearing Examiner, and the comments received from NSP, hereby makes and issues the following Findings of Fact, Conclusions and Decision.

FINDINGS OF FACT

1. In general, the hearing examiner did a reasonable and thorough job of presenting his Findings of Fact in the above-captioned matter. The hearing examiner's Findings 1-3, 5, 6, 8, 10, 11, 15, and 18 are hereby adopted as Findings of the director.

2. The director agrees with hearing examiner's Finding 4 with respect to proposed rule EA 601. However, the director believes the following introduction should be added at the beginning of the rule:

> For purposes of these rules, the following definitions shall apply:

This addition conforms with other Agency definitional rules. Further, it is necessary to stress that the definitions pertain to all of these rules and only to these rules.

NSP, in its comments, questioned the definition of "promotional practices." The company is concerned that "[a]ctions or policies such as providing reliable energy service or conducting business operations responsibly may indirectly cause an increase in the use of energy" and may therefore be construed as unwarranted or impermissible. The director understands NSP's concern. However, the director believes that the phrase added by the hearing examiner, "except those actions or policies which are permitted or mandated by statute or rule," should prevent any misunderstanding or misapplication of the definition. By statute a public utility is required to provide "adequate and reliable services at reasonable rates" and "safe, adequate, efficient, and reasonable service." Minn. Stat. §§ 216B.01 and 216B.04 (1976).

With the addition and this further elaboration, hearing examiner's Finding 4 is also adopted as a Finding of the director.

3. The director agrees with the substance of the hearing examiner's Finding 7 with respect to proposed rule EA 604. However, the director does not agree with the hearing examiner's suggested modification of rule EA 604 D to require a list of rules "to which the applicant has not responded." Several of the EA 600 series rules are informational and require no response. Therefore, the language proposed by the hearing examiner may cause confusion as to which rules should be listed. In fact, the language originally proposed by the Agency staff may well cause the same confusion. Since the application is thoroughly examined for compliance anyway, the director believes that this particular requirement can be dropped with little or no loss in efficiency.

In addition, the director believes that two other word changes should be made in this rule. In the third sentence of rule EA 604 B, the director has changed the word "must" to the word "shall," which conforms the rule to the accepted style for rules and statutes in Minnesota. See Minn. Stat. § 645.45 subds. 15, 16 (1976). In the first line of rule EA 604 E, the director has changed the word "appointed" to the word "assigned," which is consistent with changes proposed by the Office of Hearing Examiners in Minn. Reg. HE 203.

With these small changes and additions, hearing examiner's Finding 7 is also adopted as a Finding of the director.

4. The director agrees with the substance of hearing examiner's Finding 9 with respect to proposed rule EA 611. The following discussion will examine each of the areas of controversy pointed out by the hearing examiner and resolved by the director.

The first change suggested by the hearing examiner is that the director should make a specific finding with respect to each of the criteria whenever a decision is made on an application received pursuant to these rules. The director agrees that this should be done and has made the following change in proposed rule EA 611 A:

> A. Purpose of the Criteria. The criteria for assessment of need shall be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. §§ 116H.01 through 116H.15. The factors listed under each of the criteria ~~below~~ set forth herein at rule EA 611 C shall be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules. The director shall make a specific written finding with respect to each of the criteria.

The hearing examiner made several suggestions regarding the proposed second criterion, the consideration of alternatives. The director accepts the hearing examiner's argument with respect to the burden of proof in the second criterion and has changed the criterion as recommended. With regard to the timing and specificity of alternatives, the director believes addition of the following introductory paragraph as rule EA 611 B will resolve the issues:

> B. Consideration of Alternatives. The director shall consider only those alternatives proposed before the close of the public hearing and for which there exists substantial evidence on the record with respect to each of the criteria listed in rule EA 611 C.

With respect to the third criterion, the hearing examiner has raised two points. First, the burden of proof with respect to showing that a proposed facility is beneficial to society must rest with the proponent of the facility. That is, a certificate of need should not be granted merely for lack of a showing that the proposed facility is detrimental to society and the environment. The director agrees and has shifted the

burden of proof back to the applicant in the third criterion as adopted.

Second, the hearing examiner found that the third criterion as proposed and reworded by the Agency staff is "vague and discretionary, entirely too subjective and lacking a definable standard." The director agrees that the language can be made more precise and understandable to those involved in the process. It must be realized, however, that all decisions of this type require a certain amount of discretion on the part of the decision-maker. The director believes that the third criterion is improved by substitution of the following language:

> 3. ~~the consequences of granting the certificate of need are more favorable than the consequences of denying the certificate~~ it has been demonstrated by a preponderance of the evidence on the record that the proposed facility, or a suitable modification thereof, will provide benefits to society in a manner compatible with protection of the natural and socioeconomic environments, including human health, considering:

The director believes that this language correctly places the burden of proof, provides the measure of the amount of evidence that is required to make an affirmative finding on the criterion, and is consistent with the language and meaning of the Minnesota Environmental Rights Law (Minn. Stat. ch. 116B) and State Environmental Policy (Minn. Stat. ch. 116D). The director believes it also correctly expresses the intent of the Agency staff's proposed language and the understanding of that proposed language as evidenced by the statements of the Minnesota Pollution Control Agency and Society Concerned About a Ravaged Environment. Finally, it clearly is in

harmony with the legislature's goal of "assuring statewide environmental protection consistent with an adequate, reliable supply of energy." Minn. Stat. § 116H.01 (1976).

The director has inserted the phrase "or a suitable modification thereof" into the third criterion, the factors listed under the third criterion, and one factor listed under the first criterion. The director believes this phrase is necessary to correct a defect in the proposed criteria. If the director certified a modification of the proposed facility, the third criterion and accompanying factors as proposed would be irrelevant to the decision without the proposed addition.

In addition to the aforementioned changes made as a result of the hearing examiner's Findings, the director has made one other change in the criteria worthy of note. The phrase "which have been considered during the hearing process" in the proposed fourth criterion has been deleted as totally unnecessary. It is impossible for anything to be "demonstrated on the record" without having been "considered during the hearing process."

With these small changes and additions, hearing examiner's Finding 9 is adopted as a Finding of the director.

5. The director agrees with the substance of hearing examiner's Finding 12 with respect to proposed rule EA 633. However, rule EA 633 B 5 has been changed slightly to read:

> 5. any reasonable combinations of the alternatives listed in rule EA 633 B 1 through 4;

The reason for changing "a" to "any reasonable" is to acknowledge that in some cases no combination may be reasonable while in other cases more than one combination may be reasonable and should therefore be considered.

With this minor change, hearing examiner's Finding 12 is adopted as a Finding of the director.

6. The director agrees with the substance of hearing examiner's Finding 13 with respect to proposed rule EA 634. However, rule EA 634 B 8 has been changed in the same way and for the same reason given in director's Finding 5.

With this small change, hearing examiner's Finding 13 is adopted as a Finding of the director.

7. The director agrees with the substance of hearing examiner's Finding 14 with respect to proposed rule EA 635. One minor addition has been made to clarify the meaning of the proposed rules. In proposed rule EA 635 C 1 g, the word "applicant's" has been inserted before the phrase "previous certificate of need proceedings." While it is not likely that the meaning of the proposed language could be misconstrued, it is clear that an applicant should only be held accountable for its own previous certificate of need forecasts.

With this small change, hearing examiner's Finding 14 is adopted as a Finding of the director.

8. The director agrees with the substance of hearing examiner's Finding 16 with respect to proposed rule EA 637. However, the director has made one minor language change, which appears several times in the adopted rule. The phrase "energy conservation and efficiency" has been inserted into the rule at five different locations wherein that phrase expresses the obvious intent of the various phrases used in the proposed rule.

With these small changes, hearing examiner's Finding 16 is adopted as a Finding of the director.

9. The director agrees with the substance of hearing examiner's Finding 17 with respect to proposed rule EA 638. However, NSP's statement raised questions with respect to subdivisions A 4 b and A 5, and the director believes that these questions should be addressed.

NSP suggested deletion of the words "ranges of" from subdivision A 4 b. The reason given indicates a different interpretation of the intent of the requirement. The director adopts the following language to clarify the provision:

> the estimated range of maximum contributions to 24-hour average ground level concentrations ~~described as isopleths~~ of sulfur dioxide, nitrogen oxides and particulates in micrograms per cubic meter at specified distances from the stack during operation at rated capacity and assuming generalized worst-case meteorological conditions;

The original rule proposed for adoption by the Agency staff required the applicant to submit isopleths of the maximum contributions of pollutants to ambient concentrations. The industry proposed deletion of that provision, stating that ambient concentrations cannot be predicted without knowledge of the meteorology of the site and the design of the facility.

The Agency staff was persuaded that these data need not be submitted in the form of isopleths. However, the director finds that it is reasonable and necessary to require the applicant to submit data on the range of contributions of pollutants to ambient concentrations at different distances from the stack. An indication of the extent of the area affected by stack emissions is necessary to distinguish alternatives considered in the environmental report. For example, ambient concentrations contributed by a large plant may be no greater than those contributed by a smaller plant, but may extend over a significantly broader area.

NSP also suggested deletion from the same subdivision of the phrase "during operation at rated capacity and assuming generalized worst-case meteorological conditions." The Agency staff testified that the proposed rules should clearly specify the units and special assumptions for reporting the data to standardize applications. Standardization of applications is necessary to minimize the time required to prepare

environmental reports.

NSP recommended modification of the information required by subdivision A 5 on water use by a proposed large electric generating facility and by each alternative considered. NSP cited inconsistencies in the uses of the words "estimated" and "maximum." The director does not totally agree with NSP's argument but believes the rule as written could cause confusion with respect to maximum use and annual use.

The director accepts the arguments by the staffs of the Agency and the Department of Natural Resources (hereinafter "DNR") that the environmental data section should treat the impacts of water appropriation as well as water consumption. The director also agrees that "maximum use" is needed to provide an indication of the constraints imposed by water requirements on siting of various alternatives without water storage or significant groundwater augmentation.

NSP also stated that it would be inappropriate to break down water use into surface and ground sources because this would depend upon relative water availability, water quality, plant design and DNR appropriation policies. The company argued that it would be difficult or impossible to provide a detailed breakdown of water sources early in the regulatory process and before a site designation.

However, the director agrees with the Agency staff that an applicant could, with relatively little effort, present different scenarios depending on groundwater availability which would consider the alternatives of different site locations. For example, one scenario would require surface water for large-volume uses, while groundwater would be used only for service or similar low-volume purposes where water purity is of great importance. An applicant can reasonably be required to describe what uses it expects to make of surface water and groundwater under appropriate assumptions.

The director therefore concludes that subdivision A 5 should be changed to read as follows:

> ~~the maximum~~ water use by the facility ~~during operation at rated capacity~~ for alternate cooling systems, ~~in cubic feet per second for appropriation from groundwater, appropriation from surface water, and consumptive losses~~ including:
>
> a. the estimated maximum use, including the groundwater pumping rate in gallons per minute and surface water appropriation in cubic feet per second;
>
> b. the estimated groundwater appropriation in million gallons per year; and
>
> c. the estimated annual consumption in acre-feet;

With the changes identified above for rule EA 638 and with this further elaboration, hearing examiner's Finding 17 is adopted as a Finding of the director.

10. The director agrees with the substance of hearing examiner's Finding 19 with respect to proposed rule EA 641. However, the director has made minor revisions in subdivisions A, B 2, and D in order to remove the pronoun "he" from the rules.

With this small addition, hearing examiner's Finding 19 is adopted as a Finding of the director.

11. Certain other very minor changes have been made to the rules as proposed or revised. These changes include relettering in rule EA 601 to accommodate the added definition, making more precise the references in a rule to other portions of the rule, and adding, deleting or substituting a word for the sake of grammar, clarification, or consistency.

CONCLUSIONS

A. The Minnesota Energy Agency has duly acquired and now has jurisdiction over the subject proceeding.

B. All relevant legal and procedural requirements of statute and rule have been properly considered.

C. The Minnesota Energy Agency has statutory authority to amend the subject rules.

D. The proposed amendments to the rules are reasonable and necessary for the purposes of improving the data base and the assessment of need criteria to be used by the Agency and its director in making the determination whether to issue a certificate of need. Furthermore, the proposed rule amendments are reasonable and necessary to supply the requisite data base for other state agencies to participate in the certificate of need process as required by statute.

E. In making the language changes suggested by the hearing examiner and those additional changes believed to be necessary and reasonable, and in reviewing the adopted rules as compared to the originally proposed amendments, consideration was given to Minn. Reg. HE 108, which sets forth the criteria necessary to determine whether a rule, as finally adopted, is substantially different from the rule as originally proposed. In the event it is determined that a substantial change has been made, the proposing Agency must either withdraw the proposed final rule or reconvene the rules hearing. The director concludes that the amendments, additions and language changes suggested by the hearing examiner and made by the director do not result in a substantial change from the rules as proposed for amendment.

DECISION

The director accepts the recommendation of the hearing examiner to adopt the revised rules and in a separate order adopts rules EA 601-641, incorporating the hearing examiner's changes as modified by the changes indicated in the director's Findings. A copy of rules EA 601-641, as adopted, and indicating changes from the rules as proposed for amendment, is attached.

Dated: December 9, 1977

John P. Millhone
Director

Adopted
December 9, 1977

MINNESOTA ENERGY AGENCY

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

RECEIVED
DEC 12 1977
OFFICE OF HEARING EXAMINERS

Chapter 6
EA 601 - ~~638~~ 641

EA 601 DEFINITIONS

For purposes of these rules, the following definitions shall apply:

A. "Adjusted Net Demand" means system demand, minus firm purchases, plus firm sales;

B. "Adjusted Net Capability" means net generating capacity, minus participation sales, plus participation purchases;

C. "Agency" means the Minnesota Energy Agency;

D. "Annual Adjusted Net Demand" means annual system demand, minus firm purchases, plus firm sales;

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

F. "Annual System Demand" means the highest system demand occurring during the twelve-month period beginning May 1 of the forecast year;

G. "Director" means the director of the Minnesota Energy Agency;

H. "Firm Purchases" and "Firm Sales" mean the amount of power to be purchased or sold which is intended to have assured availability;

I. "Forecast Years" means the 26 calendar years consisting of the calendar year the application is filed with the aAgency, the ten previous calendar years, and the fifteen subsequent calendar years;

J. "Heat Rate" means a measure of average thermal efficiency of an electric generating facility expressed as the ratio of input energy per net kilowatt-hour produced, computed by dividing the total energy content of fuel burned for electricity generation by the resulting net kilowatt-hour generation;

K. "Large Electric Generating Facility (LEGF)" means any electric power generating ~~plant~~ unit or combination of ~~plants~~ units at a single site and associated facilities designed for or capable of operation at a combined capacity of 50,000 kilowatts or more, or any facility of 5,000 kilowatts or more which requires oil, natural gas, or natural gas liquids as a fuel and for which an installation permit has not been applied for by May 19, 1977, pursuant to Minn. Reg. APC 3(a);

L. "Large High Voltage Transmission Line (LHVTL)" means a conductor of electrical energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more with more than 50 miles (80.4 kilometres) of its length in Minnesota, or at a nominal voltage of 300 kilovolts or more with more than 25 miles (40.2 kilometres) of its length in Minnesota. Associated facilities shall include, but not be limited to, insulators, towers, and substations and terminals operating at the nominal voltage;

M. "Load Center" means that portion or those portions of a utility's system where electrical energy demand is concentrated;

N. "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;

O. "Minnesota Service Area" means that portion of a utility's system lying within Minnesota;

P. "Net Generating Capacity" means the total number 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;

Q. "Net Reserve Capacity Obligation" means the annual adjusted net demand multiplied by the percent reserve capacity requirement;

R. "Participation Power" means power and energy which are 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);

S. "Participation Purchases" and "Participation Sales" mean purchases and sales under a participation power agreement or a seasonal participation power agreement;

T. "Peak Demand" means the highest system demand occurring within any designated period of time;

U. "Promotional Practices" means any actions or policies by an applicant, except those actions or policies which are permitted or mandated by statute or rule, which directly or indirectly give rise to the demand for the facility including, but not limited to, advertising, billing practices, promotion of increased use of electrical energy, and other marketing activities;

~~U~~ V. "Seasonal Adjusted Net Demand" means seasonal system demand, minus firm purchases, plus firm sales;

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

~~W~~ X. "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 season ~~months~~ or ~~six~~ winter season ~~months~~;

~~X~~ Y. "Summer Season" means the period from May 1 through October 31;

~~Y~~ Z. "System" means the ~~geographic~~ service area where the utility's ultimate consumers are located and that combination of generating, transmission, and distribution facilities which makes up the operating physical plant of the utility, whether

owned or nonowned, for the delivery of electrical energy to ultimate consumers;

~~Z~~ AA. "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;

~~AA~~ BB. "Ultimate Consumers" means consumers purchasing electricity for their own use and not for resale;

~~BB~~ CC. "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; and

~~ee~~ DD. "Winter Season" means the period from November 1 through April 30.

EA 602 PURPOSE OF RULES

The purpose of these rules is to specify the content of applications for certificates of need and to specify criteria for the assessment of need for large electric generating facilities and large high voltage transmission lines. In accordance with Minn. Stat. §§ 116H.13 subd. 2, no LEGF or LHVTL shall be sited or constructed in Minnesota without the issuance of a certificate of need by the director pursuant to Minn. Stat. §§ 116H.01 through 116H.15 and consistent with the criteria for assessment of need.

EA 603 APPLICABILITY OF RULES

Each person applying for a certificate of need for an LEGF or an LHVTL shall provide all information required by these rules. A certificate of need is required for each new LEGF, each new LHVTL, and for each expansion of either such facility,

which expansion is itself of sufficient size to come within the definition in either rule EA 601 ~~J~~ K or rule EA 601 ~~K~~ L.

EA 604 APPLICATION PROCEDURES AND TIMING

A. Each applicant for a certificate of need shall apply in a form and manner prescribed by the director.

B. A minimum of fifty (50) bound copies and one (1) unbound copy of the application must be filed with the director. The director may require additional bound copies, not to exceed 100 bound copies total. All documents, forms, and schedules filed with the application ~~must~~ shall be typed on 8½" x 11" paper except for drawings, maps, and similar materials. ~~The date of preparation and the applicant's name shall appear on each page of the application, as well as on each document filed with the application.~~ Each application shall contain a title page and a complete table of contents which includes the applicable rule by the titles and numbers given in these rules. The date of preparation and the applicant's name shall appear on the title page, as well as on each document filed with the application.

C. Subsequent to the filing of an application, any changes or corrections to the application shall comply with rule EA 604 B as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked with the word "REVISED" and with the date the revision was made. The original copy of the changes or corrections shall be filed with the hearing examiner, and the remaining copies shall be submitted to the director.

D. Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested, and the number of copies of the application filed, ~~and the rules and subdivisions thereof to which the applicant has responded.~~

E. A hearing examiner shall be ~~appointed~~ assigned, and a public hearing shall be scheduled to commence no later than eighty days after the receipt of the application, in accordance with Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, Minn. Regs. EA 500 et seq., and the Hearing Examiner Rules for Contested Case Procedures, Minn. Regs. HE 201 et seq.

F. A decision on an application for a certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as received is substantially complete.

G. The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct any deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is then substantially complete.

H. Prior to the submission of an application, a person may be exempted from any data requirement of these rules upon a written request to the director for exemption from specified rules and a showing by that person in the request that the data requirement 1) is unnecessary to determine the need for the proposed facility or 2) may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for ~~his~~ the decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

EA 605 FILING FEES AND PAYMENT SCHEDULE

A. The fee for processing an application shall be:

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

B 2. $10,000 plus $40 per kilovolt of ~~rated-capacity~~ design voltage for LHVTL's;

plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility. In no event shall the total fee required of any applicant exceed $50,000.

B. Twenty-five percent of the fee set according to either item A 1 or A 2 of rule EA 605 shall accompany the application, and the balance shall be paid in three equal installments within 45, 90, and 135 days after submission of the application. The applicant shall be notified prior to the time its application is acted upon by the director of any additional fees, which fees shall be paid within 30 days of notification. The billing of such additional fees shall be accompanied by an itemized document showing the necessity for the additional assessment.

C. No certificate of need shall be issued until all fees are paid in full.

EA 611 CRITERIA FOR ASSESSMENT OF NEED

A. Purpose of the Criteria. The criteria for assessment of need shall be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. SS SS 116H.01 through 116H.15. The factors listed under each of the criteria ~~below~~ set forth herein at rule EA 611 C shall be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules. The director shall make a specific written finding with respect to each of the criteria.

B. Consideration of Alternatives. The director shall consider only those alternatives proposed before the close of the public hearing and for which there exists substantial evidence on the record with respect to each of the criteria listed in rule EA 611 C.

B C. Criteria. A certificate of need shall be granted to the applicant if it is determined that:

1. the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, ~~In making this determination, the director shall~~ considering:

a. the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

b. the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

c. the effects of promotional practices of the applicant which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

d. the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and

e. the effect of the proposed facility, or a suitable modification thereof, in making ~~more~~ efficient use resources;

2. a more reasonable and prudent alternative to the proposed facility has not been demonstrated ~~In making this determination, the following factors shall be~~ by a preponderance of evidence on the record by parties or persons other than the applicant, consider~~ed~~ing:

a. the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

b. the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

c. the ~~impact~~ effects of the proposed facility upon the natural and socioeconomic environments

compared to the ~~impacts~~ effects of reasonable alternatives; and

d. the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

3. it has been demonstrated by a preponderance of the evidence on the record that ~~the consequences of granting the certificate of need are more favorable than the consequences of denying the certificate~~ the proposed facility, or a suitable modification thereof, will provide benefits to society in a manner compatible with protection of the natural and socioeconomic environments, including human health, considering:

a. the relationship of the proposed facility, or a suitable modification thereof, to overall state energy needs;

b. the ~~impact~~ effects of the proposed facility, or a suitable modification thereof, upon the natural and socioeconomic environments compared to the ~~impact~~ effects of not building the facility;

c. the effects of the proposed facility, or a suitable modification thereof, in inducing future development; and

d. the socially beneficial uses of the output of the proposed facility, or a suitable modification thereof, including its uses to protect or enhance environmental quality;

and that

4. it has not been demonstrated on the record that the design, construction or operation of the proposed facility will fail to comply with those relevant policies, rules and regulations of other state and federal agencies and local governments ~~which have been considered during the hearing process~~.

EA 631 CONTENTS OF APPLICATION

A. Large Electric Generating Facilities. Each application for a certificate of need for an LEGF shall include all of the information required by rules EA 632, 633, and 635-639.

B. Large High Voltage Transmission Lines. Each application for a certificate of need for an LHVTL shall include all of the information required by rules EA 632 and 634-639. If, however, a proposed LHVTL is designed to deliver electric power to a particular load center within the applicant's system, the application shall contain the information required by rule EA 635 for that load center rather than for the system as a whole.

C. Joint Ownership and Multi-Party Use. If the proposed LEGF or LHVTL is to be owned jointly by two or more utilities or by a pool, all information required by rules EA 632, 635-637 and 639 shall be provided by each joint owner for its system. If the facility is designed to meet the long-term needs (in excess of 50 megawatts) of a particular utility which is not to be an owner, that utility shall also provide all information required by rules EA 632, 635-637 and 639.

EA 632 NEED SUMMARY AND ADDITIONAL CONSIDERATIONS

A. Need Summary. Each application shall contain a summary of the major factors which justify the need for the proposed facility. This summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, graphs and figures.

B. Additional Considerations. Each application shall contain an explanation of the relationship of the proposed facility to each of the following socioeconomic considerations:

1. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

2. promotional activities which may have given rise to the demand for the facility; and

3. the effects of the facility in inducing future development.

EA 633 DESCRIPTION OF PROPOSED LARGE ELECTRIC GENERATING FACILITY AND ALTERNATIVES

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, including the expected annual capacity factor;

3. the type of fuel used, including:

a. the reason for the choice of fuel;

b. projection of the availability of this fuel type over the projected life of the facility; and

c. alternate fuels, if any; ~~and~~

4. the anticipated heat rate of the facility; and

5. to the fullest extent known to the applicant, the anticipated areas where the proposed facility could be located;

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, including transmission lines;

3. new transmission lines; ~~and~~

4. new generating facilities of a different size or using a different energy source (fuel oil, natural gas, coal, nuclear fission, and the emergent technologies); and

5. any reasonable combinations of the alternatives listed in rule EA 633 B 1 through 4;

C. for the proposed facility and for each of the alternatives provided in response to rule EA 633 B that could provide electric power at the asserted level of need, a discussion of:

1. its capacity cost in current dollars per kilowatt;

2. its service life;

3. its estimated average annual availability;

4. its variable operating and maintenance costs in current dollars per kilowatt-hour;

5. the total cost in current dollars of a kilowatt-hour provided by it; ~~and~~

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

6 7. any major assumptions made in providing the information in items 1 through 5 6 of rule EA 633 C ~~above~~;

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

E. such other information about the proposed facility and each alternative as may be relevant to determination of need.

EA 634 DESCRIPTION OF PROPOSED LARGE HIGH VOLTAGE TRANSMISSION LINE AND ALTERNATIVES

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 number, the size(s) and the type(s) of conductor(s);

3. the expected losses under projected maximum loading and under projected average loading 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, which information shall be on a map of

appropriate scale; and

6. a list of all counties reasonably likely to be affected by construction and installation of the proposed line;

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

1. new generation;

2. upgrading of existing transmission lines or existing generating facilities;

3. transmission lines with different design voltages or with different numbers, sizes and types of conductors;

4. transmission lines with different terminals or substations;

5. double circuiting of existing transmission lines;

6. if the proposed facility is for DC (AC) transmission, an AC (DC) transmission line; ~~and~~

7. if the proposed facility is for overhead (underground) transmission, an underground (overhead) transmission line; and

8. any reasonable combinations of the alternatives listed in rule EA 634 B 1 through 7;

C. for the proposed facility and for each of the alternatives provided in response to rule EA 634 B that could provide electric power at the asserted level of need, a discussion of:

1. its total cost in current dollars;

2. its service life;

3. its estimated average annual availability;

4. its estimated annual operating and maintenance costs in current dollars; ~~and~~

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

~~5~~ 6. any major assumptions made in providing the information in items 1 through ~~4~~ 5 of rule EA 634 C ~~above~~;

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

E. such other information about the proposed facility and each alternative 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, as provided in rule EA 631, including but not limited to the data requested in subsection B of rule EA 635. 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 justification section (EA 635 C) the procedure(s) used in deriving the estimate. The application shall clearly indicate which data are historical and which are projected. It is expected that data provided by the applicant should be reasonable and internally consistent.

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. for each of the following categories, estimates of the number of ultimate consumers within the applicant's system and annual electrical consumption by those consumers:

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

b. irrigation and drainage pumping;

c. nonfarm residential (when electricity is supplied through a single meter for both

residential and commercial uses, it shall be reported according to its principal use, and apartment buildings shall be reported as residential even if not separately metered);

d. commercial (this category shall include wholesale and retail trade; communication industries; public and private office buildings, banks, and 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);

e. mining;

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

g. street and highway lighting;

h. 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);

i. 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 a through h); and

j. the sum of categories a through i;

3. an estimate of the demand for power in the applicant's system at the time of annual system peak demand, including an estimated breakdown of

the demand into the consumer categories listed in rule EA 635 B 2;

4. the applicant's system peak demand by month; and

5. the estimated annual revenue requirement per kilowatt-hour; and

5 6. the applicant's ~~monthly~~ system weekday load factor by month.

C. Forecast Justification

1. Forecast Methodology. Each applicant may use a forecast methodology of its own choosing, with due consideration given to cost, manpower requirements and data availability. However, any forecast data provided by the applicant shall be subject to tests of accuracy, reasonableness and consistency. The applicant shall detail the forecast methodology employed to obtain the forecasts provided under section B of rule EA 635, including:

a. the overall methodological framework which is used;

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

c. the manner in which these specific techniques are related in producing the forecast;

d. 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;

e. forecast confidence levels or ranges of accuracy for annual peak demand and annual electrical consumption, as well as a description of their derivation;

f. 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; and

g. an explanation of any discrepancies which appear between the forecasts presented in the application and the forecasts submitted to the Agency under Minn. Regs. EA 201 et seq. or in the applicant's 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 its application, including;

a. 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);

b. 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

a. 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.

b. 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 rule EA 635 B which is not available historically or not generated by the applicant in preparing its 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:

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

b. 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 electrical energy forecast in response to rule 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. 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. the applicant's seasonal firm purchases and seasonal firm sales for each utility involved in each transaction for each of the forecast years;

C. the applicant's seasonal participation purchases and seasonal participation sales for each utility involved in each transaction for each of the forecast years;

D. for the summer season and for the winter season corresponding to each forecast year, the load and generation capacity data requested in items 1 through 13 below, including all anticipated purchases, sales, capacity retirements and capacity additions, except those which depend on certificates of need not yet issued by the Agency:

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. for the summer season and for the winter season corresponding to each forecast year subsequent to the year of application, the load and generation capacity data requested in items 1 through 13 of rule EA 636 D, including purchases, sales and generating capability contingent on the proposed facility;

F. for the summer season and for the winter season corresponding to each forecast year subsequent to the year of application, the load and generation capacity data requested in items 1 through 13 of rule EA 636 D, including all projected purchases, sales and generating capability;

G. for each of the forecast years subsequent to the year of application, a list of proposed additions and retirements in net generating capability, including the probable date of application for any addition which is expected to require a certificate of need;

H. 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 and monthly adjusted net capability, as well as a plot on the same graph of the difference between the adjusted net capability and actual, planned, or estimated maintenance outages of generation and transmission facilities; and

I. a discussion of the appropriateness of and the method of determining system reserve margins, considering 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 CONSERVATION PROGRAMS

Each application shall include the following information:

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

B. a list of the applicant's energy conservation and ~~energy~~ efficiency goals and objectives;

C. a description of the specific energy conservation and efficiency programs the applicant has considered, ~~and~~ a list of those which have been implemented, and the reasons why the other programs have not been implemented;

D. a description of the major accomplishments which have been made by the applicant with respect to energy conservation ~~or energy~~ and efficiency;

E. a description of the applicant's future plans through the forecast years with respect to energy conservation and ~~energy~~ efficiency; and

F. a quantification of the manner by which these programs affect or help determine the forecast provided in response to rule EA 635 B, a list of their total costs by program, and a discussion of their expected effects in reducing the need for new generating facilities.

EA 638 ENVIRONMENTAL DATA

Each applicant shall provide environmental data for the proposed facility and for each alternative considered in detail in response to rule EA 633 C or rule EA 634 C. Information relating to construction and operation of each of these alternatives shall be provided as indicated below, to the extent that such information is reasonably available to the applicant and applicable to the particular alternative. Where appropriate, the applicant shall submit data for ~~a range of locations in the state, and~~ a range of possible facility designs. Major assumptions should be stated, and references should be cited where appropriate.

A. Generating Facilities. The applicant shall provide the following information for each alternative which would involve construction of an LEGF:

1. ~~the amount of land required by the facility for different designs and topography~~ the estimated range of land requirements for the facility with a discussion of assumptions on land requirements for water storage, cooling systems and solid waste storage;

2. the estimated amount of vehicular, rail and barge traffic generated by construction and operation of the facility;

3. for fossil-fueled facilities:

   a. the expected regional sources(s) of fuel for the facility;

   b. the ~~maximum and~~ typical fuel requirement (in tons per hour, gallons per hour, or thousand cubic feet per hour) during operation at rated capacity and the expected annual fuel requirement at the expected capacity factor;

   c. the expected rate of heat input for the facility in Btu per hour during operation at rated capacity;

   ~~e~~ d. the ~~expected~~ typical range of the heat value of the fuel (in Btu per pound, Btu per gallon or Btu per thousand cubic feet) and the typical average heat value of the fuel; and

   ~~d~~ e. the ~~expected content~~ typical ranges of sulfur, ash and moisture ~~in~~ content of the fuel;

4. for fossil-fueled facilities:

   a. the estimated range of trace element emissions and the maximum ~~and typical~~ emissions of sulfur dioxide, nitrogen oxides, and particulates ~~and trace elements~~ in pounds per hour during operation at rated capacity; and

   b. the estimated range of maximum contributions to 24-hour average ground level concentrations at specified distances from the stack ~~described as isopleths~~ of sulfur dioxide, nitrogen oxides and particulates in micrograms per cubic meter during operation at rated capacity and assuming generalized worst-case meteorological conditions;

5. ~~the maximum~~ water use by the facility ~~during operation at rated capacity~~ for alternate cooling systems, ~~in cubic feet per second for appropriation from groundwater, appropriation from surface water, and consumptive losses~~ including:

a. the estimated maximum use, including the groundwater pumping rate in gallons per minute and surface water appropriation in cubic feet per second;

b. the estimated groundwater appropriation in million gallons per year; and

c. the estimated annual consumption in acre-feet;

6. the potential sources and types of discharges to water attributable to operation of the facility;

7. radioactive releases, including:

a. for nuclear facilities, the ~~expected~~ typical types and amounts of radionuclides released by the facility in curies per year for alternate facility designs and levels of waste treatment; and

b. for fossil-fueled facilities, the estimated range of radioactivity released by the facility in curies per year;

8. the potential types and quantities of solid wastes produced by the facility in tons per year at the expected capacity factor;

9. the potential sources and ~~levels~~ types of audible noise attributable to operation of the facility;

10. the ~~peak and average~~ estimated work force required for construction and operation of the facility; and

11. the minimum ~~and the expected~~ number and size of transmission facilities required ~~by~~ to provide a reliable outlet for the generating ~~the~~ facility~~;~~. ~~and~~

~~12. a description of equipment and measures that may be used to reduce the environmental impact of construction and operation of the facility;~~

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

1. ~~for each type of support structure that would be used~~ for overhead transmission facilities:

a. schematic diagrams which show the dimensions of the support structures and conductor configurations for each type of support structure that may be used;

b. ~~the strength of the electric field in kilovolts per meter (root mean square) described in isopleths for a plan view of a typical span between support structures at one meter above ground level; and~~ a discussion of the strength and distribution of the electric field attributable to the transmission facility, including the contribution of air ions if appropriate;

~~c. the strength of the electric field in kilovolts per meter (roots mean square) described in isopleths for an elevation view from the ground to the conductors for the width of the right of way at the point of maximum conductor sag;~~

~~2. for overhead transmission facilities:~~

~~a~~ c. ~~the typical levels~~ a discussion of ozone and nitrogen oxides emissions attributable to the transmission facility; ~~in parts per billion at ground level; and~~

~~b~~ d. a discussion of radio and television interference attributable to the transmission facility; and

e. a discussion of the characteristics and estimated maximum and typical levels of audible noise attributable to the transmission facilities;

~~3~~ 2. for underground transmission facilities:

a. the types and dimensions of the cable systems and associated facilities that would be used;

b. the types and quantities of materials required for the cable system, including materials required

for insulation and cooling of the cable; and

c. the amount of heat released by the cable system in kilowatts per meter of cable length;

~~4~~ 3. the estimated width of the right-of-way required for the transmission facility;

~~5.--the-maximum-and-typical-levels-of-audible-noise in-decibels-(A-scale)-attributable-to-the-transmission facility-at-the-edge-of-the-right-of-way;~~

~~6~~ 4. a description of construction practices for the transmission facility;

~~7~~ 5. a description of operation and maintenance practices for the transmission facility;

~~8~~ 6. the ~~peak-and-average~~ estimated work force required for construction and for operation and maintenance of the transmission facility; and

~~9~~ 7. a narrative description of the major features of the region between the endpoints of the transmission facility. The region shall encompass the likely area for routes between the endpoints. The description should emphasize the area within three miles of the endpoints. The following information shall be described where applicable:

a. hydrologic features including lakes, rivers, streams and wetlands;

b. natural vegetation and associated wildlife;

c. physiographic regions; and

d. land-use types, including human settlement, recreation, agricultural production, forestry production, and mineral extraction.

C. The Alternative of No Facility. The applicant shall provide the following information for the alternative of no facility:

1. a description of the expected operation of existing and ~~planned~~ committed generating and transmission facilities;

2. a description of the changes in resource

requirements and wastes produced by facilities discussed in response to rule EA 638 C 1, including:

a. the amount of land required;

b. induced traffic;

c. fuel requirements;

d. airborne emissions;

e. water appropriation and consumption;

f. discharges to water;

g. reject heat;

h. radioactive releases;

i. solid waste production;

j. audible noise; and

k. labor requirements; and

3. a description of equipment and measures that may be used to reduce the environmental impact of the alternative of no facility.

EA 639 CONSEQUENCES OF DELAY

The applicant shall present a discussion of anticipated consequences to its system, neighboring systems, and the power pool should the proposed facility be delayed one, two and three years or postponed indefinitely.

EA 641 CERTIFICATE OF NEED MODIFICATIONS

A. Issuance of a certificate of need may be made contingent upon modifications required by the director. When ~~the director denies~~ an application is denied, ~~he~~ the director shall state the reason(s) for the ~~refusal~~ denial.

B. Applications for changes in in-service date for large generation and transmission facilities previously certified shall conform to the following:

1. If an applicant determines that a change in the in-service date is necessary for a large generation or transmission facility previously certified by the director, it shall inform the director of the desired change of date for in-service 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 in-service date is acceptable.

2. Delays in the in-service 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~~ it 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:

~~2~~ a. Large transmission line length additions or subtractions made as a result of the route length approved by the Minnesota Environmental Quality Board (hereinafter "MEQB") for projects previously certified shall not require recertification.

b. If a utility applies to the MEQB for a transmission line route which is not expected to meet the definition of LHVTL in rule EA 601 L, but at some time in the routing process it becomes apparent that the MEQB may approve a route that meets the definition, the utility may apply for a certificate of need as soon as possible after that time. The length of a route is determined by measuring the length of its center line.

D. When ~~the director approves~~ a certificate of need is granted for the proposed facility ~~application~~, or modification thereof, ~~he~~ the director shall state which fuel types are not permitted in supplying the additional generation capacity certified.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 6 - 1978
Joan Anderson Growe
Secretary of State
3:00 pm