

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone _____

May 18, 1978

Michael B. Miller
Special Assistant Attorney General
Room G19K Administration Building
50 Sherburne Avenue
St. Paul, MN 55115

Re: Rules returned to the MEQB for minor revision

Dear Mike:

Enclosed herewith are the items necessary for your review as we discussed on the phone yesterday; namely, a copy of the Board's supplementary findings of fact which address the defects detected by you in your review of rules MEQB 71-82 and noted in your memo dated May 5, 1978, the order adopting the amendments to the rules, and three copies of the complete text of the rules.

Hopefully, the Board's amendments will allow you to file the rules with the Secretary of State.

Thank you for your expeditious treatment of this matter.

Sincerely,

Will Kaul

Will Kaul
Power Plant Siting Staff

Enclosure

/mt

AN EQUAL OPPORTUNITY EMPLOYER

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
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ORDER OF ADOPTION

The Minnesota Environmental Quality Board hereby adopts the amendments to adopted rules MEQB 73G, 74G and 79B.2 as shown on the attached supplementary findings of fact as amendments reasonable and necessary to carry out its responsibilities pursuant to the Power Plant Siting Act.

Dated this 18th day of May, 1978.

Peter Vanderpoel

Peter Vanderpoel, Chairman
Minnesota Environmental
Quality Board

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
BEFORE THE
ENVIRONMENTAL QUALITY BOARD

In the Matter of the Rules Proposed for Adoption by the Minnesota Environmental Quality Board Relating to Power Plant Siting and Transmission Line Routing.

Supplementary Findings of Fact

1. In finding #45 of his report, the Hearing Examiner recommends deletion of the second sentence of proposed rule MEQB 74H.2.a concerning siting criteria which states, "Economic considerations alone shall not justify approval of avoidance areas." (The referenced rule is now rule MEQB 74H.3.a as adopted by the Board on March 9, 1978.) The Examiner came to a similar conclusion concerning similar language with respect to proposed rule MEQB 73H.1 (now rule MEQB 73H.2 as adopted by the Board on March 9, 1978) concerning transmission line routing criteria.

2. Findings # 65 and 66 of the Board, adopted March 9, 1978, discuss the Examiner's finding recommending deletion of the "economic considerations alone" language for routes. The Board found in that case that such language was "authorized consistent with the intent of the Legislature" and that "(c)ontrary to the notion expressed by the Hearing Examiner the subject language does not deter or prevent the Board from assessing direct and indirect economic impacts as required by the Power Plant Siting Act." The Board now finds similarly in the case of the siting criteria, where application of the language "economic considerations alone shall not justify approval of avoidance areas" is analogous to use of that language in the routing criteria and similarly justifiable.

3. The word "purpose" as it appears in MEQB 73G and 74G should be changed to "purposes" to be gramatically correct.

4. The word "accordingly" should be added to the end of MEQB 79B.2 to add clarity.

Exh. 5.1 B

PROPOSED RULES OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD for SITING LARGE ELECTRIC POWER GENERATING PLANTS and ROUTING HIGH VOLTAGE TRANSMISSION LINES

CHAPTER TWENTY-ONE: MEQB 71-82

MEQB 71 AUTHORITY, PURPOSE AND POLICY

A. Authority. The rules contained herein are prescribed by the Minnesota Environmental Quality Board pursuant to the authority granted to the Board in the Power Plant Siting Act, Minn. Stat. §116C.51 et seq. (1977), to give effect to the purposes of the Act.

B. Purpose and Policy. It is the purpose of the Act and the policy of the State to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, the Board shall choose locations that minimize adverse human and environmental impact while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion. The Board shall provide for broad spectrum citizen participation as a principle of operation.

MEQB 72 DEFINITIONS. As used in these rules, the following terms have the meanings given them.

A. "Act" means the Power Plant Siting Act of 1973, as amended, Minn. Stat. §116C.51 et seq. (1977).

B. "Board" means the Minnesota Environmental Quality Board.

C. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of a site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary boring, to ascertain foundation conditions.

D. "File" means to deliver 40 copies to the office of the chairman of the Board.

E. "High Voltage Transmission Line" (HVTL) means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more. Associated facilities shall include, but not be limited to, insulators, towers, switching yards, substations and terminals.

F. "Large Electric Power Facilities" means high voltage transmission lines and large electric power generating plants.

G. "Large Electric Power Generating Plant" (LEPGP) means electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

H. "Large Electric Power Generating Plant Study Area" means a general area of land designated by the Board for purposes of planning for future sites.

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

J. "Public Advisor" means a staff person designated by the Board for the sole purpose of assisting and advising affected and interested citizens on how to effectively participate in the site and route designation processes.

K. "Right-Of-Way" means the land interest used or proposed to be used within a route to accommodate a high voltage transmission line.

L. "Route" means the location of a high voltage transmission line between two end points. A route may have a variable width of up to 1.25 miles.

M. "Route Segment" means a portion of a route.

N. "Site" means the location of a large electric power generating plant.

O. "Utility" means any entity engaged in this State in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, a cooperatively owned utility, a public or municipally owned utility, or a private corporation.

MEQB 73 PROCEDURE FOR DESIGNATION OF A ROUTE AND ISSUANCE OF A CONSTRUCTION PERMIT

A. Content of an Application for a Construction Permit. An application shall be filed with the Board which includes an environmental report consistent in form with a draft environmental impact statement (Minn. Reg. MEQB 30D). The application shall contain any information necessary to make the evaluation required in MEQB 73H and the following:

1. The size and type of the proposed transmission line;
2. At least two proposed routes for the proposed transmission line;
3. An environmental analysis of each proposed route including a description of the environmental setting and the potential environmental impacts of each route;
4. The engineering and operational design concepts for the proposed transmission line;
5. A description of the construction, right-of-way preparation and maintenance procedures anticipated for the proposed transmission line;
6. The procedures and practices proposed for the ultimate abandonment and restoration of the right-of-way;
7. A listing of federal or state permits that may be required for the proposed transmission line;
8. A cost analysis of each route;
9. The certificate of need application submitted to the director of the Minnesota Energy Agency, if required by Minn. Stat. Chapter 116H.
10. A statement of ownership of the utility as of the day of filing and an affidavit authorizing the applicant to act on behalf of the owners.

B. Acceptance of a Construction Permit Application. The Board shall either accept or reject an application for a construction permit no later than 50 days after the application was filed with the Board. If the Board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. On acceptance of the application, the Board shall initiate the study, public participation and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional information which the Board deems necessary to process the application.

C. Route Evaluation Committee. Upon acceptance of an application for a construction permit, the Board may appoint a route evaluation committee consistent with the Act.

D. Public Advisor. The public advisor shall be available to affected and interested citizens to advise them on how to participate in the route designation process. However, all persons given advice or aid in connection with

participation in large electric power facility siting proceedings are hereby informed that the public advisor is not authorized to give legal advice or advice which may affect the legal rights of the person being advised. In no case shall any person rely to his possible legal disadvantage on such advice or information.

E. Information Meetings. The Board shall hold at least one information meeting in each county through which a route is proposed to be located to explain the route designation process, present major issues and alternatives under consideration by the Board and respond to questions raised by the public.

F. Route Proposals. The Board shall consider the route and route segments proposed by the applicant and may consider any other route or route segment it deems necessary. No route shall be considered at the public hearing unless approved for consideration by the Board prior to notice of the hearing thereon. All approved routes shall be identified by the Board consistent with MEQB 76D. Any proposer of a route or route segment which the Board has approved for consideration shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the Board with a basis for making a determination on that proposal.

1. The Board member agencies, power plant siting staff and the route evaluation committee may propose routes or route segments to the Board. Route proposals made by the route evaluation committee must be made no later than 105 days after acceptance of the application by the Board.
2. Any other person may propose a route or a route segment in the following manner:
   a. The route or route segment must be set out specifically on the appropriate general county highway map available from the Minnesota Department of Transportation, or on the appropriate United States Geological Survey Topographical maps.
   b. The proposal must contain the data and analysis required in MEQB 73A and MEQB 73H, except MEQB 73A.2; except where such information is the same as provided by the applicant.
   c. The proposal must be presented to the chairman of the Board or his designee within 60 days of acceptance of the application by the Board.

Within 10 days of receipt of the proposal, the chairman of Board or his designee shall determine if the proposal is adequately prepared. If the chairman of the Board or his designee determines that it is adequately prepared, he shall forward the proposal to the Board for its consideration. If the chairman of the Board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the Board or his designee. The chairman of the Board or his designee shall determine within 10 days whether the amended proposal is adequately prepared. If the chairman of the Board or his designee then determines that the proposal is not adequately prepared, the proposer may appeal to the Board to determine the adequacy of the proposal.

G. Public Hearings. Public hearings held by the Board pursuant to this rule shall be held for the purpose of collecting and verifying data, and establishing a complete and accurate record upon which to base a decision. The hearings shall be conducted by an independent hearing examiner from the State Hearing Examiner's Office. The conduct of these hearings shall be as prescribed by rule adopted by the Chief Hearing Examiner.

H. Criteria for the Evaluation of Routes. In selecting a route and issuing a construction permit, the Board shall seek to minimize adverse human and environmental impact, maximize the efficient use of resources, and ensure continuing electric power system reliability. No route shall be designated by the Board in violation of federal or state statute or law, rule or regulation. No route shall be designated by the Board through state or national wilderness areas.

1. Designated Lands. Lands designated as state and national parks and scientific and natural areas by the Congress of the United States, the Minnesota Legislature or the Commissioner of the Department of Natural Resources pursuant to Legislative directive have been set aside for the benefit of the people and for future generations. No land within any of these designated areas shall be selected as a high voltage transmission line route by the Board unless:
   a. A route in a designated area would not materially damage or impair the purpose for which the land was designated; and
   b. Unusual circumstances exist in all alternate routes which would be more severely detrimental to humans or the environment if any alternate were selected.

   Economic considerations alone shall not justify approval of these designated lands. In the event that such an area is approved, effort shall be made to minimize the harm to it.
2. Considerations for the Designation of a Route and Issuance of a Construction Permit. The Board shall make an evaluation of the following considerations prior to issuance of a construction permit. In its evaluation of route alternatives, the Board shall consider the characteristics of a given geographical area, identify the potential impacts, and apply methods to mitigate adverse impacts so that it may select a route with the least adverse impact.
   a. Identification of Geographical Characteristics and Potential Impacts. The Board shall identify the geographical characteristics and potential impacts in the following categories:
      (1) Existing and projected human settlement, including but not limited to development patterns;
      (2) Economic operations, including but not limited to agricultural, forestry and mining operations;
      (3) The natural environment and public land, including but not limited to natural areas, wildlife habitat, waters, recreational lands, and lands of historic or cultural significance;
      (4) Reliability, cost and accessibility.
   b. Methods of Mitigating Impacts. The Board shall utilize the following methods in seeking to find a route with the least adverse impact:
      (1) Evaluation of existing land use or management plans, and established methods of resource management;
      (2) Evaluation of routes along or sharing existing rights-of-way;
      (3) Evaluation of routes along survey, natural division and field boundaries;
      (4) Evaluation of structures capable of expansion in transmission capacity through multiple circuiting or design modifications to accommodate future high voltage transmission lines.

(5) Evaluation of alternate structure types and technologies.

I. Board Action. Within one year after the Board's acceptance of a utility's application for a construction permit, the Board shall act on that application. When the Board designates a route, it shall issue a permit for the construction of a high voltage transmission line specifying the type, design, routing, right-of-way preparation and maintenance, facility construction and abandonment procedures it deems necessary with any other appropriate conditions. The Board's decision shall be made in accordance with MEQB 73H. The Board shall give the reasons for its decision in written findings of fact.

J. Construction Plans. Following issuance of a construction permit, a utility shall provide the Board with a preliminary construction plan at least 60 days prior to construction which shall show that the right-of-way of the transmission line as proposed is within the route designated by the Board. The Board may suspend the 60-day time limitation if it can be shown that earlier construction will not preclude proper review of the plans. If the utility makes any changes in its preliminary construction plan, it shall notify the Board in writing of such changes.

MEQB 74 PROCEDURE FOR DESIGNATION OF A SITE AND ISSUANCE OF A CERTIFICATE OF SITE COMPATIBILITY

A. Content of an Application for a Certificate of Site Compatibility. The application for a certificate of site compatibility filed with the Board shall contain any information necessary to make the evaluation required in MEQB 74H and the following:

1. The size and type of the proposed plant;
2. At least two proposed sites for the proposed plant;
3. The engineering and operational design concepts for the plant at each of the proposed sites;
4. An engineering analysis of each of the proposed sites;
5. The procedures and practices proposed for the ultimate abandonment and restoration of the site;
6. An environmental analysis of each proposed site, including a description of the environmental setting and the potential environmental impacts of each site;
7. A cost analysis of the plant at each proposed site;
8. The certificate of need application submitted to the Minnesota Energy Agency, if required by Minnesota Statutes Chapter 116H;
9. A statement of ownership of the utility as of the day of filing and an affidavit authorizing the applicant to act on behalf of the owners.

After Board adoption and publication of its inventory of large electric power generating plant study areas, the utility shall either apply for sites located within the inventory of study areas, or shall specify the reasons for any proposal located outside of the study areas and make an evaluation of the proposed site based upon the planning policies, criteria and standards specified in the inventory.

B. Acceptance of an Application for a Certificate of Site Compatibility. The Board shall either accept or reject an application for a certificate of site compatibility no later than 50 days after the application was filed with the Board. If the Board rejects the application, it shall at that time inform the applicant which deficiencies if corrected will allow the application to be accepted. On acceptance of the application, the Board shall initiate the study, public participation and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional information which the Board deems necessary to process the application.

C. Site Evaluation Committee. On acceptance of an application for a certificate of site compatibility, the Board shall appoint a site evaluation committee consistent with the Act.

D. Public Advisor. The public advisor shall be available to affected and interested citizens to advise them on how to effectively participate in the site designation process. However, all persons given advice or aid in connection with participation in large electric power facility siting proceedings are hereby informed that the public advisor is not authorized to give legal advice which may affect the legal rights of the person being advised. In no case shall any person rely, to his possible legal disadvantage, on such advice or information.

E. Information Meetings. The Board shall hold at least one information meeting in each county in which a site is proposed to be located to explain the site designation process, to present major issues and alternatives under consideration by the Board, and to respond to questions raised by the public.

F. Site Proposals. The Board shall consider the sites proposed by the applicant and may consider any other site it deems necessary. No site shall be considered at the public hearing unless approved for consideration by the Board prior to notice of the hearing thereon. All approved sites shall be identified by the Board consistent with MEQB 76D. Any proposer of a site which has been approved for consideration at the public hearings by the Board shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the Board with a basis for making a determination on that proposal. Any person may propose a site in the following manner:

1. The site must be set out specifically on United States Geological Survey topographical maps.
2. The proposal must contain the data and anslysis required in MEQB 74A and MEQB 74H with the exception of MEQB 74A.2 and MEQB 74A.7; except where such information is the same as provided by the applicant.
3. The proposal must be presented to the chairman of the Board or his designee within 60 days of acceptance of the application by the Board. Within 10 days of receipt of the proposal, the chairman of the Board or his designee shall determine if the proposal is adequately prepared. If the chairman of the Board or his designee determines that it is adequately prepared, he shall forward the proposal to the Board for its consideration at its next meeting. If the chairman of the Board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the Board or his designee. The chairman of the Board or his designee shall determine within 10 days whether the amended proposal is adequately prepared. If the chairman of the Board or his designee then determines that the proposal is not adequately prepared, the proposer may appeal to the Board at its next meeting to determine the adequacy of the proposal.

G. Public Hearings. Public hearings held by the Board pursuant to this rule shall be held for the purpose of collecting and verifying data and establishing a complete and accurate record upon which to base a decision. The hearings shall be conducted by an independent hearing examiner from the State Hearing Examiner's Office. The conduct of these hearings shall be as prescribed by rule adopted by the Chief Hearing Examiner.

H. Criteria for the Evaluation of Sites. The following criteria and standards shall be used to guide the site suitability evaluation and selection process. Not all site selection criteria are applicable to all plants to the same degree.

1. Exclusion Criteria.
   a. No large electric power generating plant shall be sited in violation of any federal or state statute or law, rule or regulation. No area shall be selected in which a large electric power generating plant is not licensable by all appropriate state and federal government agencies.
   b. The following land areas shall not be certified as a site for a large electric power generating plant except for use for water intake structures or water pipelines: national parks, national historic sites and landmarks; national historic districts; national wildlife refuges; national monuments; national wild, scenic and recreational riverways; state wild, scenic and recreational rivers and their land use districts; state parks; nature conservancy preserves; state scientific and natural areas; and state and national wilderness areas.
   c. No area shall be selected which does not have reasonable access to a proven water supply sufficient for plant operation. No use of ground water shall be permitted where mining of ground water resources will result. "Mining" as used herein shall mean the removal of ground water that results in material adverse effects on ground water in and adjacent to the area, as determined in each case.
   d. No water shall be transferred between the four major drainage basins within the state: that is, the Missouri River drainage basin, the Mississippi River drainage basin, the Lake Superior drainage basin, and the Red-Rainy River drainage basin.
2. Large Electric Power Generating Plant Avoidance Areas.
   a. In addition to exclusion areas, the following land use areas shall not be approved for large electric power generating plant sites when feasible and prudent alternatives with lesser adverse human and environmental effects exist. Economic considerations alone shall not justify approval of avoidance areas. Any approval of such areas shall include all possible planning to minimize harm to these areas. These avoidance areas are: state registered historic sites; state historic districts; state wildlife management areas (except in cases where the plant cooling water is to be used for wildlife management purposes); county parks; metropolitan parks; designated state and federal recreational trails; designated trout streams; and the rivers identified in Minn. Stat. §85.32, subd. 1 (1971).
   b. Avoidance areas also apply to new transportation access routes and storage facilities associated with the plant in addition to the plant itself. Water intake structures and water pipelines shall not necessarily be prohibited from LEPGP avoidance areas.
   c. The use of ground water for high consumption purposes, such as cooling, shall be avoided if feasible and prudent surface water alternatives less harmful to the environment exist. Ground water use to supplement available surface water shall be permitted if the cumulative impact minimizes environmental harm.
3. Site Selection Criteria. The following criteria shall be applied in the selection of sites:
   a. Preferred sites require the minimum population displacement.
   b. Preferred sites minimize adverse impacts on local communities and institutions.
   c. Preferred sites minimize adverse health effects on human population.
   d. Preferred sites do not require the destruction or major alteration of land forms, vegetative types, or terrestrial or aquatic habitats which are rare, unique, or of unusual importance to the surrounding area.
   e. Preferred sites minimize visual impingement on waterways, parks, or other existing public recreation areas.
   f. Preferred sites minimize audible impingement on waterways, parks or other existing public recreation areas.
   g. Preferred sites minimize the removal of valuable and productive land from other necessary uses.
   h. Preferred sites minimize the removal of valuable and productive water from other necessary uses and minimize conflicts among water users.
   i. Preferred sites minimize potential accident hazards and possible effects with respect to geology.
   j. Preferred sites permit significant conservation of energy or utilization of by-products.
   k. Preferred sites are located near large load centers.
   l. Preferred sites maximize the use of already existing operating sites.
   m. Preferred sites utilize existing transportation systems unless feasible alternative systems, including new or upgraded existing substandard systems, have less adverse impact.
   n. Preferred sites allow for larger rather than smaller generating capacity.
   o. Preferred sites minimize adverse impact of transmission lines.

I. Board Action. Within one year after the Board's acceptance of a utility's application for a certificate of site compatibility, the Board shall act on that application. When the Board designates a site it shall issue a certificate of site compatibility with any appropriate conditions. The Board's decision shall be made in accordance with MEQB 74H. The Board shall give the reasons for its decision in written findings of fact. If the Board refuses to designate a site, it shall indicate the reasons for the refusal and indicate the necessary changes in size or type of facility to allow site designation.

J. Certificate Administration. Following issuance of a certificate of site compatibility, the Board may require the applicant to supply such plans and information as it deems necessary to determine whether the plant, as proposed, is in compliance with the conditions of the certificate of site compatibility.

MEQB 75 ADVISORY COMMITTEES

A. Route and Site Evaluation Committees. Route and site evaluation committees appointed by the Board are advisory and are to assist the Board in evaluating applications for routes and sites.

B. Power Plant Siting Advisory Committee. The Board

shall appoint a Power Plant Siting Advisory Committee which shall work closely with the Board staff in reviewing, advising, and making recommendations to the Board concerning development, revision and enforcement of any rule, inventory, or program initiated under the Act or these Rules. The Board shall provide guidance to the committee in the form of a charge and through specific requests. The committee shall be composed of as many members as may be designated by the Board, and its membership shall be solicited on a statewide basis. The committee shall be appointed for a one-year term coincident with the fiscal year.

MEQB 76 NOTICE

A. Applications. Within 20 days of acceptance of any application submitted to the Board pursuant to the Act, except an exemption application, the Board shall give notice of acceptance of the application by paid advertisement in a legal newspaper of general circulation in each county in which a route or site is proposed by the applicant to be located. The notice shall include the following information:

1. Identification of the application;
2. The date of the Board's acceptance of the application;
3. A brief description of the proposed facility;
4. A map showing the routes or sites proposed in that county;
5. The name of the public advisor and the place where he can be reached;
6. Locations where the application is available to the public;
7. Procedures for proposing alternate routes or sites.

B. Information Meetings. Notice and agenda of public information meetings of the Board shall be given by the Board consistent with the Act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under MEQB 73F.2 or 74F, or by resolution of the Board pursuant to MEQB 73F or 74F.

C. Public Hearings. Notice and agenda of public hearings shall be given by the Board consistent with the Act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under MEQB 73F.2 or 74F, or by resolution of the Board pursuant to MEQB 73F or 74F.

D. Route and Site Proposals. Prior to public hearings held on routes and sites which the Board has approved for consideration at thepublic hearings consistent with these rules, the Board shall identify the routes and sites with maps published in a newspaper of general circulation in each county in which a route or site is proposed to be located showing the routes or sites in that county.

MEQB 77 EMERGENCY CERTIFICATION

A. Application. Any utility whose electric power system requires the immediate construction of a large electric power generating plant or a high voltage transmission line may apply to the Board for an emergency certificate of site compatibility or an emergency construction permit. The application for an emergency construction permit shall contain the supporting information required in MEQB 73A and MEQB 77B. The application for an emergency certificate of site compatibility shall contain the supporting information required in MEQB 74A and MEQB 77B.

B. Determination of an Emergency. The Board shall hold a public hearing within 90 days of acceptance of an application for emergency certification to consider the following to determine whether or not an emergency exists:

1. Any evidence offered by the Minnesota Energy Agency;
2. Whether adherence to the procedures and time schedules specified in MEQB 73I and MEQB 74I would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner;
3. Whether there remains any feasible or prudent alternative to the utility which can serve its immediate need;
4. Whether the utility is prepared to, and will upon authorization, carry out the acquisition and construction program at the maximum rate of progress.

The Board shall also establish whether the situation could have been reasonably anticipated by the utility in time to utilize the normal application procedures. If the Board finds that the utility could have reasonably anticipated the situation, the utility may be subject to the provisions of Minn. Stat. §116C.68 (1977).

C. Board Action. If the Board determines that an emergency exists, then the route or site designation procedures prescribed in MEQB 73 and MEQB 74, with the exception of MEQB 73F and MEQB 74F, shall be followed except that the Board shall designate a route and issue an emergency construction permit or designate a site and issue an emergency certificate of site compatibility within 195 days of the application.

MEQB 78 EXEMPTION OF CERTAIN ROUTES

A. Application. A utility may apply to the Board to exempt the construction of a high voltage transmission line from the Act. A utility shall submit an application for exemption of a specific transmission line containing the following information:

1. The engineering design concepts;
2. The proposed location of the facility;
3. The environmental setting and impact of the proposed action;
4. A description of the plans for right-of-way preparation and construction.

B. Notice of Exemption Application. Within 15 days of filing with the Board an application for exemption of a certain route, the utility shall:

1. Publish a notice and description of the exemption application including, but not limited to, a map of the proposed route and the size and type of facility in a legal newspaper of general circulation in each county in which the route is proposed to be located;
2. Send a copy of the exemption application by certified mail to the chief executive of any regional development commission, county, incorporated municipality and organized town in which the route is proposed to be located; and
3. Send a notice and description of the exemption application to each owner over whose property the line may run, together with an understandable description of the procedures the owner must follow should he desire to object.

C. Objection to an Exemption Application. Any person who owns real property crossed by the proposed route, or any person owning property adjacent to the property crossed by the proposed route, or any affected political subdivision may file an objection with the Board within 60 days after the giving of notice under MEQB 78B stating

reasons why the Board should deny the application.

D. Board Action. The Board may conduct a public hearing to determine if the proposed high voltage transmission line will cause any significant human or environmental impact. If any objections are filed with the Board, the Board shall either deny the application or conduct such a public hearing. Whether or not an objection is filed or a hearing is held, the Board shall determine whether the proposed high voltage transmission line will cause any significant human or environmental impact. If the Board determines that significant human or environmental impact will occur, it shall deny the application. If not, it may exempt the proposed transmission line with any appropriate conditions, but the utility shall comply with any applicable state rule and any applicable zoning, building and land use rules, regulations and ordinances of any regional, county, local and special-purpose government in which the route is proposed to be located.

MEQB 79 IMPROVEMENT OF ACQUIRED ROUTES AND SITES

A. Delay in Construction. Utilities that have acquired a route or site may proceed to construct or improve the route or site in accordance with these rules. However, when construction and improvement has not commenced four years after the construction permit or site certificate has been issued by the Board, the Board shall suspend the certificate or permit. If at that time, or at a time subsequent, the utility decides to construct the proposed large electric power facility, it shall certify to the Board that there has been no significant changes in any material aspects of the conditions or circumstances existing when the permit or certificate was issued. If the Board determines that there are no significant changes, it shall reinstate the permit or certificate. If the Board determines that there is a significant change, it may order a new hearing and consider the matter further, or it may require a new application.

B. Minor Alterations in a Construction Permit for a High Voltage Transmission Line.

1. Application. Following issuance of a construction permit for a high voltage transmission line, a utility may apply to the Board for minor alterations on conditions specified in the permit. The utility shall submit an application for a minor alteration which contains sufficient information for the Board to determine within 45 days the following:
   a. Whether or not the requested changes are significant enough to warrant Board study and approval;
   b. Whether or not to order public hearings near the affected area;
   c. Whether or not additional fees shall be assessed.
2. Board Action. If the Board decides to study the application, the Board shall determine within 70 days whether granting the application would be consistent with MEQB 73H and shall grant or deny the utility's application.

MEQB 80 REVOCATION OR SUSPENSION

A. Initiation of Board Action. The Board may initiate action to consider revocation or suspension of a construction permit or certificate of site compatibility if the Board determines that a prima facie showing has been made by affidavit and documentation that a violation of the provisions of the Act has occurred as set forth in Minn. Stat. §116C.645 and these rules. For purposes of this rule such a violation shall result from any act described in Minn. Stat. §116C.645 unless the Board determines that significant additional adverse environmental effects will not result or that such significant additional adverse environmental effects can and will be corrected. Additional adverse environmental effects mean environmental effects which are more substantial, taken as a whole, than those which would have occurred in absence of a violation.

B. Board Action. If the Board initiates action to consider revocation or suspension of a construction permit or certificate of site compatibility, it shall conduct a hearing pursuant to the contested case procedures of Minn. Stat. Chapter 15. If the Board finds that the violation has or will cause significant additional or continuing adverse environmental impacts which cannot be corrected or substantially mitigated and that revocation will not imperil the utility's electric power system reliability, then it may revoke the permit or certificate or order other appropriate measures. If the Board finds that the violation has or will cause significant additional permanent or continuing adverse environmental impacts, and that corrective or mitigative measures are reasonably available, then the Board shall order such measures and may suspend the permit or certificate until such measures are taken. If the Board finds that the violation has or will cause significant additional permanent or continuing adverse environmental impacts and that revocation will imperil the utility's electric power system reliability and that there are no mitigative or corrective measures which can be taken to improve the situation, then the Board may ask the Attorney General to bring action against the utility pursuant to Minn. Stat. §116C.68.

MEQB 81 ANNUAL HEARING. The Board shall hold an annual public hearing on a Saturday in November in St. Paul in order to afford interested persons an opportunity to be heard regarding its inventory of study areas, route and site designation processes, other aspects of the Board's activities and duties performed pursuant to the Act, or policies set forth in these rules.

MEQB 82 ASSESSMENT, APPLICATION FEES

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

B. Application Fees. Every applicant for a route or site pursuant to Minn. Stat. §116C.57 shall pay to the Board a fee as prescribed by the Act.

1. For applications filed pursuant to Minn. Stat. §116C.57, subds. 1 and 2, twenty-five percent of the total estimated fee shall accompany the application and the balance is payable in three equal installments at the end of 90, 180 and 270 days from the date of the Board's acceptance of the application.
2. For applications filed pursuant to Minn. Stat. §116C.57, subd. 3, twenty-five percent of the total estimated fee shall accompany the application and the balance is payable at the end of 90 days from the date of the Board's acceptance of the application.
3. For applications filed pursuant to Minn. Stat. §116C.57, subd. 5, ten percent of the total estimated fee shall accompany the application and the balance is payable as determined by the Board.

Exhibit A

STATE PLANNING AGENCY

ENVIRONMENTAL QUALITY BOARD/POWER PLANT SITING

Rules of the Minnesota Environmental Quality Board for Routing High Voltage Transmission Lines and Siting Large Electric Power Generating Plants - MEQB 71-82.

MEQB 71 AUTHORITY, PURPOSE AND POLICY

A. Authority. The rules contained herein are prescribed by the Minnesota Environmental Quality Board pursuant to the authority granted to the Board in the Power Plant Siting Act, Minn. Stat. § 116C.51 et seq. (1977), to give effect to the purposes of the Act.

B. Purpose and Policy. It is the purpose of the Act and the policy of the State to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, the Board shall choose locations that minimize adverse human and environmental impact while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion. The Board shall provide for broad spectrum citizen participation as a principle of operation.

MEQB 72 DEFINITIONS. As used in these rules, the following terms have the meanings given them.

A. "Act" means the Power Plant Siting Act of 1973, as amended, Minn. Stat. § 116C.51 et seq. (1977).

B. "Board" means the Minnesota Environmental Quality Board.

C. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of a site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary boring, to ascertain foundation conditions.

D. "File" means to deliver 40 copies to the office of the chairman of the Board.

E. "High Voltage Transmission Line" (HVTL) means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more. Associated facilities shall include, but not be limited to, insulators, towers, switching yards, substations and terminals.

F. "Large Electric Power Facilities" means high voltage transmission lines and large electric power generating plants.

G. "Large Electric Power Generating Plant"(LEPGP) means electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

H. "Large Electric Power Generating Plant Study Area" means a general area of land designated by the Board for purposes of planning for future sites.

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

J. "Public Advisor" means a staff person designated by the Board for the sole purpose of assisting and advising affected ~~and~~ or interested citizens on how to effectively participate in the site ~~and~~ or route designation processes.

K. "Right-Of-Way" means the land interest used or proposed to be used within a route to accommodate a high voltage transmission line.

L. "Route" means the location of a high voltage transmission line between two end points. A route may have a variable width of up to 1.25 miles.

M. "Route Segment" means a portion of a route.

N. "Site" means the location of a large electric power generating plant.

O. "Utility" means any entity engaged in this State in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, a cooperatively owned utility, a public or municipally owned utility, or a private corporation.

MEQB 73 PROCEDURE FOR DESIGNATION OF A ROUTE AND ISSUANCE OF A CONSTRUCTION PERMIT.

A. Content of an Application for a Construction Permit. An application shall be filed with the Board which includes an environmental report consistent in form with a draft environmental impact statement (~~Minn. Reg. MEQB-30~~ Environmental Review Program Rules). The application shall contain any information necessary to make the evaluation required in MEQB 73H and the following:

1. The size and type of the proposed transmission line;
2. At least two proposed routes for the proposed transmission line;
3. An environmental analysis of each proposed route including a description of the environmental setting and the potential environmental impacts of each route;
4. The engineering and operational design concepts for the proposed transmission line;
5. A description of the construction, right-of-way preparation and maintenance procedures anticipated for the proposed transmission line;
6. The procedures and practices proposed for the ultimate abandonment and restoration of the right-of-way;
7. A listing of federal or state permits that may be required for the proposed transmission line;

8. A cost analysis of each route;

9. The certificate of need ~~application-submitted-to the-director-of-the-Minnesota-Energy-Agency~~, if available, or an acknowledgement of the acceptance a substantially complete certificate of need application by the Minnesota Energy Agency, if a certificate of need is required by Minn. Stat. §116H;

10. A statement of proposed ownership of the ~~utility~~ facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of ~~the-owners~~ those planning to participate in the project.

B. Acceptance of a Construction Permit Application. The Board shall either accept or reject an application for a construction permit ~~no-later-than-50-days-after-the application-was-filed-with-the-Board~~ at its first regularly scheduled meeting after the application is filed with the Board, provided the application is filed at least 30 days prior to that meeting. If the Board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the Board 10 days in advance of a regularly scheduled meeting, the Board shall reconsider the application at that meeting. If the Board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the application, the Board shall

initiate the study, public participation and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information which the Board deems necessary to process the application.

C. Route Evaluation Committee. On acceptance of an application for a construction permit the Board ~~may~~ shall appoint a route evaluation committee consistent with the Act. The Board shall provide guidance to the committee in the form of a charge.

D. Public Advisor. The public advisor shall be available to affected ~~and~~ or interested citizens to advise them on how to effectively participate in the route designation process. The public advisor's duties shall include providing advice on appropriate methods and techniques of public involvement in the transmission line routing process. However, ~~all persons given advice or aid in connection with participation in large electric power facility siting proceedings are hereby informed that~~ the public advisor is not authorized to give legal advice or advice which may affect the legal rights of the person being advised. ~~In no case shall any person rely to his possible legal disadvantage on such advice or information.~~

E. Information Meetings. The Board shall hold at least two information meetings as follows:

1. After acceptance of an application for a construction permit the Board shall hold at least one information meeting in the area affected by the applicant's proposal to explain the route designation process and to respond to questions raised by the public.
2. Prior to the public hearings held to consider the routes approved for consideration by the Board, the Board shall hold ~~at least one~~ an information meeting in each county through which a route is proposed to be located to explain the route designation process, present major issues and alternatives under consideration by the Board and respond to questions raised by the public.

F. Route Proposals. The Board shall consider the routes and route segments proposed by the applicant and may consider any other route or route segment it deems necessary. No route shall be considered at the public hearing unless approved for consideration by the Board prior to notice of the hearing thereon. All approved routes shall be identified by the Board consistent with MEQB 76D. Any proposer of a route or route segment which the Board has approved for consideration shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the Board with a basis for making a determination on that proposal.

1. The Board member agencies, power plant siting staff and the route evaluation committee may propose routes or route segments to the Board. Route proposals made by the route evaluation committee must be made no later than 105 days after acceptance of the application by the Board.
2. Any other person may propose a route or a route segment in the following manner:
   a. The route or route segment must be set out specifically on the appropriate general county highway map available from the Minnesota Department of Transportation, or on the appropriate United States Geological Survey topographical maps.
   b. The proposal must contain the data and analysis required in MEQB 73A and MEQB 73H, except MEQB 73A.2; except where such information is the same as provided by the applicant.
   c. The proposal must be presented to the chairman of the Board or his designee within ~~60~~ 70 days of acceptance of the application by the Board.

Within 10 days of receipt of the proposal, the chairman of the Board or his designee shall determine if the proposal is adequately prepared. If the chairman of the Board or his designee determines that it is adequately

prepared, he shall forward the proposal to the Board for its consideration. If the chairman of the Board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the Board or his designee. The chairman of the Board or his designee shall determine within 10 days whether the amended proposal is adequately prepared. If the chairman of the Board or his designee then determines that the proposal is not adequately prepared, the proposer may appeal to the Board at its next meeting to determine the adequacy of the proposal.

G. Public Hearings. Public hearings held by the Board pursuant to this rule shall be held for the purpose of collecting and verifying data, and establishing a complete and accurate record upon which to base a decision. The hearings shall be conducted by an independent hearing examiner from the State Hearing Examiner's Office. The conduct of these hearings shall be as prescribed by rule adopted by the Chief Hearing Examiner.

~~H.--Criteria-for-the-Evaluation-of-Routes.--In-selecting a-route-and-issuing-a-construction-permit,-the-Board-shall~~

~~seek to minimize adverse human and environmental impact, maximize the efficient use of resources, and ensure continuing electric power system reliability. No route shall be designated by the Board in violation of federal or state statute or law, rule or regulation. No route shall be designated by the Board through state or national wilderness areas.~~

~~1. Designated lands. Lands designated as state and national parks and scientific and natural areas by the Congress of the United States, the Minnesota Legislature or the Commissioner of the Department of Natural Resources pursuant to legislative directive have been set aside for the benefit of the people and for future generations. No land within any of these designated areas shall be selected as a high voltage transmission line route by the Board unless:~~

~~a. A route in the designated area would not materially damage or impair the purpose for which the land was designated, and~~

~~b. Unusual circumstances exist in all alternate routes which would be more severely detrimental to humans or the environment if any alternative were selected.~~

~~Economic considerations alone shall not justify approval of these designated lands. In the event~~

~~that such an area is approved, effort shall be made to minimize the harm to it.~~

~~2. Considerations for the Designation of a Route and Issuance of a Construction Permit. The Board shall make an evaluation of the following considerations prior to issuance of a construction permit. In its evaluation of route alternatives, the Board shall consider the characteristics of a given geographical area, identify the potential impacts, and apply methods to mitigate adverse impacts so that it may select a route with the least adverse impact.~~

~~a. Identification of Geographical Characteristics and Potential Impacts. The Board shall identify the geographical characteristics and potential impacts in the following categories:~~

~~(1) Existing and projected human settlement, including but not limited to development patterns;~~

~~(2) Economic operations, including but not limited to agricultural, forestry and mining operations;~~

~~(3) The natural environment and public land, including but not limited to natural areas, wildlife habitat, waters, recreational lands, and lands of historic or cultural significance;~~

~~(4) Reliability, cost and accessibility.~~

~~b.--Methods-of-Mitigating-Impacts.--The-Board shall-utilize-the-following-methods-in-seeking to-find-a-route-with-the-least-adverse-impact:~~

~~(1)--Evaluation-of-existing-land-use-or-management-plans,-and-established-methods of-resource-management;~~

~~(2)--Evaluation-of-routes-along-or-sharing existing-right-of-way;-~~

~~(3)--Evaluation-of-routes-along-survey,-natural division-and-field-boundaries;~~

~~(4)--Evaluation-of-structures-capable-of-expansion-in-transmission-capacity-through multiple-circuiting-or-design-modifications to-accommodate-future-high-voltage-transmission lines.~~

~~(5)--Evaluation-of-alternate-structure-types and-technologies.~~

H. Criteria for the Evaluation of Routes. In selecting a route and issuing a construction permit, the Board shall seek to minimize adverse human and environmental impact, maximize the efficient use of resources, and ensure continuing electric power system reliability.

1. Considerations for the Designation of a Route and Issuance of a Construction Permit. The Board shall make an evaluation of the following considerations prior to issuance of a construction permit. In its evaluation of route alternatives, the Board shall consider the characteristics of a given geographical

area, identify the potential impacts, and apply methods to minimize adverse impacts so that it may select a route with the least adverse impact.

a. Identification of Geographical Characteristics and Potential Impacts. The Board shall identify the geographical characteristics and potential impacts in the following categories:

(1) Human settlement, including development patterns;

(2) Economic operations, including agricultural, forestry, recreational and mining operations;

(3) The natural environment and public land, including natural areas, wildlife habitat, waters, recreational lands and lands of historical and/or cultural significance;

(4) Reliability, cost and accessibility.

b. Methods of Minimizing Impacts. In selecting a route with the least adverse impact, the Board shall make an evaluation of each of the following categories:

(1) Existing land use or management plans, and established methods of resource management;

(2) Routes along or sharing exisitng rights-of-way;

(3) Routes along survey and natural division lines and field boundaries so as to minimze interference with agricultural operations;

(4) Structures capable of expansion in transmission capacity through multiple circuiting or design modifications to accommodate future high voltage transmission lines; and

(5) Alternate structure types and technologies.

2. Designated Lands. Certain lands within the state have been designated for preservation by action of the state or federal government for the benefit of the people and for future generations. No route shall be designated by the Board through State or National Wilderness Areas. No route shall be designated by the Board through State or National Parks and State Scientific and Natural Areas unless:

a. A route in a designated area would not materially damage or impair the purpose for which the land was designated; and

b. Circumstances exist in all alternate routes which would be more severely detrimental to humans or the environment if any alternate were selected.

In the event that such an area is approved, the Board may require the applicant to take measures to minimize impacts which adversely affect the unique character of designated lands. Economic considera-

tions alone shall not justify approval of these designated lands. No route shall be designated by the Board in violation of federal or state statute or law, rule or regulation.

I. Board Action. Within one year after the Board's acceptance of a utility's application for a construction permit, the Board shall act on that application. When the Board designates a route, it shall issue a permit for the construction of a high voltage transmission line specifying the type, design, routing, right-of-way preparation and maintenance, facility construction and abandonment procedures it deems necessary with any other appropriate conditions. The Board's decision shall be made in accordance with MEQB 73H. The Board shall give the reasons for its decision in written findings of fact.

J. Construction Plans. Following issuance of a construction permit, a utility shall provide the Board with a preliminary construction plan at least 60 days prior to construction which shall show that the right-of-way of the transmission line as proposed is within the route designated by the Board. The Board may suspend the 60-day time limitation if it can be shown that earlier construction will not preclude proper review of

the plans. If the utility makes any changes in its preliminary construction plan, it shall notify the Board in writing of such changes.

MEQB 74 PROCEDURES FOR DESIGNATION OF A SITE AND ISSUANCE OF A CERTIFICATE OF SITE COMPATIBILITY.

A. Content of an Application for a Certificate of Site Compatibility. The application for a certificate of site compatibility filed with the Board shall be consistent in form with an environmental report as outlined in the Minnesota Environmental Quality Board's Environmental Review Program Rules and shall contain any information necessary to make the evaluation required in MEQB 74H and the following:

1. The size and type of the proposed plant;
2. At least two proposed sites for the proposed plant;
3. The engineering and operational design concepts for the plant at each of the proposed sites;
4. An engineering analysis of each of the proposed sites;
5. The procedures and practices proposed for the ultimate abandonment and restoration of the site;
6. An environmental analysis of each proposed site, including a description of the environmental setting and the potential environmental impacts of each site;
7. A cost analysis of the plant at each proposed site;
8. A listing of federal or state permits that may by required for each proposed site;

~~8.~~9. The certificate of need ~~application-submitted-to the-Minnesota-Energy-Agency~~, if available, or an acknowledgement of the acceptance of a substantially complete certificate of need application by the Minnesota Energy Agency, if a certificate of need is required by Minn. Stat. 116H;

~~9.~~10. A statement of proposed ownership of the ~~utility~~ facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of ~~the owners~~ those planning to participate in the project;

After Board adoption and publication of its inventory of large electric power generating plant study areas, the utility shall in all new applications filed with the Board either apply for sites located within the inventory of study areas, or shall specify the reasons for any proposal located outside of the study areas and make an evaluation of the proposed site based upon the planning policies, criteria and standards specified in the inventory.

B. Acceptance of an Application For a Certificate of Site Compatibility. The Board shall either accept or reject an application for a certificate of site compatibility ~~no-later-than-50-days-after-the-application-was-filed-with-the-Board~~ at its first regularly scheduled meeting after the application is filed with the Board, provided the application is filed at least 30 days prior to that meeting. If the Board rejects the application,

it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the Board 10 days in advance of a regularly scheduled meeting, the Board shall reconsider the application at that meeting. If the Board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the application, the Board shall initiate the study, public participation and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information which the Board deems necessary to process the application.

C. Site Evaluation Committee. Upon acceptance of an application for a certificate of site compatibility, the Board shall appoint a site evaluation committee consistent with the Act. The Board shall provide guidance to the committee in the form of a charge.

D. Public Advisor. The public advisor shall be available to affected ~~and~~ or interested citizens to advise them on how to effectively participate in the site designation process. The public advisor's duties shall include providing advice on appropriate methods and techniques of public involvement in the site designation process.

However, ~~all persons given advice or aid in connection with participation in large electric power facilities siting proceedings are hereby informed that~~ the public advisor is not authorized to give legal advice or advice which may affect the legal rights of the person being advised. ~~In no case shall any person rely to his possible legal disadvantage on such advice or information.~~

E. Information Meetings. The Board shall hold at least two information meetings as follows:

1. After acceptance of an application for a certificate of site compatibility, the Board shall hold at least one information meeting in the area affected by the applicant's proposal to explain the site designation process and to respond to questions raised by the public.

2. Prior to the public hearings held to consider the sites approved for consideration by the Board, ~~T~~the Board shall hold ~~at least one~~ an information meeting in each county in which a site is proposed to be located to explain the site designation process, to present major issues and alternatives under consideration by the Board, and to respond to questions raised by the public.

F. Site Proposals. The Board shall consider the sites proposed by the applicant and may consider any other site it deems necessary. No site shall be considered at the public hearing unless approved for consideration by the Board prior to notice of the hearing thereon. All approved sites shall be identified by the Board consistent with MEQB 76D. Any proposer of a site which has been approved for consideration at the

public hearings by the Board shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the Board with a basis for making a determination on that proposal. Any person may propose a site in the following manner:

1. The site must be set out specifically on United States Geological Survey topographical maps.
2. The proposal must contain the data and analysis required in MEQB 74A and MEQB 74H with the exception of MEQB 74A.2 and MEQB 74A.7; except where such information is the same as provided by the applicant.
3. The proposal must be presented to the chairman of the Board or his designee within ~~60~~ 70 days of acceptance of the application by the Board. Within 10 days of receipt of the proposal, the chairman of the Board or his designee shall determine if the proposal is adequately prepared. If the chairman of the Board or his designee determines that it is adequately prepared, he shall forward the proposal to the Board for its consideration at its next meeting. If the chairman of the Board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the Board or his designee. The chairman of the Board or his designee shall determine within 10 days whether the amended proposal is adequately prepared. If the chairman

of the Board or his designee then determines that the proposal is not adequately prepared, the proposer may appeal to the Board at its next meeting to determine the adequacy of the proposal.

G. Public Hearings. Public hearings held by the Board pursuant to this rule shall be held for the purpose of collecting and verifying data and establishing a complete and accurate record upon which to base a decision. The hearing shall be conducted by an independent hearing examiner from the State Hearing Examiner's Office. The conduct of these hearings shall be as prescribed by rule adopted by the Chief Hearing Examiner.

H. Criteria for the Evaluation of Sites. The following criteria and standards shall be used to guide the site suitability evaluation and selection process. Not all site selection criteria are applicable to all plants to the same degree.

~~3.~~ 1. Site Selection Criteria. The following criteria shall be applied in the selection of sites:

a. Preferred sites require the minimum population displacement.

b. Preferred sites minimize adverse impacts on local communities and institutions.

c. Preferred sites minimize adverse health effects on human population.

d. Preferred sites do not require the destruction or major alteration of land forms, vegetative types, or terrestrial or aquatic habitats which are rare, unique, or of unusual importance to the surrounding area.

e. Preferred sites minimize visual impingement on waterways, parks, or other existing public recreation areas.

f. Preferred sites minimize audible impingement on waterways, parks or other existing public recreation areas.

g. Preferred sites minimize the removal of valuable and productive ~~land~~ agricultural, forestry, or mineral land from ~~other necessary~~ their uses.

h. Preferred sites minimize the removal of valuable and productive water from other necessary uses and minimize conflicts among water users.

i. Preferred sites minimize potential accident hazards and possible related adverse effects with respect to geology.

j. Preferred sites permit significant conservation of energy or utilization of by-products.

k. Preferred sites ~~are located near~~ minimize the distance to large load centers.

l. Preferred sites maximize the use of already existing operating sites if expansion can be demonstrated to have equal or less adverse impact than feasible alternative sites.

m. Preferred sites utilize existing transportation systems unless feasible alternative systems, including new or upgraded existing substandard systems, have less adverse impact.

n. Preferred sites allow for ~~larger-rather-than smaller-generating-capacity~~ future expansion.

o. Preferred sites minimize adverse impact of transmission lines.

p. Preferred sites minimize the costs of constructing and operating the facility.

~~1.~~2. Exclusion Criteria.

a. No large electric power generating plant shall be sited in violation of any federal or state statute or law, rule or regulation. No ~~area~~ site shall be selected in which a large electric power generating plant is not licensable by all appropriate state and federal government agencies.

b. The following land areas shall not be certified as a site for a large electric power generating plant except for use for water intake structures or water pipelines: ~~n~~National ~~p~~Parks; ~~n~~National ~~h~~Historic ~~s~~Sites and ~~l~~Landmarks; ~~n~~National ~~h~~Historic ~~d~~Districts; ~~n~~National ~~w~~Wildlife ~~r~~Refuges; ~~n~~National ~~m~~Monuments; ~~n~~National ~~w~~Wild, ~~s~~Scenic and ~~r~~Recreational ~~r~~Riverways; ~~s~~State ~~w~~Wild, ~~s~~Scenic and ~~r~~Recreational ~~r~~Rivers and their land use districts; ~~s~~State ~~p~~Parks; ~~n~~Nature ~~c~~Conservancy ~~p~~Preserves; ~~s~~State ~~s~~Scientific and ~~n~~Natural ~~a~~Areas; and ~~s~~State

and ~~n~~National ~~w~~Wilderness ~~a~~Areas. If the Board includes any of these lands within a site for use for water intake structures or water pipelines, it may impose appropriate conditions in the certificate of site compatibility which protect these lands for the purpose for which they were designated. The Board shall also consider the adverse effects of proposed sites on these areas which are located wholly outside of the boundaries of these areas.

c. No area shall be selected which does not have reasonable access to a proven water supply sufficient for plant operation. No use of ground water shall be permitted where mining of ground water resources will result. "Mining" as used herein shall mean the removal of ground water that results in material adverse effects on ground water in and adjacent to the area, as determined in each case.

~~d.--No-water-shall-be-transferred-between-the-four major-drainage-basins-within-the-state:-that-is, the-Missouri-River-drainage-basin,-the-Mississippi-River-drainage-basin,-the-Lake-Superior drainage-basin,-and-the-Red-Rainy-River drainage-basin.~~

~~2.~~3. Large Electric Power Generating Plant Avoidance Areas.

a. In addition to exclusion areas, the following land use areas shall not be approved for large electric power generating plant sites when feasible and prudent alternatives with lesser adverse human and environmental effects exist. Economic considerations alone shall not justify approval of avoidance areas. Any approval of such areas shall include all possible planning to minimize harm to these areas. These avoidance areas are: state registered historic sites; ~~s~~State ~~h~~Historic ~~d~~Districts; ~~s~~State ~~w~~Wildlife ~~m~~Management ~~a~~Areas (except in cases where the plant cooling water is to be used for wildlife management purposes); county parks; metropolitan parks; designated state and federal recreational trails; designated trout streams; and the rivers identified in Minn. Stat. §85.32, Subd. 1(1971)

b. Avoidance areas also apply to new transportation access routes and storage facilities associated with the plant in addition to the plant itself. ~~Water-intake-structures-and-water-pipelines shall-not-necessarily-be-prohibited-from LEPGP-avoidance-areas.~~

c. The use of ground water for high consumption purposes, such as cooling, shall be avoided if feasible and prudent surface water alternatives less harmful to the environment exist. Ground water use to supplement available surface water shall be permitted if the cumulative impact minimizes environmental harm.

I. Board Action. Within one year after the Board's acceptance of a utility's application for a certificate of site compatibility, the Board shall act on that application. When the Board designates a site it shall issue a certificate of site compatibility with any appropriate conditions. The Board's decision shall be made in accordance with MEQB 74H. The Board shall give the reasons for its decision in written findings of fact. If the Board refuses to designate a site, it shall indicate the reasons for the refusal and indicate the necessary changes in size or type of facility to allow site designation.

J. Certificate Administration. Following issuance of a certificate of site compatibility, the Board may require the applicant to supply such plans and information as it deems necessary to determine whether the plant, as proposed <u>or operated</u>, is in compliance with the conditions of the certificate of site compatibility.

MEQB 75 ADVISORY COMMITTEES.

A. Route and Site Evalution Committees. Route and site evaluation committees appointed by the Board are advisory and are to assist the Board in evaluating applications for routes and sites.

B. Power Plant Siting Advisory Committee. The Board shall appoint a Power Plant Siting Advisory Committee which shall work closely with the Board staff in reviewing, advising, and making recommendations to the Board concerning development, revision and enforcement of any rule, inventory, or program initiated under the Act or these Rules. The Board shall provide guidance to the committee in the form of a charge and through specific requests. The committee shall be composed of as many members as may be designated by the Board, and its membership shall be solicited on a statewide basis. The committee shall be appointed for a one-year term coincident with the fiscal year.

MEQB 76 NOTICE

A. Applications. Within 20 days of acceptance of any application submitted to the Board pursuant to the Act, except an exemption application, the Board shall give notice of acceptance of the application by paid advertisement in a legal newspaper of general circulation in each county in which a route or site is proposed by the applicant to be located. The notice shall include the following information:

1. Identification of the application;
2. The date of the Board's acceptance of the application;
3. A brief description of the proposed facility;
4. A map showing the routes or sites proposed in that county;
5. The name and function of the public advisor and the place where ~~he~~ that person can be reached;
6. Locations where the application is available to the public;
7. Procedures for proposing alternate routes or sites.

B. Information Meetings. Notice and agenda of public information meetings of the Board shall be given by the Board consistent with the Act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under MEQB 73F.2 or 74F.1,2 and 3, or by resolution of the Board pursuant to MEQB 73F or 74F, as of the time of notice.

C. Public Hearings. Notice and agenda of public hearings shall be given by the Board consistent with the Act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under MEQB 73F.2 or 74F.1,2 and 3, or by resolution of the Board pursuant to MEQB 73F or 74F.

D. Route and Site Proposals. Prior to public hearings held on routes and sites which the Board has approved for consideration at the public hearings consistent with these rules, the Board shall identify the routes and sites with maps published in a newspaper of general circulation in each county in which a route or site is proposed to be located showing the routes or sites in that county.

MEQB 77 EMERGENCY CERTIFICATION

A. Application. Any utility whose electric power system requires the immediate construction of a large electric power generating plant or a high voltage transmission line may apply to the Board for an emergency certificate of site compatibility or an emergency construction permit. The application for an emergency construction permit shall contain the supporting information required in MEQB 73A and MEQB 77B. The application for an emergency certificate of site compatibility shall contain the supporting information required in MEQB 74A and MEQB 77B.

B. Determination of an Emergency. The Board shall hold a public hearing within 90 days of acceptance of an application for emergency certification to consider the following to determine whether or not an emergency exists:

1. Any evidence offered by the Minnesota Energy Agency or any other person;
2. Whether adherence to the procedures and time schedules specified in MEQB 73I and MEQB 74I would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner;
3. Whether there remains any feasible or prudent alternative to the utility which can serve its immediate need;
4. Whether the utility is prepared to, and will upon authorization, carry out the acquisition and construction program at the maximum rate of progress.

The Board shall also establish whether the situation could have been reasonably anticipated by the utility in time to utilize the normal application procedures. If the Board finds that the utility could have reasonably anticipated the situation, the utility may be subject to the provisions of Minn. Stat. §116C.68 (1977).

C. Board Action. If the Board determines that an emergency exists, then the route or site designation procedures prescribed in MEQB 73 and MEQB 74, with the exception of MEQB F.2 and MEQB 74F.1, 2 and 3, shall be followed,

except that the Board shall designate a route and issue an emergency construction permit or designate a site and issue an emergency certificate of site compatibility within 195 days of the application.

MEQB 78 EXEMPTION OF CERTAIN ROUTES

A. Application. A utility may apply to the Board to exempt the construction of a high voltage transmission line from the Act. A utility shall submit an application for exemption of a specific transmission line containing the following information:

1. The engineering design concepts;
2. The proposed location of the facility;
3. The environmental setting and impact of the proposed action;
4. A description of the plans for right-of-way preparation and construction.

B. Notice of Exemption Application. Within 15 days of filing with the Board an application for exemption of a certain route, the utility shall:

1. Publish a notice and description of the exemption application including, but not limited to, a map of the proposed route and the size and type of facility in a legal newspaper of general circulation in each county in which the route is proposed to be located;
2. Send a copy of the exemption application by certified mail to the chief executive of any regional development commission, county, incorporated municipality and organized town in

which the route is proposed to be located; and

3. Send a notice and description of the exemption application to each owner over whose property the line may run, together with an understandable description of the procedures the owner must follow should he desire to object.

C. Objection to an Exemption Application. Any person who owns real property crossed by the proposed route, or any person owning property adjacent to the property crossed by the proposed route, or any affected political subdivision may file an objection with the Board within 60 days after the giving of notice under MEQB 78B stating reasons why the Board should deny the application.

D. Board Action. The Board may conduct a public hearing to determine if the proposed high voltage transmission line will cause any significant human or environmental impact. If any objections are filed with the Board, the Board shall either deny the application or conduct such a public hearing. Whether or not an objection is filed or a hearing is held, the Board shall determine whether the proposed high voltage transmisison line will cause any significant human or environmental impact. If the Board determines that significant human or environmental impact will occur, it shall deny the application. If not, it may exempt the proposed transmission line with any appropriate conditions, but the utility shall comply with any applicable

state rule and any applicable zoning, building and land use rules, regulations and ordinances of any regional, county, local and special-purpose government in which the route is proposed to be located.

MEQB 79 IMPROVEMENT OF ACQUIRED ROUTES AND SITES

A. Delay in Construction. Utilities that have acquired a route or site may proceed to construct or improve the route or site in accordance with these rules. However, when construction and improvement has not commenced four years after the construction permit or site certificate has been issued by the Board, the Board shall suspend the certificate or permit. If at that time, or at a time subsequent, the utility decides to construct the proposed large electric power facility, it shall certify to the Board that there has been no significant changes in any material aspects of the conditions or circumstances existing when the permit or certificate was issued. If the Board determines that there are no siginificant changes, it shall reinstate the permit or certificate. If the Board determines that there is a significant change, it may order a new hearing and consider the matter further, or it may require a new application.

B. Minor Alterations in a Construction Permit for a High Voltage Transmission Line.

1. Application. Following issuance of a construction permit for a high voltage transmission line, a utility may apply to the Board for minor alterations on conditions specified in the permit. The utility shall submit an application for a minor alteration which contains sufficient information for the Board to determine within 45 days the following:

   a. Whether or not the requested changes are significant enough to warrant Board study and approval;

   b. Whether or not to order public hearings near the affected area;

   c. Whether or not additional fees shall be assessed.

2. Board Action. If the Board decides to study the application, the Board shall determine within 70 days whether granting the application would be consistent with MEQB 73H and shall grant or deny the utility's application.

MEQB 80 REVOCATION OR SUSPENSION

~~A.--Initiation-of-Board-Action.--The-Board-may-initiate action-to-consider-revocation-or-suspension-of-a-construction-permit-or-certificate-of-site-compatibility-if-the Board-determines-that-a-prima-facie-showing-has-been made-by-affidavit-and-documentation-that-a-violation-of~~

~~the provisions of the Act has occurred as set forth in Minn. Stat. §116C.645 and these rules. For purposes of this rule such a violation shall result from any act described in Minn. Stat. §116C.645 unless the Board determines that significant additional adverse environmental effects will not result or that such significant additional adverse environmental effects can and will be corrected. Additional adverse environmental effects mean environmental effects which are more substantial, taken as a whole, than those which would have occurred in absence of a violation.~~

~~B. Board Action. If the Board initiates action to consider revocation or suspension of a construction permit or certificate of site compatibility, it shall conduct a hearing pursuant to the contested case procedures of Minn. Stat. Chapter 15. If the Board finds that the violation has or will cause significant additional or continuing adverse environmental impacts which cannot be corrected or substantially mitigated and that revocation will not imperil the utility's electric power system reliability, then it may revoke the permit or certificate or order other appropriate measures. If the Board finds that the violation has or will cause significant additional permanent or continuing adverse environmental impacts, and that corrective or mitigative measures are reasonably available, then the Board shall order such measures and may suspend the permit or certificate until such measures are taken. If the Board finds that the~~

~~violation has or will cause significant additional permanent or continuing adverse environmental impacts and that revocation will imperil the utility's electric power system reliability and that there are no mitigative or corrective measures which can be taken to improve the situation, then the Board may ask the Attorney General to bring action against the utility pursuant to Minn. Stat. §116C.68.~~

A. Initiation of Board Action.

The Board may initiate action to consider revocation or suspension of a construction permit or certificate of site compatibility on its own motion or upon the request of any person who has made a prima facie showing by affidavit and documentation that a violation of the Act has occurred as set forth in Minn. Stat. §116C.645 or these rules.

B. Board Action.

If the Board initiates action to consider revocation or suspension of a construction permit or certificate of site compatibility, it will consider in a hearing under Minn. Stat. §116C.645 the following matters:

1. Whether a violation of any of the conditions in Minn. Stat. §116C.645 has occurred;
2. Whether the violation will result in any significant additional adverse environmental effects;
3. Whether the results of the violation can be corrected or ameliorated; and

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

If the Board finds that a violation of Minn. Stat. §116C.645 or these rules has occurred, it may (1) revoke or suspend the permit or certificate, (2) require the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension, or (3) require corrective measures and suspend the permit or certificate.

MEQB 81 ANNUAL HEARING. The Board shall hold an annual public hearing on a Saturday in November in St. Paul in order to afford interested persons an opportunity to be heard regarding its inventory of study areas, route and site designation processes, other aspects of the Board's activities and duties performed pursuant to the Act, or policies set forth in these rules.

MEQB 82 ASSESSMENT, APPLICATION FEES

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

B. Application Fees. Every applicant for a route or site pursuant to Minn. Stat. §116C.57 shall pay to the Board a fee as prescribed by the Act.

1. For applications filed pursuant to Minn. Stat. §116C.57, subds. 1 and 2, twenty-five percent of the total estimated fee shall accompany the application and the balance is payable in three equal installments at the end of 90, 180 and 270 days from the date of the Board's acceptance of the application.

2. For applications filed pursuant to Minn. Stat. §116C.57, Subd. 3, twenty-five percent of the total estimated fee shall accompany the application and the balance is payable at the end of 90 days from the date of the Board's acceptance of the application.

3. For applications filed pursuant to Minn. Stat. §116C.57, subd. 5, ten percent of the total estimated fee shall accompany the application and the balance is payable as determined by the Board.

Exhibit D-1

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY BOARD

COUNTY OF RAMSEY

RECEIVED
SEP 23 1977
OFFICE OF HEARING EXAMINERS

In the Matter of the Rules Proposed for Adoption by the Minnesota Environmental Quality Board Relating to Power Plant Siting and Transmission Line Routing.

ORDER FOR HEARING

Pursuant to Minn. Stat. § 116C.66, the Minnesota Environmental Quality Board deems it necessary to call a public hearing on the above-entitled matter.

NOW, THERFORE, IT IS ORDERED that a public hearing on the above-entitled matter be held at the following dates and places. These hearings shall be continued until all interested persons have had an opportunity to be heard by submitting oral or written data, statements, comments or arguments, or by presenting witnesses.

Times and Places of Hearings:

St. Paul	October 19, 1977	9:00 a.m. & 7:00 p.m.	William Mitchell College of Law Legal Education Center, Room 107 40 North Milton
Duluth	October 20, 1977	7:00 p.m.	"The Depot" Multi Media Room Lower Floor (St. Louis County Heritage and Arts Center)
Thief River Falls	October 24, 1977	7:00 p.m.	Northland Community College Room B37
Bemidji	October 25, 1977	7:00 p.m.	Smith Elementary School Auditorium
Brainerd	October 26, 1977	7:00 p.m.	Brainerd Community College Media Center
St. Cloud	October 27, 1977	7:00 p.m.	City Hall Annex, Council Chambers
Alexandria	October 31, 1977	7:00 p.m.	Vocational-Technical Institute, Cafeteria
Mankato	November 1, 1977	7:00 p.m.	Mankato State University Centennial Student Union Ballroom Highland Campus
Rochester	November 2, 1977	7:00 p.m.	Rochester Community College Plaza West Building, Room P223

Dated this 31st day of August, 1977.

Peter Vanderpoel

Peter Vanderpoel, Chairman
Environmental Quality Board

Exhibit D-2

RECEIVED
SEP 23 1977
OFFICE OF HEARING EXAMINERS

MINNESOTA ENVIRONMENTAL QUALITY BOARD
550 Cedar Street
St. Paul, Minnesota 55101
612/296-2096

NOTICE IS HEREBY GIVEN OF
HEARINGS
on the Rules of the
Minnesota Environmental Quality Board
for
SITING LARGE ELECTRIC POWER GENERATING PLANTS
and
ROUTING HIGH VOLTAGE TRANSMISSION LINES

Subject of the hearings: These hearings will be held to consider rules proposed for siting electric power plants over 50 megawatts and routing transmission lines over 200 kilovolts. These rules will include criteria for selecting sites and routes, a description of the information to be furnished by utilities and guidelines for public participation. The rules will also include procedures for the revocation or suspension of a construction permit or certificate of site compatibility, the procedures and timeliness for proposing alternative routes and sites, and route exemption criteria and procedures.

Taking part in the hearing: Any person can make statements, ask questions or present information at the hearings. Copies of the proposed rules are available from the Environmental Quality Board, free of charge. They may also be reviewed at the Board office or at libraries listed at the end of this notice. The hearings will be conducted under the rules of the Office of Hearing Examiners. The Hearing Examiner's rules are available from the Documents Section of the Department of Administration or the Hearing Examiner's Office.

Environmental Quality Board staff will present testimony on the proposed rules when hearings open at 9:00 a.m. in St. Paul on October 19, and will summarize their testimony at the beginning of all other hearings on these rules. (See "Times and Places" for locations.)

Hearing examiner: The independent hearing examiner who will conduct these hearings is Myron Greenberg, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, telephone 612/296-8109.

Times and places of hearings:

St. Paul	October 19	9:00 a.m. and 7:00 p.m.	William Mitchell College of Law Legal Education Center, Room 107 40 North Milton
Duluth	October 20	7:00 p.m.	"The Depot" Multi Media Room Lower Floor (St. Louis County Heritage and Arts Center)
Thief River Falls	October 24	7:00 p.m.	Northland Community College Room B37

Bemidji	October 25	7:00 p.m.	Smith Elementary School Auditorium
Brainerd	October 26	7:00 p.m.	Brainerd Community College Media Center
St. Cloud	October 27	7:00 p.m.	City Hall Annex, Council Chambers
Alexandria	October 31	7:00 p.m.	Vocational-Technical Institute, Cafeteria
Mankato	November 1	7:00 p.m.	Mankato State University Centennial Student Union Ballroom Highland Campus
Rochester	November 2	7:00 p.m.	Rochester Community College Plaza West Building, Room P223

Additional hearings may be scheduled by the hearing examiner.

After the hearing: After the last hearing, the hearing examiner will accept written comments for five working days. Copies of the transcript will be available for review at libraries listed below and the Board office. The hearing examiner's report will also be placed in the libraries as soon as it is available.

The Environmental Quality Board will make the final decision on the rules. This decision will be reviewed by the Attorney General for form and legality. Final rules will be published in the State Register and be available from the Board or may be reviewed at the libraries.

Libraries where information may be reviewed: Public libraries in Crookston, Bemidji, Duluth, Fergus Falls, Pine River, Willmar, Montevideo, Cambridge, St. Cloud, Marshall, Mankato, Rochester, and Minneapolis (Environmental Conservation Library, 300 Nicollet Mall) and the Board office.

Other information: These hearings are authorized by the Power Plant Siting Act as amended in 1977, Minnesota Statutes 116C.66.

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, phone 612/296-5615.

Dated this 31 day of August, 1977.

Peter Vanderpoel

Peter Vanderpoel, Chairman
Minnesota Environmental Quality Board

Exhibit D-3

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of the Rules Proposed for Adoption by the Minnesota Environmental Quality Board Relating to Power Plant Siting and Transmission Line Routing.

AFFIDAVIT OF RECEIPT

I, Terri Johnson, first being duly sworn on oath deposes and says that:

1. I am an employee of the State Planning Agency.

2. On August 31, 1977 I received the attached Secretary of State's mailing list.

Terri Johnson

Subscribed and sworn to before me this 23 day of September, 1977 at St. Paul, Minnesota.

NOTARY PUBLIC
DAKOTA COUNTY

KAREN BECKMAN
Notary Public, Dakota County Minn.
My Commission Expires Nov. 3, 1981

Exhibit D-4

RECEIVED
SEP 23 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

NOTICE OF PUBLIC HEARING

In the Matter of the Rules of the Environmental Quality Board related to Power Plant Siting and Transmission Line Routing.

CERTIFICATE

I hereby certify that the attached 15 sheets constitute the complete list of persons, associations, and other interested groups who as of 1:50 o'clock P m., this 31 day of August, 1977, have requested pursuant to M.S. 1971, Section 15.0412, Subd. 4, 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.

Secretary of State

Joan Anderson Growe

By Randall W. Sayre

Exhibit D 6

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY BOARD

RECEIVED
SEP 23 1977
OFFICE OF HEARING EXAMINERS

In the Matter of the Rules Proposed for Adoption by the Minnesota Environmental Quality Board Relating to Power Plant Siting and Transmisson Line Routing.

AFFIDAVIT OF MAILING

I, Terri Johnson, first being duly sworn on oath deposes and says that:

1. I am an employee of the State Planning Agency.

2. On September 12, 1977 I served the attached Notice of Hearing, upon the attached list of persons by depositing in the United States Mail, with postage prepaid, envelopes containing a true and correct copy of the said Notice addressed to each of the names and addresses contained in the attached list.

Terri Johnson

Subscribed and sworn to before me this 23 day of September, 1977 at St. Paul, Minnesota.

NOTARY PUBLIC
DAKOTA COUNTY

KAREN BECKMAN
Notary Public, Dakota County Minn.
My Commission Expires Nov. 3, 1981

Exhibit D-7

RECEIVED
SEP 23 1977
OFFICE OF HEARING EXAMINERS

In the Matter of the Rules Proposed for Adoption by the Minnesota Environmental Quality Board Relating to Power Plant Siting and Transmission Line Routing

STATEMENT OF NEED AND EVIDENCE

Introduction

Minnesota's Power Plant Siting Act was enacted in 1973 by the Minnesota Legislature. In the Power Plant Siting Act the Legislature gave the Minnesota Environmental Quality Board (hereinafter "Board") authority and jurisdiction for routing high voltage transmission lines and siting large electric power generating plants, declaring it to be the policy of the State to locate large electric power facilities in an "orderly manner compatible with environmental preservation and the efficient use of resources." The Legislature also directed the Board to adopt "broad spectrum citizen participation as a principle of operation" in its transmission line routing and power plant siting proceedings.

The Board adopted rules to implement the Act in August, 1974, and has since routed over 800 miles of high voltage transmission lines affecting approximately 16,000 acres of land and has sited three major power plants which will produce a total of 2100 megawatts of electrical energy. Consistent with the mandate that the Board adopt broad spectrum citizen participation as a principle of operation, thousands upon thousands of interested and affected citizens have participated in routing and siting proceedings and have had a profound influence on the Board's actions. Public participation in the Power Plant Siting program has also helped to define major issues by raising significant questions before the Board concerning the Board's policies and procedures.

This considerable experience with the Power Plant Siting program led the Board to propose major revisions in the Power Plant Siting Act to the 70th Legislature. After hundreds of hours of discussion and debate before several committees in both houses of the Legislature, a major re-draft of the Power Plant Siting Act was produced. These changes have, in turn, made it necessary for the Board to make a major revision of its rules for transmission line routing and power plant siting.

In its proposed new rules for transmission line routing and power plant siting, the Board is attempting to interpret new Legislative directives, to clarify the Board's procedures and to allow for more effective public participation. These proposed new rules also represent a major reorganization of the old rules. The purpose of the reorganization is expressly intended to make the new rules easier for the public to understand.

Consistent with Minn. Stat. § 15.0412, subd. 6 and Rule HE 103(g), the Board published a Notice of Intent to Solicit Outside Opinion in the May 31, 1977 issue of the State Register (1 S.R. 1713). Ironically, there was no response.

The Board has found it necessary to repeat statutory language from time to time within these rules; notably in statement of policy and in the definitions. The Board is aware of amendments to Chapter 15 in the Minnesota Statutes made by the 70th Legislature which prohibit duplication of statutory language; however, since the Board has also been directed by the Legislature to "adopt broad spectrum citizen participation as a principle of operation," it believes that it would be a mistake and contrary to Legislative intent to assume that the general public has in its possession a copy of the statute for reference purposes. Certainly the statement of policy of the Power Plant

Siting Act and its key definitions are "crucial to the ability of a person affected by a rule" to comprehend the meaning and effect of these rules proposed by the Board.

In each case where statutory language is duplicated, that fact will be noted in the justification with a summary explanation for its inclusion.

Justification

In this section, each rule will be cited, followed by an explanation of the intent, need and reasonableness of the rule.

MEQB 71 AUTHORITY, PURPOSE AND POLICY

A. Authority.

This rule references the Board's authority to promulgate rules to administer its official agency duties pursuant to the Power Plant Siting Act.

B. Purpose and Policy.

This rule repeats statutory language. However, the Board believes that this broad statement of policy is a necessary element in a person's ability to comprehend the purpose and meaning of these rules as a whole.

MEQB 72 DEFINITIONS.

Several definitions in this section are duplications of statutory language. They are as follows:

MEQB 72B repeats Minn. Stat. § 116C.52, subd. 2.

MEQB 72C repeats Minn. Stat. § 116C.52, subd. 7.

MEQB 72F repeats Minn. Stat. § 116C.52, subd. 10.

MEQB 72G repeats Minn. Stat. § 116C.52, subd. 4.

MEQB 72I repeats Minn. Stat. § 116C.52, subd. 5.

MEQB 72J repeats Minn. Stat. § 116C.59, subd. 3.

MEQB 72L repeats Minn. Stat. § 116C.52, subd. 8.

MEQB 72N repeats Minn. Stat. § 116C.52, subd. 9.

In each definition where statutory language appears, the definition is included because a precise understanding of the term is crucial to the ability of a person affected by the rules to comprehend each term's meaning and effect as used in these rules.

MEQB 72A. "Act" is included as a definition in these rules to give reference to the Power Plant Siting Act as amended in 1977. The Power Plant Siting Act is referred to several times in these rules and it is important that all persons involved are aware that it was amended in 1977.

MEQB 72D. "File" is defined for purposes of prescribing the number of copies and place of delivery of various applications to be submitted to the Board pursuant to the Power Plant Siting Act. In each instance where such an application is submitted to the Board, 40 copies of it are necessary for distribution to Board member agencies and Board staff for review to determine the application's completeness prior to Board acceptance of the application.

MEQB 72E. "High Voltage Transmission Line" is, in part, a duplication of statutory language and a key definition in these rules. The Board, however, believes that it is necessary to elaborate on the definition of "associated facilities" in order to clarify its jurisdiction for routing transmission lines.

MEQB 72H. "Large Electric Power Generating Plant Study Area" is a new concept which was introduced in the 1977 Amendments to the Power Plant Siting Act. The definition of this concept is crucial to the Board's efforts in planning for future sites for large electric power generating plants.

MEQB 72K. "Right-of-way" is a key term throughout the transmission line routing process. It is defined within these rules in order to distinguish between a right-of-way and a route.

MEQB M. "Route Segment" is defined herein because the public may propose routes or route segments to the Board for its

approval for study at the public hearings. Generally, such proposals are short segments of a route which are proposed as an alternative to a problem area rather than a complete route proposal which extends the entire length of the proposed project.

MEQB 720. "Utility" is mostly a duplication of statutory language but has been included as a key definition for these rules. The only departure from statutory language is the addition of "private corporation" which was added to the definition consistent with the statutory language "not limited to." There are such private corporations in the State which do engage in the generation, transmission or distribution of electric energy.

MEQB 73 PROCEDURE FOR DESIGNATION OF A ROUTE AND ISSUANCE OF A CONSTRUCTION PERMIT.

A. Content of an Application for a Construction Permit. Minn. Stat. § 116C.57, subd. 2 authorizes the Board to prescribe the form and manner in which a utility must apply to the Board for a construction permit for a high voltage transmission line.

The Board is proposing that the application be organized in the form of a draft environmental impact statement as prescribed in Minn. Reg. MEQB 30D because such proposals to construct high voltage transmission lines often also require review under the Minnesota Environmental Policy Act. In such cases the EIS format is a consistent and well-established organization of information which would facilitate simultaneous review under the two laws. In cases where no EIS is necessary, the EIS format remains a well-established format of proven utility. In any case, the Board will not determine whether or not to order an impact statement until after the application is submitted.

Rule MEQB 73A also requires the applicant to provide certain information. The rule requires the applicant to provide

any information necessary to make the evaluation of its proposal as required in Rule MEQB 73H, and the specific items listed in MEQB 73A.1 through MEQB 73A.8 as they relate to the applicant's proposal. The Board is authorized to require this information pursuant to Minn. Stat. § 116C.57, subd. 2 where it is directed to prescribe the form and manner in which a utility must apply for a construction permit for a high voltage transmission line. The information is necessary in order for the Board to perform the required evaluation of "type, design, routing, right-of-way preparation and facility construction" prescribed by Minn. Stat. § 116C.57, subd. 2. The establishment of application content requirements also serves as a necessary measure of the adequacy of an application.

In MEQB 73A.9, the Board is requiring that any applicant utility which will need to obtain a certificate of need for the proposed facility must make that application to the Minnesota Energy Agency prior to application to the Board for a construction permit. The purpose of the rule is to establish a logical sequence in the permitting process which is necessary for the Board's unencumbered administration of its official duties pursuant to the Power Plant Siting Act. An official determination of need for the facility should help to focus attention on those considerations that need to be made by the Board.

MEQB 73A.10 is necessary in order to specifically identify the owner(s) of the utility and to officially identify the person(s) who has been designated to act on behalf of the owner so that the Board and the public know where to direct communications.

MEQB 73B. Acceptance of a Construction Permit Application. This rule recognizes the necessity for the establishment of a formalized procedure by which the Board may either accept or reject an application for a construction permit. The rule is necessary because of the time limitations imposed upon the Board

by the Legislature within which the Board must designate a route and issue a construction permit. The rule allows the Board to reject an application which is deficient in information in order to ensure that the Board and the public have sufficient information with which to complete their study and evaluation within the one year time limit.

MEQB 73C. Route Evaluation Committee. This rule is a simple statement of Legislative intent as contained in Minn. Stat. § 116C.59, subd. 1. It is included as a rule both as an affirmation of the Board's commitment to broad spectrum citizen participation and as an informational item.

MEQB 73D. Public Advisor. The Legislature authorized the Board to appoint a public advisor in Minn. Stat. § 116C.59, subd. 3. This rule is intended to inform the public of the use they may make of the public advisor, explaining the purpose and limitations of the position. Because the public advisor will not be an attorney, the Board believes it is necessary and in the public interest to inform the public that no advise given by the public advisor should be construed as legal advise.

MEQB 73E. Information Meetings. Consistent with Minn. Stat. § 116C.59, the Board is establishing by rule the requirement that it hold public information meetings in each county through which a route is proposed to be located. The Board believes that these meetings are necessary for effective public involvement in the route designation process because they serve to publicize the proposed project and familiarize interested and potentially affected citizens with the Board's procedures, issues at hand and the avenues of imput available to the public.

MEQB 73F. Route Proposals. In Minn. Stat. § 116C.57, subd. 2 the Legislature recognized the need for a formal policy concerning which route proposals shall be considered by the Board. The statute requires the Board to consider the route proposals

contained in the utility's application. The statute also specifies that the Board consider any other route it deems necessary, provided it was proposed in a manner consistent with rules adopted by the Board, and provided that the Board identifies the route prior to the public hearings held on that route. While it is the intent of the Legislature that any person may propose a route which will be considered by the Board at its public hearings, the Legislature also recognized the time and resource limitations within which the Board must operate by directing the Board to promulgate a rule prescribing the form, content and timeliness of such route proposals.

Consistent with the Board's responsibility to evaluate route proposals, the Board is requiring each proposer of a route to provide adequate information with which it can make its evaluation. Logic dictates that any proposer of a route alternative must be in possession of substantial information which moved him to make such a proposal. For the same reason, the Board is placing the burden of proof on a route proposer at the public hearings.

The Board also sees a need to provide a mechanism by which such proposals can be reviewed for adequacy prior to Board approval for study at the public hearings. The Board has established the review mechanism to ensure that adequate information is available to the route evaluation committee for its review and recommendation, for the preparation of the draft EIS and for the use of the general public.

The 60-day time limitation and subsequent time limitations for review of proposals are both necessary and reasonable. The time limitations are necessary because of the statutory requirement that the Board identify all routes prior to hearings held thereon, and because in many instances the Board will order an environmental impact statement to be prepared on a project.

That EIS must discuss each alternative route under consideration at the hearing. It is the Board's desire that in cases where environmental impact statements are required, that the draft be prepared and published before the public hearings on the routes so as to serve as a useful informational document for the public during the hearings. The information is also necessary for the evaluation of the citizen's route evaluation committee, which has to prepare its recommendation in a timely manner prior to the public hearings according to rules proposed by the State Hearing Examiner's Office.

In any case, any proposer of a route alternative who does not make a proposal in the manner specified in this rule may still suggest his route to the route evaluation committee, the Board member agencies or the Board.

MEQB 73G. Public Hearings. This rule is necessary as an informational item. The Board believes that the purpose of the hearings, the single most important element in the route designation procedure, be clearly explained to the public.

MEQB 73H. Criteria for the Evaluation of Routes. Minn. Stat. §116C.55, Subd. 2 authorizes the Board to promulgate criteria to guide the route evaluation and selection process. Responsive to this legislative mandate the Board is proposing Rule MEQB 73H which provides both direction and a method of selecting routes for high voltage transmission lines which cause the least adverse environmental impact while maintaining the flexibility necessary to accomplish this objective. The direction provided in this rule is a duplication of the policy statement prescribed in the Power Plant Siting Act. The Board is not able to expand upon, nor make a statement more specific in this regard because of the unique linear nature of the impacts caused by a transmission line. The Board is recognizing the fact, reaffirmed by the Legislature, that there is no specific

land use rule which can be applied uniformly throughout the State that would always result in the route with the least adverse impact.

The Board is able, however, to identify certain areas of land which have been formally designated through a publicly acknowledged procedure and which, therefore, require protection pursuant to the directives of either the United States Congress or the Minnesota Legislature. The observance of such laws is the result of the Board's interpretation of the use that can be made of lands within these designated areas together with an assessment of the potential for adverse environmental effects which a high voltage transmission line route may create. Observance of such laws is both a reasonable and necessary measure for the Board to make.

In the case of state or national wilderness areas the Board is interpreting the Congressional and Legislative intent to be one of absolute exclusion. National Wilderness Areas can only be designated by an Act of Congress pursuant to Public Law 88-577 which established the National Wilderness Preservation System. This law was established in order to protect and preserve lands in their natural condition for present and future generations. The Boundary Waters Canoe Area in north-eastern Minnesota is the only national wilderness area in the State.

Currently, there are no designated state wilderness areas in Minnesota. However, the Outdoor Recreation Act of 1975, Minn. Stat. §86A.01 et. seq. severely restricts the uses which can be made of such an area if one were designated. The law states that wilderness areas are established to be preserved in a natural, wild and undeveloped condition. The law specifies that management of wilderness areas shall only be to the extent necessary to control fire, insects or disease, and to preserve existing wilderness or re-establish wilderness conditions. The law also specifically prohibits development of public

roads or commercial utilization of timber or minerals.

Under MEQB 73H.1, the Board lists state and national parks and state scientific and natural areas as "designated lands," prohibiting the selection of any lands within these designated areas as a route for a high voltage transmission line except under severe circumstances. The designated lands section of this rule perpetuates the "avoidance area" concept used in the old rules; however, this protection is no longer extended to as many of the types of land as were previously included as avoidance areas. The purpose for changing the name of this section from avoidance areas to designated lands it two-fold:

1) The Board is utilizing a more narrow concept in establishing protection for certain lands; and
2) The name "designated lands" more accurately conveys the principle behind establishing protection for certain lands.

The establishment of designated lands as protected areas by the Board in this rule is an attempt by the Board to interpret either congressional or legislative mandates. The Board qualifies the protection afforded "designated lands" consistent with its interpretation of the intent of the designating law or statute. In the case of each statute or law referenced within this section of Rule MEQB 73H it is the Board's position that the prohibition against transmission line use is not absolute and that exceptions to the Rule must be considered on a case by case basis.

National parks are established only by an Act of Congress. They are established for the purpose of preserving outstanding examples of the country's natural and historic resources for the benefit and enjoyment of the people. The only national park in Minnesota is Voyageur's National Park on Rainy Lake in extreme north central Minnesota. This park was designated by Congress in 1971.

Minn. Stat. §85 establishes state parks in Minnesota for the purpose of conserving the scenery, natural and historic objects and wildlife and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. There are 58 state parks in Minnesota which comprise a total area of 204,000 acres, of which approximately 60% is state-owned.

The state scientific and natural area designation was established in Minnesota's Outdoor Recreation Act to protect and perpetuate in an undisturbed natural state those natural features which possess exceptional scientific or educational value. The Board is extending protection to these areas consistent with legislative intent. In Minnesota there are currently 5 such designations comprising a total area of 1,592 acres.

Other lands specifically designated for reasons similar to those of the "designated lands" herein have not been included for special protection because of their linear shape which limits the adverse effects of a perpendicular crossing and potentially creates substantial problems for route selection because of the difficulty of their avoidance.

Consistent with the Power Plant Siting Act the Board prohibits any route designation which is in violation of any rule or regulation. This part of Rule MEQB 73H will have the effect affording some degree of protection to other lands within the state such as state historic sites, lands developed for recreational purposes with financial assistance from the Land and Water Conservation Fund and others.

Consistent with the statutory mandate directing the Board to develop criteria which will "guide" route evaluation and selection, and consistent with Minn. Stat. §116C.57, Subd. 4, the Board is proposing Rule MEQB 73H.2. This section is specifically intended to provide guidance in terms of identifying, categorizing and minimizing the potential for adverse environmental impacts of proposed routes.

Section a, of this rule is necessary to provide a reasonable and broad categorization of all potential impacts of transmission lines within which the Board, the utility and the public can organize their efforts at identifying the potential for adverse environmental effects of a given proposed route. None of the general criteria is given preeminence because the importance of any one depends upon its relative setting, the general significance of specific features, and the possibilities of avoidance.

Section b, is intended to be a list of methods or analytical approaches which can be applied after the identification of the potential for adverse environmental impacts of the proposed routes in order to find the route with the least adverse environmental impact. These methods are consistent with the Legislative mandate prescribed in Minn. Stat. §116C.57, Subd. 4 and are intended to identify factors which will differentiate between alternative routes.

MEQB 73I. Board Action. This rule is largely duplicative of statutory language, however, it is a necessary item insofar as it is necessary for the public to know the manner in which the Board disposes of a project.

MEQB 73J. Construction Plans. This Rule has been proposed by the Board because it is necessary for the Board to know prior to construction that the applicant utility's plans are consistent with the route designated in the construction permit issued by the Board. The Rule is necessary because while the statute directs

the Board to conduct thorough studies in selecting a route, it provides no specific language prescribing the manner in which the Board may review the utility's plans once the permit is issued. It is also necessary for the Board to require that plans be submitted 60 days in advance of construction to provide adequate time for Board and public review. Finally, the rule is reasonable in allowing the utility the flexibility of changing its plans, consistent with the construction permit, without the time-consuming procedure of an official Board action.

MEQB 74 PROCEDURE FOR DESIGNATION OF A SITE AND ISSUANCE OF A CERTIFICATE OF SITE COMPATIBILITY.

A. Content of an Application for a Certificate of Site Compatibility. Consistent with Minn. Stat. §116C.57, Subd. 1, this Rule is prescribing the form and manner in which a utility must apply to the Board for a certificate of site compatibility. The content requirements are consistent with this directive and also derive from the statutory requirement that the utility "propose" at least two sites. It is the intent of the Legislature that the sites proposed by the utility are accompanied by information adequate for the Board to conduct its evaluation and selection process. The establishment of application content requirements also serves as a necessary measure of the adequacy of an application.

In MEQB 74A.8, the Board is requiring that any applicant for a certificate of site compatibility must make its application to the Minnesota Energy Agency for a certificate of need prior to its application to the Board. The purpose of the rule is to establish a logical sequence in the permitting process which is necessary for the Board's unencumbered administration of its official duties pursuant to the Power Plant Siting Act. An official determination of need for the facility should help to focus attention on those considerations that need to be made by the Board.

MEQB 74A.9, is necessary in order to specifically identify the owner(s) of the utility and to officialy identify the person(s) who has been designated to act on behalf of the owner so that the Board and the public know where to direct communications.

The Board is including some statutory language at the end of Rule MEQB 74A prescribing that proposed sites must either be within the Board's inventory of study areas or the proposer must specify the reasons for any proposal located outside of the study areas and make an evaluation of the proposed site based upon the planning policies, criteria and standards specified in the inventory. This language is necessary for the information of any potential proposer of a site because this is a requirement which applies to any proposer of a site pursuant to MEQB 74F. The Board believes that it is both reasonable and necessary to require any proposer of a site to recognize the public planning efforts being conducted by the Board pursuant to Minn. Stat. §116C.55, Subd. 2.

MEQB 74B. Acceptance of an Application for a Certificate of Site Compatibility. This rule recognizes the necessity for the establishment of a formalized procedure by which the Board may either accept or reject an application for a certificate of site compatibility. The rule is necessary because of the time limitations imposed upon the Board by the Legislature within which the Board must designate a site and issue a certificate of site compatibility. The rule allows the Board to reject an application which is deficient in information in order to ensure that the Board and the public have sufficient information with which to complete their study and evaluation within the one year time limit.

MEQB 74C. Site Evaluation Committee. This rule is a simple statement of Legislative intent as contained in Minn. Stat. §116C.59, Subd. 1. It is included as a rule both as an affirmation of the Board's commitment to broad spectrum citizen participation and as an informational item.

MEQB 74D. Public Advisor. The Legislature authorized the Board to appoint a public advisor in Minn. Stat. §116C.59, Subd. 3. This rule is intended to inform the public of the use they may make of the public advisor, explaining the purpose and limitations of the position. Because the public advisor will not be an attorney, the Board believes it is necessary and in the public interest to inform the public that no advise given by the public advisor should be construed as legal advise.

MEQB 74E. Information Meetings. Consistent with Minn. Stat. §116C.54, the Board is establishing by rule a requirement that it hold public information meetings in each county in which a site is proposed to be located. The Board believes that these meetings are necessary for effective public involvement in the site designation process because they serve to publicize the proposed project and familiarize interested and potentially affected citizens with the Board's procedures, issues at hand and the avenues of input available to the public.

MEQB 74F. Site Proposals. In Minn. Stat. §116C.57, Subd. 1 the Legislature recognized the need for a formal policy concerning which site proposals shall be considered by the Board. The statute requires the Board to consider the site proposals contained in the utility's application. The statute also specifies that the Board consider any other site it deems necessary, provided it was proposed in a manner consistent with rules adopted by the Board. While it is the intent of the Legislature that any person may propose a site which will be considered by the Board at its public hearings, the Legislature also recognized the time and resource limitations within which the Board must operate by directing the Board to promulgate a rule prescribing the form, content and timeliness of such site proposals.

Consistent with the Board's responsibility to evaluate site proposals, the Board is requiring each proposer of a site to provide adequate information with which it can make its evaluation. Logic dictates that any proposer of an alternate site must be in possession of substantial information which moved him to make such

a proposal. For the same reason, the Board is placing the burden of proof on the site proposer at the public hearings.

The Board also sees a need to provide a mechanism by which such proposals can be reviewed for adequacy prior to Board approval for study at the public hearings. The Board has established the review mechanism to ensure that adequate information is available to the site evaluation committee for its review and recommendation, for use by the Board's consultants in the preparation of their report, and for the use of the general public.

In any case, any proposer of an alternate site who does not make a proposal in the manner specified in this rule may still suggest his site to the site evaluation committee, the Board member agencies, or the Board.

MEQB 74G. Public Hearings. This rule is necessary as an informational item. The Board believes that the purpose of the hearings, the single most important element in the site designation procedure, be clearly explained to the public.

MEQB 74H. Criteria for the Evaluation of Sites. Minn. Stat. §116C.55, Subd. 2 authorizes the Board to promulgate criteria to guide the site suitability evaluation and selection process. MEQB 74H contains substantially the same criteria which the Board previously promulgated in August 1974 as MEQB 74(c). The changes outlined below are a result of the experience gained through three major plant siting projects. The criteria are grouped into three categories; exclusion, avoidance, and selection criteria.

The exclusion criteria in MEQB 74H.1. are identical to the previous exclusion criteria in MEQB 74(c)(1) with the exception that MEQB 74H.1(b) combines MEQC 74(c)(1)(bb) and (ee).

The avoidance criteria in MEQB 74H.2. are identical to MEQC 74(c)(2) with the exception that MEQC 74(c)(2)(cc) has been deleted because the Department of Natural Resources has not defined "sub-basins." Lacking this definition, the criterion cannot be assessed or evaluated to determine its usefulness or necessity.

The site selection criteria in MEQB 74H.3. are identical to MEQC 74(c)(3) with the following exceptions. MEQC 74(c)(3)(aa) has been divided into two criteria, MEQB 74H. 3a and b. MEQC 74(c)(3)(dd) has been divided into two criteria, MEQB 74H. 3e and f. MEQC 74(c)(3)(ee) has been divided into four criteria, MEQB 74H. 3g, and h. MEQC 74(c)(3)(gg) has been modified in MEQB 74H.3i to clarify the intent of the criteria. MEQC 74(c)(3)(ii) has been divided into two criteria, MEQB 74H.3l and m. Criterion MEQB 74H. 3o has been added to allow the impact assessment of the transmission lines necessary for the operation of the plant.

MEQB 74I. Board Action. This Rule is largely duplicative of statutory language; however, it is a necessary item insofar as it is necessary for the public to know the manner in which the Board disposes of a project.

MEQB 74J. Certificate Administration. The Legislature has authorized the Board to conduct thorough investigations in the process of designating sites and issuing certificates of site compatibility pursuant to Minn. Stat. §116C.57 through §116C.60. In Minn. Stat. §116C.57, Subd. 1 the Legislature also authorizes the Board to include "any appropriate conditions" with the certificate of site compatibility. However, the Legislature did not specify what procedure the Board is to follow in reviewing plans subsequent to the issuance of the certificate of site compatibility to ensure that the plans have been made in accordance with the conditions of the certificate of site compatibility. In proposing this Rule the Board is recognizing the need for it to review a utility's plans after issuance of a certificate of site compatibility, but prior to construction, to ensure that the plans have been made in accordance with the conditions of the certificate of site compatibility.

MEQB 75 ADVISORY COMMITTEES

A. Route and Site Evaluation Committees. This rule is a simple statement of Legislative intent as prescribed in Minn. Stat. §116C.59, Subd. 1, and is included as a rule for purposes of informing the public.

MEQB 75B. Power Plant Siting Advisory Committee. Minn. Stat. §116C.59, Subd. 1 directs the Board to appoint one or more advisory committees to assist it in carrying out its duties. The Board has proposed this rule in recognition of the need to provide the basic guidelines for the composition and operation of the committee.

MEQB 76. NOTICE.

A. Applications. Consistent with the Legislative statement that the Board shall adopt "broad spectrum citizen participation as a principle of operation," the Board is proposing this rule which requires it to publicize the receipt of an application. The rule also requires the Board to provide a substantial amount of information about the proposed project. In proposing this rule the Board is attempting to generate public interest in power plant and transmission line projects at the earliest possible point of the process when all of the avenues of public input are open.

MEQB 76B. Information Meetings. Minn. Stat. §116C.58 requires the Board to give notice of any information meetings it holds pursuant to the Power Plant Siting Act. The Board recognizes that such notice of information meetings may be more effective if accompanied by maps showing proposed routes and sites and is therefore noting specifically which routes and sites may be included in the notice.

MEQB 76C. Public Hearings. Minn. Stat. §116C.58 requires the Board to give notice of any public hearings it holds pursuant to the Power Plant Siting Act. The Board recognizes that such notice of public hearings may be more effective if accompanied by maps showing proposed routes and sites that have been approved for consideration at the public hearings by the Board and is therefore noting specifically which routes and sites may be included in the notice.

MEQB 76D. Route and Site Proposals. Consistent with Minn. Stat. §116C.57, Subd. 2 and Minn. Stat. §116C.59, Subd. 3, the Board is proposing a rule which requires it to identify the proposed routes and sites it has approved for consideration at the hearings. While the rule is mostly a repetition of statutory language, there is no requirement in the statute that the Board identify proposed sites prior to hearing. However, it is the Board's position that the same good reasons that caused the Legislature to require the Board to identify all proposed routes prior to

hearings apply to the siting process also.

MEQB 77. EMERGENCY CERTIFICATION.

Minn. Stat. §116C.57, Subd. 3 provides for emergency certification of large electric power facilities. In order for the Board to administer this provision of the Power Plant Siting Act, it is necessary for the Board to require the applicant to provide information which will enable the Board to determine whether an emergency exists, consistent with Minn. Stat. §116C.57, Subd. 3, and for the Board's use in evaluating the route or site proposals consistent with Minn. Stat. §116C.57, Subd. 4.

MEQB 77B. Determination of an Emergency. Minn. Stat. §116C.57, Subd. 3 directs the Board to develop criteria for emergency certification. Responsive to this mandate the Board is proposing that it evaluate four items which it considers to be crucial in the determination of an emergency.

In MEQB 77B.1., the Board is recognizing the expertise of the Minnesota Energy Agency in these matters.

MEQB 77B.2. is a consideration that the Board is required to make in Minn. Stat. §116C.57, Subd. 3.

MEQB 77B.3. is proposed consistent with Minn. Stat. §116C.53, Subd. 1, which requires the Board to explore alternatives which could possibly spare unnecessary adverse environmental effects.

The Board is proposing MEQB 77B.4. to ensure that sound environmental planning practices and broad spectrum citizen participation are not needlessly sacrificed.

The Board also finds it necessary to establish whether the emergency situation could have been reasonably anticipated by the utility in order to ensure that the emergency certification provision is not abused.

MEQB 77C. Board Action. Consistent with Minn. Stat. §116C.53, Subd. 1, and Minn. Stat. §116C.57, Subd. 4 the Board is proposing to require utility proposals which are certified as emergencies under MEQB 77B to be subject to the same review process as non-emergency proposals. However, the Board is not able to accommodate alternate route or site proposals offered by the public due to the time constraint within which it must issue an emergency certificate of site compatibility or an emergency construction permit.

MEQB 78. EXEMPTION OF CERTAIN ROUTES

A. Application. In Minn. Stat. §116C.57, Subd. 5, the Legislature directed the Board to prescribe the form and manner in which a utility must apply to exempt a route from the Power Plant Siting Act. Responsive to this directive the Board has established certain informational requirements which enable it to determine whether the proposed high voltage transmission line will cause any significant environmental effects.

MEQB 78B. Notice of Exemption Application. This section of MEQB 78 duplicates statutory language. However, the inclusion of this information in these rules is necessary as it relates to MEQB 78C.

MEQB 78C. Objection to an Exemption Application. This rule duplicates statutory language concerning who may make an objection to an exemption application but its inclusion is of paramount importance insofar as it serves to make people aware of their right to object. The Board also finds it necessary to require any person who desires to make an objection to an exemption application to state reasons why. Since an objection will automatically trigger a hearing to determine if the proposed high voltage transmission line will cause any significant environmental effects, it is necessary for the Board to know what the basis is for the objection so that it will know what issue it must explore specifically.

MEQB 78D. Board Action. This rule is basically duplicative of statutory language but has been included by the Board in recognition on the need for potentially affected person to know the manner in which the Board will dispose of an exemption application.

MEQB 79. IMPROVEMENT OF ACQUIRED ROUTES AND SITES.

Minn. Stat. §116C.62 provides for improvements of sites and routes insofar as such improvements commence within four years after a certificate or permit is issued. The statute also requires that construction shall not commence after four years unless the utility can certify to the Board that the route or site continues to meet the conditions upon which the certificate or permit was issued. However, the statute does not provide a specific course of Board action in the event that the Board finds that there are significant changes in the conditions or circumstances in which the certificate or permit was issued. Recognizing this need, the Board is proposing this rule to provide two possible avenues upon which the Board may proceed, allowing for flexibility according to the circumstances that exist in a particular case.

MEQB 80. REVOCATION OR SUSPENSION

Minn. Stat. §116C.645 (1977) provides that the MEQB may revoke or suspend a site certificate or a construction permit after a full and fair hearing and making findings that: the utility knowingly made a false statement during the siting process which affected the results; the utility failed to comply with material conditions or safety standards of the permit; or the utility committed a material violation of the Act, the rules adopted thereunder, or an order of the Board.

These rules establish criteria for determining the necessity for such a hearing, the criteria to be used to determine whether there has been a violation and the remedial options available to the Board if a violation is found.

The Act provides no statement concerning who may initiate the process or how that initiation should come about. As a result, MEQB 80A is proposed to establish the process.

Anyone may be in possession of information which may lead to the finding of a violation. As a result, it is proper to allow anyone to attempt to initiate the process, and there is no restriction along those lines in the proposed rule. However, the hearing required by the Act would have to be a formal contested case hearing which would involve the expenditure of large sums of public and private funds and staff time. As a result, the proposed rule requires that a "prima facie" showing of a violation be made to initiate the process and that the determination of whether there is such a showing by affidavit or documentation is to be made by the Board.

Since the process of siting and constructing power plants or lines involves lengthy and detailed testimony, some of which may be erroneous, and extensive construction activity sometimes covering large areas, there is a substantial likelihood of some sort of technical "violation" in nearly all projects. As a result, the MEQB feels that in order to initiate the formal hearing process, the violation being alleged must be significant and have some relationship to available remedial measures. In determining the significance of the violation, the Board proposes to initiate the process only if the alleged violation has resulted in additional adverse environmental effects. If the "violation" has resulted in a better location or design there is no need to revoke the permit or employ other extra-

ordinary measures. Similarly, if the utility has or will correct the problem the need for extensive hearings is mooted.

If the revocation or suspension process is initiated there must be guidelines for determining what remedies are available and under what circumstances. There are three general criteria which have a direct impact upon the remedial measures that should be available. Does the violation contribute to additional significant environmental effects? If not, there is no need for any remedy. Are corrective measures available? And what effect will revocation or suspension have on the overall electrical power system reliability?

If the Board finds that the violation is causing additional adverse environmental effects, there are no available corrective measures, and the overall system reliability is not imperiled, then the Board should have the authority to revoke the permit or order similar regulatory measures in order to protect the overall public interest.

If the Board finds that additional adverse environmental effects are cuased but corrective measures are available, it must have the authority to suspend the permit and order such corrective measures to be taken during the period of suspension.

Finally, if there are additional adverse environmental effects with no available corrective measures and the overall public interest dictates that the loss of system reliability may be more severe than the environmental effects, the MEQB has no option but to turn to the penalty provisions of the Power Plant Siting Act to invoke punitive measures against the violating utility.

MEQB 81. ANNUAL HEARING.

Pursuant to Minn. Stat. §116C.58 the Board is prescribing a time and a place for its annual hearing.

MEQB 82. ASSESSMENT, APPLICATION FEES.

A. Assessment. Pursuant to Minn. Stat. §116C.69, Subd. 3, the Board is prescribing the manner in which the annual assessment shall be levied against the utilities. The manner proposed by the Board is simple and does not require any unnecessary effort on the part of the utilities.

MEQB 82B. Application Fees. Pursuant to Minn. Stat. §116C.69, Subd. 2 and Subd. 2a, the Board is prescribing the time and manner in which application fees for sites and routes shall be paid.

MEQB 82B.1. prescribes the manner in which normal site and route application fees shall be paid as prescribed by Minn. Stat. §116C.69, Subd. 2 and Subd. 2a.

MEQB 82B.2. prescribes the manner in which application fees shall be paid for emergency certification pursuant to Minn. Stat. §116C.69, Subd. 2 and Subd. 2a. Because the Board will not know what course of action it may take until 90 days after acceptance of the application, it is prescribing that it may require the balance of the total estimated fee at that time.

MEQB 82B.3. prescribes the manner of payment of the application fee for exemption applications pursuant to Minn. Stat. §116C.69, Subd. 2a. Because the Board cannot know ahead of time which course of action it may take in its consideration of an exemption application, it is providing for flexibility in the determination of the payment of the balance of the fee.

Exhibits D-8 & 11

March 9, 1978

STATE OF MINNESOTA

BEFORE THE

ENVIRONMENTAL QUALITY BOARD

In the Matter of the Rules Proposed for Adoption by the Minnesota Environmental Quality Board Relating to Power Plant Siting and Transmission Line Routing	))))))	Findings of Fact, Conclusions and Order of Adoption.

The above-captioned matter came on for hearing before Hearing Examiner Myron S. Greenberg of the Minnesota Hearing Examiner's Office. The hearing commenced on October 19, 1977 at 9:00 a.m. at the William Mitchell College of Law in St. Paul and was continued at the following times and places:

October 19, 1977	7:00 p.m.	William Mitchell College of Law St. Paul, Minnesota
October 20, 1977	7:00 p.m.	St. Louis County Heritage and Arts Center, Duluth, Minnesota
October 24, 1977	7:00 p.m.	Northland Community College Thief River Falls, Minnesota
October 25, 1977	7:00 p.m.	Smith Elementary School Bemidji, Minnesota
October 26, 1977	7:00 p.m.	Brainerd Community College Brainerd, Minnesota
October 27, 1977	7:00 p.m.	City Hall Annex St. Cloud, Minnesota
October 31, 1977	7:00 p.m.	Vocational-Technical Institute Alexandria, Minnesota
November 1, 1977	7:00 p.m.	Mankato State Univeristy Mankato, Minnesota
November 2, 1977	7:00 p.m.	Rochester Community College Rochester, Minnesota

The Rochester hearing was continued in Granite Falls, Minnesota, at 7:00 p.m. on November 3, 1977, for purposes of hearing more testimony because of the great interest shown by residents of the Granite Falls area in these proceedings. The hearing was again continued to St. Paul at 1:00 p.m. on November 4, 1977 for purposes of further cross-examination of Minnesota Pollution Control Agency (MPCA) and Minnesota Public Interest Research Group (MPIRG) witnesses.

The hearings continued until all interested persons or groups had an opportunity to be heard concerning the adoption of the proposed rules. The record remained open for written submissions for 5 days after the end of the last hearing and closed on November 14, 1977.

Donald A. Kannas, William E. Dorigan, and Douglas Blomgren, Special Assistants to the Attorney General, appeared as counsel for the Minnesota Environmental Quality Board (hereinafter "Board"). Will Kaul, research scientist on the Board's power plant siting staff, John Hynes, acting manager of the power plant siting staff, George Durfee, research scientist on the power plant siting staff and Craig Amundsen, a planner on the staff appeared and testified on behalf of the Board.

The matter under consideration by the Board is a completely new set of rules for transmission line routing and power plant siting proposed for adoption pursuant to the Power Plant Siting Act, Minn. Stat. §116C.51 et. seq. (1977). The proposed new rules are intended to repeal and supercede rules MEQB 71-75.

The purpose of the hearings is to establish a record upon which the Board can determine whether the rules, as proposed, properly provide for the administration of the Power Plant Siting Act, and that the rules are reasonable and necessary. This must be shown by an affirmative presentation of facts by the agency.

The 1973 Minnesota Power Plant Siting Act gave the Board authority and jurisdiction for routing transmission lines over 200 kilovolts and siting power plants over 50 megawatts in capacity. The Board adopted rules to administer the law in August, 1974, and has since issued construction permits for six major power line projects with a total of over 800 miles of power lines and sited three major power plants which will produce a total of 2900 megawatts of electrical energy.

In carrying out the legislative mandate that the Board adopt broad spectrum citizen participation as a principle of operation, thousands of interested and affected citizens have energetically participated in the nine major proceedings held by the Board. Most importantly, public participation in the power plant siting program has helped to define the major issues which ever-increasing demand for electrical energy, and the resulting increased need for large electric power facilities, has created.

Many of the issues raised by the public resulted in significant controversy. The controversy surrounding these issues and the difficulty in resolving them led the Board to place the matter before the 1977 Legislature with a proposal for major revisions in

the Power Plant Siting Act. A major re-draft of the Power Plant Siting Act was passed by the Legislature and signed into law by the Governor on June 2, 1977. These changes in the law have, in turn, made it necessary for the Board to make a major revision of its rules for transmission line routing and power plant siting.

Attendance at the twelve scheduled hearing locations varied considerably as did the concerns registered by those who testified. Very few portions of the proposed rules received no public comment. On the other hand, many persons testified concerning the large electric power facility certificate of need and environmental impact statement processes; issues outside of the scope of these proposed rules.

Notable among the participants of the hearing was the Power Plant Siting Advisory Committee which was represented at nearly every hearing location. The committee is to be commended for its thoughtful recommendations for changes in the proposed rules, many of which have been adopted herein as an improvement over the original proposal. The Board wishes to thank the committee for the time given, miles driven, and the considerable hard work donated by its members.

Upon all testimony, records, files, evidence, arguments of counsel and written comments, the Board hereby makes the following:

FINDINGS OF FACT ON PROCEDURAL REQUIREMENTS.

1. On August 31, 1977, the Board filed the following documents with the Chief Hearing Examiner:

   (a) A copy of the proposed rules;
   (b) A proposed Order for Hearing;
   (c) A proposed Notice of Hearing; and
   (d) A Statement of the estimated length and number of people attending the hearing.

2. On September 12, 1977, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

3. On September 19, 1977 a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 508 et seq.

4. On September 23, 1977, the Board filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called; and
(h) The names of Board personnel who will represent the agency.

The aforementioned documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The Board is authorized to promulgate the proposed rules in Minn. Stat. §116C.66.

FINDINGS OF FACT ON THE PROPOSED RULES

6. MEQB 71 Authority, Purpose and Policy.

Rule MEQB 71 references the Board's authority to pro-

mulgate the rules for transmission line routing and power plant siting and states the broad policy which must be followed by the Board in routing transmission lines and siting power plants. Two issues were raised concerning this rule during the hearings.

7. The Power Plant Siting staff (hereinafter "Staff") raised the issue of the propriety of duplicating statutory language in the proposed rules in its Statement of Need and Evidence (MEQB Exhibit 2); a practice which was prohibited by the 70th Legislature in an amendment to Minn. Stat. §15.0412, except where inclusion of statutory language in rules is "crucial" to the ability of a person affected by a rule to comprehend the meaning and effect of the rule. Staff argued that the statutory mandate contained in the Power Plant Siting Act which requires the Board to adopt "broad spectrum citizen participation as a principle of operation" in the administration of its power plant siting program should serve to temper any conservative interpretation of the Chapter 15 Amendment as it applies to the rules promulgated pursuant to the Power Plant Siting Act. Staff also argued, and the Hearing Examiner found (HE Report #9, p. 4), that inclusion of the Power Plant Siting Act's broad policy statement as it appears in MEQC 71B meets the test prescribed by the Legislature. No one suggested otherwise.

8. Staff for the Minnesota Pollution Control Agency (MPCA) testified that MEQB 71B be amended to include language from the Minnesota Environmental Policy Act (MEPA) "to achieve recognition of and consistency with" that Act. (Pub. Ex. 23, p. 9) The language proposed by the MPCA staff is from Minn. Stat. §116D.04(6), the section in MEPA which broadly states a policy which must be followed by state agencies in the issuance of certain permits for natural resources management and development.

9. While the language proposed by the MPCA staff could have some bearing on Board actions authorized by the Power Plant Siting Act, the MPCA staff did not show the need to augment the broad policy statement provided by the Legislature in the Power Plant Siting Act. The nearly concurrent passage of the two laws suggests that the policy statements within each law are intended to govern the administration of that law as it is applied by the Board. The Hearing Examiner found similarly and stated, "The change suggested by the MPCA is neither necessary nor reasonable." (HE Report #9, p. 5.)

10. The language suggested by the MPCA staff to amend MEQB 71B duplicates statutory language and to be included in a rule must be crucial to the ability of a person affected by the rule to understand its meaning and affect. In the opinion of the Hearing Examiner the language proposed by

the MPCA staff does not meet this test of the law. (HE Report #9, p. 5.)

11. Clear Air, Clear Water, Unlimited suggested that MEQB 71B be supplemented with the language, "The purpose and policies of the Minnesota Environmental Policy Act, Minn. Stat. §116D.04, shall be considered where applicable. (Com. 25, p. 1) The Board agrees with the Hearing Examiner that such language is unnecessary. (HE Report #9, p. 5)

12. As found by the Hearing Examiner, rule MEQB 71 is "reasonable and necessary for a clear understanding of the remainder of the rules." It is adopted as proposed.

13. MEQB 72 Definitions

MEQB 72 reasonably provides definitions which are necessary to understand the precise meaning of terms used in the rules. The repetition of statutory definitions in MEQB 72B., C., F., G., I., J., L., and N. is crucial for that same purpose and therefore not a violation of statutory intent to eliminate duplication of statutory language. (MEQB Ex. 2, pp. 3-4) All definitions proposed in MEQB 72 are considered to be reasonable and necessary for the reasons set forth in the Statement of Need or in the following discussions and are adopted as proposed or as amended herein.

14. The definition of "file" in MEQB 72D. is reasonable in its requirement that 40 copies of a document or application be delivered to the office of the chairman of the MEQB. Approximately that number of copies are necessary for distribution to Board member agencies and staff for review to determine the application's completeness prior to Board acceptance of the application. It is noted that the only documents to be "filed" with the Board are applications for a construction permit (under MEQB 73) or for a certificate of site compatibility (under MEQB 74). Suggestions for consideration of alternative route proposals or site proposals under 73 F. and 74 F., need only be "presented" and not "filed". (Tr. I, pp. 52-55)

15. MEQB 72 E. differs from the statutory definition of "high voltage transmission line" (HVTL) in that the definition does not specify that the Board may exempt certain lines from the routing process set forth in the Rules. (See Minn. Stat §116C.57, subd. 5) MP&L feels the statutory definition should be used. (Com. 1, p. 1) The Examiner disagreed and so does the Board. Specification that the Board may exempt certain lines from the normal routing process does not add anything to the definition of HVTL. Since a purpose of administrative rules is to clarify statutes, it is proper and reasonable that the exemptory language be deleted in the rule and that specification be given to the term "associated facilities."

16. There is little concern that MEQB 72G. adequately defines "large electric power generating plant" (LEPGP). The absence of an expanded definition of "associated facilities" as such term appears in the definition of LEPGP is reasonable in light of the apparent general understanding of what constitutes such associated facilities for an LEPGP. (Tr. I, pp. 55-58; Tr. X, pp. 52-53)

17. The Power Plant Siting Advisory Committee pointed out that the definition of "public advisor" contained in MEQB 72J would better provide for broad spectrum citizen participation and also reflect the language of the Power Plant Siting Act by changing "and" to "or" in the phrases "affected and interested citizens" and "site and route designation processes". (pub. Ex. 6, p. 1; Com. 3, p. 1) Such changes are reasonable and necessary. (HE Report #15, p. 7)

18. MEQB 73 Procedure for Designation of a Route and Issuance of a Construction Permit.

This rule establishes the procedure for routing high voltage transmission lines. It specifies what information must be contained in a utility's application and gives the Board the option of rejecting an application when the informational requirements are not fulfilled. It provides for route evaluation committees, the public advisor and information meetings. It specifies how routes may be pro-

posed. It provides for public hearings and the criteria for routing high voltage transmission lines. And finally, it specifies how the Board makes its decision and provides a means by which the Board can review a utility's plans before construction to ensure that these plans are in compliance with the construction permit. (MEQB Ex. 3, pp 4-5)

19. The Power Plant Siting Act (Minn. Stat. §116C.57 Subd. 2) directs the Board to prescribe the form and manner in which a utility must apply to the Board for a construction permit for a high voltage transmission line. With some minor changes, parts A and B of proposed rule MEQB 73 accomplish this. (MEQB Ex. 3, p. 5)

20. MEQB 73A. Content of an Application for a Construction Permit

The first change is in the language of paragraph A in rule MEQB 73 and it is of a very minor, technical nature. The parenthetical reference to the Minnesota Environmental Policy Act rules should be changed from "(Minn. Reg. MEQB 30D)" to "(Environmental Review Program Rules)" to account for the possibility that the reference may change.

21. No comments or criticisms were offered regarding MEQB 73A.1, 3, 4, 5, or 7. These items are found to be reasonable and necessary for the Board to evaluate applications as it is charged to do in the Power Plant Siting Act. (HE Report #19, p. 10)

22. It is recognized that the "two proposed routes for the proposed transmission line" which is required by MEQB 73A.2 may involve some overlap of the routes. The Board may determine that an application is deficient under MEQB 73 B if the two routes proposed in that application do not represent clearly different alternatives. (HE Report #19, p. 10; Tr. I, pp. 63-65) Considering Staff testimony and the above discussion, MEQB 73A.2 is found to be reasonable and necessary.

23. In response to a question raised by the Hearing Examiner regarding the Board's authority to require an applicant to specify "the procedures and practices proposed for the ultimate abandonment and restoration of the right-of-way" under MEQB 73 A.6., Staff submitted a memorandum to the Hearing Examiner indicating the sources of such authority. (Tr. I, p. 94; Com. 6) Although no specific authority is granted the Board for the stated requirement, Minn. Stat. §116C.57, Sub. 2, provides the Board with authority to issue a permit with "any appropriate conditions." Other statutory citations noted in Comment 6, and the fact that Minn. Rule 6 MCAR §3.030 specifically requires review of the conclusion of operation of a proposed project in an EIS substantiates the authority and reasonableness of this provision. (HE Report #19 pp. 10-11) For the reasons stated herein MEQB 73A.6 is found to be reasonable and necessary.

24. The requirement that a cost analysis of each route be contained in the application, as in MEQB 73A.8, is specifically supported as a reasonable means of allowing the Board to assess the direct and indirect economic impact of a project as mandated by Minn. Stat. §116C.57, Subd. 4(5). (Tr. I, pp. 96-97; HE Report #19, p. 11) MEQB 73A.8 is therefore found to be reasonable and necessary.

25. The Minnesota/Wisconsin Power Suppliers Group raised issue with the language contained in MEQB 73A.9 in its prepared statement (Public Exhibit #1). The language of MEQB 73A.9 as proposed by the Board requires an applicant for a construction permit to include its certificate of need application in its application for a construction permit. According to the testimony presented by Mr. Wietecki on behalf of the group of utilities, "Inclusion of a Certificate of Need Application several hundred pages long with every route application would be an unnecessary waste of paper and expense. . ."

Staff testified that the intent of the rule is only "to establish a logical sequence in the permitting process which is necessary for the Board's unencumbered administration of its official duties ..." (MEQB Exhibit 2), and that the language may need some adjustment. The language change recommended by Mr. Wietecki does satisfy the problem. (Com. 17, p. 8; HE Report #19, pp 11-12) Rule MEQB 73A.9 is found to be reasonable and necessary if amended to read:

"9. The certificate of need ~~application-submitted to-the-director-of-the-Minnesota-Energy-Agency~~, if available, or an acknowledgement of the acceptance of a substantially complete certificate of need application by the Minnesota Energy Agency, if a certificate of need is required by Minn. Stat. §116H."

26. MEQB 73.A.10 is necessary to identify the owner(s) of the proposed transmission line and identify those designated to act on behalf of the owner(s) so the Board and the public know where to direct communications. (MEQB 2, p. 6). Staff and the Hearing Examiner agreed that the amendment offered by the Minnesota/Wisconsin Power Suppliers Group more clearly accomplishes that purpose. (Com. 17, p. 9; HE Report #19, p. 11) MEQB 73A.10 is found to be reasonable and necessary if amended to read:

"10. A statement of proposed ownership of the ~~utility~~ facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of ~~the-owners~~ those planning to participate in the project."

27. The Board's Power Plant Siting Advisory Committee, in a memo to the Hearing Examiner which incorporated its recommended changes to the Board's proposed rules (Public Exhibit #6), suggested that an additional information item be specified under MEQB 73A. The committee suggests that the Board require the applicant to provide "An analysis and report on the effect of the proposed route on land use plans and zoning regulations of counties,

municipalities, and townships affected by the route." The committee properly expressed concern that neglect of local planning efforts, which are undertaken with "substantial" citizen input and at "significant" cost, would have the effect of endangering the effectiveness of government at the local level.

The committee's point is well made. However, the Board's proposed rules already require the applicant to provide this information; though it is not specifically noted under MEQB 73A. Rule MEQB 73A requires the applicant to provide "any information necessary to make the evaluation required by MEQB 73H..." in its application. Rule MEQB 73H. 2.B.(1) requires an evaluation of "existing land use or management plans." This should satisfy the committee's concern. (Com. 17, pp. 9-10)

28. MEQB 73B. Acceptance of a Construction Permit Application. Several issues were raised by the Minnesota/Wisconsin Power Suppliers Group and Mr. Anderson, testifying on behalf of Minnesota Power and Light Company, concerning part B of rule MEQB 73. Mr. Wietecki and Mr. Anderson testified that there should be a test upon which the Board must base its decision to either accept or reject an application, and that test should be "substantial compliance" with the content requirements specified in MEQB 73A. According to Mr. Wietecki this test is common and "protects the applicant from having an application rejected and the project de-

layed for deficiencies of which the applicant had no prior knowledge."

Mr. Wietecki also suggested that in the event the Board does not act on an application within 50 days of filing, there should be some language in MEQB 73B which would provide for automatic acceptance of the application and start the one year time period within which the Board must issue a construction permit. Mr. Wietecki stated that if the Board fails to act within 50 days the only recourse available to the applicant in the rules proposed by the Board is to obtain a court order compelling the Board to either accept or reject the application.

Mr. Wietecki and Mr. Anderson both testified that there is a need to clarify what types of additional information the Board can require the applicant to submit after the Board accepts an application. According to Mr. Wietecki and Mr. Anderson additional information requested by the Board should be "relevant" and either in the possession of the utility or reasonably accessible to the utility. In addition, Mr. Anderson suggested that the 50 day time limit for Board acceptance of an application is too long and should be shortened to "30 days in advance of the next regularly scheduled Board meeting," and that a procedure should be established for Board reconsideration of rejected applications. (Public Ex. 1; Com. 1)

29. Staff testified that it did not object to the suggestion that an application be considered automatically accepted if the Board fails to act within 50 days after receipt of the application, stating that the proposed rule presumes that the Board will act within 50 days, that the Board will have the option during that time to reject an inadequate application, and that there is no other reason the staff could think of that could justify any other kind of delay in the Board's acceptance of an application. (Com. 17, p. 11) The Board agrees and finds accordingly.

30. Staff did not object to the suggestion that additional information requested by the Board after it accepts an application be relevant. It was Staff's opinion that the insertion of the word "relevant" would in no way limit the Board's ability to undertake its responsibilities. (Com. 17, p. 11) The Board agrees and finds accordingly.

31. Staff did not object to the two suggestions offered by Mr. Anderson relating to changing the 50 day limit for Board action on an application to a shorter period, and providing for Board reconsideration of rejected applications. Staff stated that the purpose of prescribing a 50 day time period for Board review of an application for adequacy was only to ensure that the Board had at least three weeks for such review before its next regularly scheduled monthly meeting. The 50 day period specified in the proposed rules guarantees adequate review time regardless of what point

in time inbetween monthly Board meetings the application is filed with the chairman. However, with a slight modification, the language suggested by Mr. Anderson goes a step further in guaranteeing adequate review time for the Board and should satisfy the concern expressed by Mr. Wietecki (Tr. VI, pp. 60-61) that the Board could not accept an application submitted less than 30 days before the Board meeting. It is specifically found that the amended language of MEQB 73B that follows does not preclude the Board from accepting an application which is submitted to the Board less than 30 days before its next meeting. Staff agreed with Mr. Anderson that it is necessary to provide a mechanism for reconsideration of rejected applications, provided the amended application is available for Board review 10 days prior to its next meeting. (Com. 17, pp. 11-12). Here again, the Board agrees with Staff and finds accordingly.

32. Concerning the other issues raised by Mr. Wietecki or Mr. Anderson, Staff agreed that a test is necessary to judge the adequacy of an application but declared in the Statement of Need and Evidence that the application content requirements listed under MEQB 73A are intended to serve as the "measure of adequacy of the application," reflecting Staff's view that the proposed rules already provide the test. Staff also took issue with the suggestion that any additional information which the Board requires the utility to provide subsequent to acceptance of an ap-

plication must either be in the possession of the applicant or reasonably accessible to the applicant.

Staff expressed the view that "substantial compliance" and "compliance" mean the same thing and that the Board rightfully has the discretion to determine what compliance with the application content requirements is. With respect to the issue of what additional information the Board can require the applicant to provide, Staff's view was that if the Board determines that it needs additional information to fulfill its statutory obligations, then it is immaterial whether the applicant has it in its possession or has reasonable access to it. The Hearing Examiner found similarily. (Tr. I, pp. 122-5; Com. 17, p. 1; HE Report #26, p. 17)

33. These arguments raised some basic questions: What does "substantial compliance" mean and will inclusion of such language protect the applicant as alleged by Mr. Wietecki? Is it possible to protect the applicant from unnecessary delays or costly searches for irrelevant information, without unduly restricting the Board in its review of projects. Or, in other words, how much discretion should the Board have in these matters?

Webster's Seventh Collegiate Dictionary gives five definitions of the word "substantial" ranging from "full" to "in the main." Lacking a concrete definition of the word substantial the Board can interpret the word as it sees fit, rendering the question of its inclusion in these rules academic.

34. The answer to the other question is really the crux of the matter and has broad implications. Can the applicant, and ultimately the consumer, be protected from unnecessary and costly delay? At what point does necessary environmental review end and costly delay begin? It is clear from the language of the Power Plant Siting Act that the Legislature intended the Board to have broad discretionary powers which must be exercised in the Board's efforts to treat competing interests fairly in carrying out its diverse statutory responsibilities. The Legislature has also given the Board rule-making authority, presumably so that the Board can state to the greatest possible extent, and ahead of time for the sake of any potentially affected party or person, what its procedures and policies will be in its efforts to fulfill the intent of the Power Plant Siting Act. The promulgation of rules will necessarily have a diminutive effect on the scope of the Board's discretion, and rightly so, but only to the extent that the matters before the Board are predictable.

The only specific directive given the Board by the Legislature on this matter is that the Board is to prescribe by rule the form and manner in which a utility must apply to the Board. No argument was offered which justifies a further limitation in the Board's discretion with respect to what constitutes compliance with application content requirements or what additional information the Board can require the applicant to provide beyond that proposed by the Board.

35. As found by the Hearing Examiner, the Board finds "(t)he rule is necessary to establish a procedure by which the Board may either accept or reject an application for a construction permit. It is reasonable for the Board to be able to reject an application which is deficient in information in order to ensure that the Board and the public have sufficient information with which to complete their study and evaluation within the one-year statutory time limit imposed by the legislature." (HE Report #26, pp. 15-16)

36. Considering findings 28-35, rule MEQB 73B is found to be reasonable and necessary if amended to read:

"B. Acceptance of a Construction Permit Application. The Board shall either accept or reject an application for a construction permit ~~no later than 50 days after the application was filed with the Board.~~ at its first regularly scheduled meeting after the application is filed with the Board, provided the application is filed at least 30 days prior to that meeting. If the Board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the Board 10 days in advance of a regularly scheduled meeting, the Board shall reconsider the application at that meeting. If the Board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the application, the

Board shall initiate the study, public participation and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information which the Board deems necessary to process the application."

37. MEQB 73C. Route Evaluation Committee.

Significant discussion and debate took place during the course of the hearings over whether the Board should be required to appoint a route evaluation committee for every route application. (See Tr. I, pp 16-17, 31, 97-99; Tr. II, p. 12; Tr. VII, PP. 11, 25, 37-43, 58; Tr. VIII pp. 12-13; Tr. x, pp. 17-18; Tr. XI, pp. 10-11; Pub. Ex. 6, pp. 1-2; Pub. Ex. 23, pp. 10-11; Com. 3; Com. 9; Com. 11, pp. 1-2; Com. 19, p. 1; Com. 24, p. 5, Com. 25, p. 2; Com. 26, pp. 3-4; see especially, Tr. VII, p. 38.)

Proposed Rule MEQB 73C states that the Board "may" appoint a committee. Staff testified that the statute is permissive on this point and that there may be some instances where such a committee would not be necessary, or where there would not be enough interest in the project to generate membership for the committee. Staff cited very short transmission lines or transmission lines on public lands as examples. Staff stated in its Statement of Need and Evidence, however, that the Board would have to appoint a route evaluation commitee for nearly every project to be consistent with the statutory mandate that the Board adopt broad spectrum citizen participation as a principle of operation.

The Power Plant Siting Advisory Committee, MPCA staff and others recommended that the word "may" be changed to "shall" to provide a much stronger directive to the Board to appoint a route evaluation committee for each application.

38. In view of the concern expressed by the Power Plant Siting Advisory Committee, the MPCA staff and others, Staff offered to suggest an amendment to the language of MEQB 73C, as proposed. Staff later submitted a memo to the Hearing Examiner stating that after thorough consideration of the question, it did not object to the proposal and rationale presented by the Power Plant Siting Advisory Committee and that it was hard pressed to come up with an example where a route evaluation committee would not be a benefit to the route designation process. Staff also suggested some additional language intended to provide basic guidelines for committee operation. According to the Hearing Examiner "Such a statement in the rules appears to be reasonable and useful to facilitate the committee's understanding of its responsibilities and goals so that it may set to its tasks quickly". (HE Report #27, p. 19) The Board agrees and finds accordingly.

39. Other suggestions were made to amend rule MEQB 73C such as allowing for committee appointment before receipt of an application or allowing for the appointment of members after the committee has been appointed to ensure "adequate local representation." (HE Report #28, pp. 19-20.) The Board

finds that while these ideas have merit for the reasons given, it is not necessary for the Board to adopt such an amendment to the rule because the Board is able to do as the language suggests without the rule. The Board does, however, wish to reaffirm its commitment to broad spectrum citizen participation. Rule MEQB 73C should be amended to read:

> "C. Route Evaluation Committee. Upon acceptance of an application for a construction permit the Board ~~may~~ shall appoint a route evaluation committee consistent with the Act. The Board shall provide guidance to the committee in the form of a charge."

40. MEQB 73D. Public Advisor

Substantial testimony was also received on MEQB 73D. General support for the idea of a public advisor was expressed throughout the hearing and in comments. (See for example, Tr. II, p. 104; Pub. Ex. 23, p. 11) The rule as proposed follows basically from the directive given in the Power Plant Siting Act and does not expand on specific responsibilities and duties to be carried out by the public advisor. It is reasonable and necessary to inform the public of the existence, purpose and limitations of the position. Comments, criticisms and suggestions addressing this rule dealt with questions concerning the extent to which the rules should define the public advisor's duties, how active the position should be, and to whom the public advisor should report.

41. The Power Plant Siting Advisory Committee recommended that the language proposed by the Board be deleted and new language be inserted which provides very specific responsibilities for the public advisor. Some of these specific responsibilities include: involvement in the certificate of need stage; that the public advisor actively seek public involvement; that the public advisor provide access to resources useful in presenting proposals and comments; that the public advisor be available locally, etc. (Pub. Ex. 6, p.2) The Minnesota Public Interest Research Group (MPIRG) also made suggestions which would guarantee active involvement by the public advisor. (Pub. Ex. 24, pp.2-3) Staff argued against inclusion in the rule of specific duties and testified that the Board, its chairman and the public advisor all should be able to exercise discretion in determining specific responsibilities of the public advisor while the position is new.

42. The Board finds that while some of the specific responsibilities suggested during the hearings for the public advisor may have merit, such as the public advisor's active involvement <u>early</u> in the routing process before avenues of input are closed, no one showed a need for inclusion of language providing specific duties of the public advisor. It should be noted, however, that rule MEQB 76A as amended herein (see finding #137) requires the Board to identify and describe the function of the public advisor in the notice of application which should guarantee early involvement of the public advisor in each route and site application process.

43. Some changes are in order, however. As pointed out by Senator Olhoft at the Alexandria hearing, some of the language intended to warn the public that the public advisor is not authorized to give legal advice may be construed to mean that the advice given by the public advisor will be of little value. While it is important to inform the public that the public advisor is not authorized to give legal advice as testified to by Staff, it is also important to state this in such a way so that the language does not discourage the public from using the public advisor to its advantage.

Language can also be added to this rule which will give the public a better idea of the function of the public advisor while not diminishing the flexibility of the position. (Com. 17) A clarified version of the language offered by Staff is found to be reasonable and necessary.

44. Rule MEQB 73D should be amended to read:

"D. Public Advisor. The public advisor shall be available to affected ~~and~~ or interested citizens to advise them on how to effectively participate in the route designation process. The public advisor's duties shall include providing advice on appropriate methods and techniques of public involvement in the transmission line routing process. However, ~~all persons given advice or aid in connection with participation in large electric power facility siting proceedings are hereby informed~~ that the public advisor is not authorized to give legal advice or advice which may affect the legal rights of the person being advised. ~~In no case~~

~~shall any person rely to his possible legal disadvantage on such advice or information."~~

45. MEQB 73E Information Meetings.

Proposed rule 73E provides that the Board hold at least one information meeting in each county in which a route is proposed to be located. The Board's authority to hold information meetings is clear (Minn. Stat. § 116C.59, subd. 1) but unspecific. As amended herein the rule is reasonable and necessary to fulfill the intent of the Power Plant Siting Act.

A concern expressed repeatedly during the hearings was that the Board should be required to hold two information meetings. MPIRG, the Power Plant Siting Advisory Committee and others expressed such concerns. The Power Plant Siting Advisory Committee also recommended that an information meeting be held in each county which is potentially impacted by the proposed transmission line. Other suggestions included very specific purposes to be accomplished at the Board's information meetings. (Pub. Ex. 6; p. 3; Pub. Ex. 17, p. 4; Tr. XI, pp. 51-56; Pub. Ex. 23, p. 11; Pub Ex. 17, p. 4; Com. 13, p. 2; Com. 25, pp. 3, 55; Com. 26, pp. 5-6)

46. As found by the Hearing Examiner, the suggestion by the Power Plant Siting Advisory Committee to hold information meetings in each county which is potentially impacted, is

"too broad." (HE Report #30, pp. 25-26) The many suggestions for a greater degree of specification of what should actually transpire at information meetings do little to guarantee a more effective information meeting and may even have the effect of limiting meetings to a specific structure which would not necessarily be conducive to the transfer of information. The Board is certainly able to carry out any of the suggestions with the rule as amended herein.

The question remains, however: Should the Board be required to hold two information meetings? The evidence seems to point to the conclusion that two information meetings as outlined generally in the staff's testimony and comments could be very useful and needed. (Tr. I, pp. 18,33; Tr. II, p. 81; Com. 17, p. 20)

47. Rule MEQB 73E should be amended to read:

"E. Information Meetings. The Board shall hold at least two information meetings as follows:

1. After acceptance of an application for a construction permit the Board shall hold at least one information meeting in the area affected by the applicant's proposal to explain the route designation process and to respond to questions raised by the public.

2. Prior to the public hearings held to consider the routes approved for consideration by the Board, the Board shall hold ~~at least one~~ an information meeting in each county through which a route is proposed to be located to explain the route designation process, present major issues and alternatives under consideration by the Board and respond to questions raised by the public."

48. MEQB 73F. Route Proposals. This rule outlines the Board's policy for determining which route proposals will be considered at the public hearings. The Power Plant Siting Act requires the Board to consider the routes contained in an application for a construction permit and allows the Board to consider any other route it deems necessary, provided that such alternate route was proposed consistent with a rule specifying form, content and timeliness of such proposals and provided that the Board identifies the route prior to the public hearings held thereon. Rule MEQB 73F as amended herein is reasonable and necessary to give effect to that provision of the Power Plant Siting Act.

49. The most significant issue raised concerning rule MEQB 73F during the hearing was whether the 60 day time limit for route proposals submitted pursuant to MEQB 73F.2 was reasonable. Several persons argued that the 60 day time limit was not enough time to prepare a route proposal. Staff argued that in effect, the 60 day time limit is a preliminary deadline when the 35 day proposal review period is taken into consideration, and that the information included in such proposals is necessary early on in the process for preparation of the draft environmental impact statement, for public review and for the citizen's route evaluation committee. The route evaluation committee and the public need the information which is required to accompany route proposals at the earliest possible

date in order to make their evaluations prior to the hearing and thereby ensure effective participation at the hearing. The information is also necessary early on in the preparation of the draft environmental impact statement which must be prepared prior to the public hearings and must consider all routes approved by the Board for consideration at the hearing. (Com. 17, p. 21) (The time constraints have become even more stringent since the close of the hearing due to a rule recently adopted by the Chief Hearing Examiner requiring the approved final EIS to be included as part of the hearing record.)

50. As pointed out by the Minnesota Energy Agency (Com. 22), there is an inconsistency between rules MEQB 73F and MEQB 74F for which there is no apparent explanation. For the reasons stated by the Energy Agency the last sentence in MEQB 73F should be amended as follows:

> "If the chairman of the Board or his designee then determines that the proposal is not adequately prepared, the proposer may appeal to the Board at its next meeting to determine the adequacy of the proposal."

51. No one endeavored to show that the time period for route proposals under MEQB 73F.2 could be extended without jeopardizing the elements of the process referred to

above. However, an inconsistency in the rule pointed out by the Hearing Examiner in his report justifies an extension of the proposal deadline from 60 to 70 days to allow the same amount of time for route proposers under MEQB 73F.2 as for similar proposals from the route evaluation committee. Extending the proposal deadline to 70 days would have the effect of potentially affording 105 days to route proposers under MEQB 73F.2 when the 35 day review period is accounted for. This 35 day review period is not extended to the route evaluation committee which is allowed 105 days for its proposals. (HE Report #31, p. 30) MEQB 73F.2.c should be amended to read:

> "c. The proposal must be presented to the chariman of the Board or his designee within ~~60~~ 70 days of acceptance of the application by the Board."

52. Mr. Herman criticized MEQB 73F for its requirement that all route proposers make an affirmative presentation of facts at the hearing in support of their proposals. Mr. Herman characterized this requirement as "inappropriate" and "a total shift of responsibility", stating "the board is affirmatively required to evaluate all reasonable alternatives pursuant to the Environmental Policy Act and the Siting Law." (Com. 26, p. 8)

53. Obviously, the rule as proposed does not relieve the Board of its responsibility to evaluate alternatives. The rule does require any proposer of an alternative to provide

the Board with facts which the proposer believes to be in support of the proposal and which could serve as a basis for making a determination on that proposal. The Board is empowered in the Power Plant Siting Act to prescribe the "form, content and timeliness" of alternative proposals. In empowering the Board to prescribe the form, content and timeliness of alternative proposals, the Legislature recognized that the Board has limited time and resources to carry out its responsibilities. In rule MEQB 73F the Board is saying that a proposer's responsibilities do not end with delivering the proposal to the Board, and that the proposer, by definition, has "affirmative" responsibilities to substantiate the proposal. (MEQB Ex. 2, p. 8) This approach is consistent with the legislative mandate to "locate large electric power facilities in an orderly manner" and was affirmed by Senator Wayne Olhoft. Senator Olhoft made the following statement at the hearing: "Overall comment on proposed rule 73F and 74F, I believe it is an excellent suggestion to require an affirmative presentation on any alternatives that are proposed. I like that part of the rule being proposed." (Tr. VII, p. 60) (It should also be noted that rules recently adopted by the Chief Hearing Examiner which govern the conduct of the hearings held to consider sites and routes require any route or site proposer to prove the facts at issue by a preponderance of the evidence. HE 413E.5)

54. MEQB 73G. Public Hearings. No significant issue was raised concerning proposed rule MEQB 73G. The Statement of Need properly justified its need and reasonableness. (MEQB Ex. 2, p. 9; HE Report #33, p. 32; Com. 17, p. 21)

55. MEQB 73H. Criteria for the Evaluation of Routes. Proposed rule MEQB 73H specifies the criteria for the evaluation of routes. As proposed, it is divided into two parts. Part 1 spells out the lands which have been designated for protection, and because of strong language in the enabling legislation or due to prohibitory language in subsequent rules or regulations, cannot be used for transmission line purposes. Part 2 lists the considerations which must be made by the Board in designating a route and issuing a construction permit. Part 2 is divided into two parts. Part "a" categorizes all possible impacts which could serve to differentiate between alternate routes into four broad categories; each category intended to be capable of analysis independently from the others. Part "b" lists methods to mitigate adverse impacts that go beyond and further differentiate the categories listed in subparagraph a. As described by Staff the two sections of part 2 in rule MEQB 73H contemplate a two step process in the analysis of transmission line impacts; first the general identification of impacts, then the application of general methods known to be capable of further reducing impacts.

MEQB 73H is supported by an affirmative presentation of facts in the record and as amended herein is found to be reasonable and necessary.

56. The Examiner questioned the Board justification for different language and evaluative techniques in the criteria for routes (MEQB 73H) and sites (MEQB 74H). (See Tr. II, p. 16-17; Com. 4, p. 1) He stated that the concerns and policies expressed by the Legislature in the Power Plant Siting Act are the same for both sites and routes. The Examiner feels that using the same or similar evaluative techniques for both processes would serve to minimize confusion. (HE Report #35, pp. 36-37)

The criteria proposed for the route process provide guidance in identifying, categorizing and minimizing the potential for adverse environmental impacts of proposed routes. The Statement of Need and Evidence submitted by the Staff explains, "The direction provided in this rule is a duplication of the policy statement prescribed in the Power Plant Siting Act. The Board is not able to expand upon, nor make a statement more specific in this regard because of the unique linear nature of the impacts caused by a transmission line. The Board is recognizing the fact, reaffirmed by the Legislature, that there is no specific land use rule which can be applied uniformly throughout the state that would always result in the route with the least adverse impact." (Statement of Need and Evidence, pp. 9-10)

The Board believes that the "laundry list" approach of exclusion and avoidance areas is more appropriate for power plants than for transmission lines "because the power plants' impact on an area is much more severe." (Tr. II, p. 101) The Board does not believe that a separate organization of the routing and siting criteria will be confusing because members of the public would usually be involved in only ont type of application at a time. (Com. 13, pp. 6-7) The Board finds that the orgnaization of the criteria for the evaluation of routes and sites as amended herein, is reasonable and necessary."

57. Two significant issues were raised by the Power Plant Siting Advisory Committee concerning proposed rule MEQB 73H. The major thrust of the committee's recommendation is to invert the order of the two main sections of rule MEQB 73H, listing the "considerations for designating a route" section first and the "designated lands" section last. As was stated in the committee's report (Pub. Ex. 6) "We have listed at the outset in the rule what we feel to be the primary categories for consideration in the routing process." The committee's rationale has merit. It makes sense to first direct the public's attention toward the basic and most useful considerations that have to be made in designating a route. These considerations apply to nearly all land in the state. The designated lands section rightfully belongs at the end because it applies only to a very small, albeit special, portion of land within the state and these areas are generally small

parcels which should not pose significant constraints in routing transmission lines.

58. The other main point made by the committee concerns the treatment of the designated lands section. The committee proposes to maintain the language contained in paragraph H which excludes certain lands from transmission line uses, as proposed by the Board, but added language to add "wild" sections of state and national wild, scenic and recreational rivers. The committee also added language prohibiting the Board from routing transmission lines which are likely to impair public health.

The committee proposed substantial changes to subparagraph 1 under H. The language proposed by the committee has the effect of expanding the scope of protected land to include any lands set aside "for the benefit of present and future generations" and any "similar" public or private lands. According to testimony of the committee, this language provides a more flexible approach and affords local citizens input into the decision of which lands merit special protection.

The Power Plant Siting Advisory Committee also suggested that an additional sentence be added at the end of section MEQB 73H.1.a, to read, "The prioritizing of the above will be done in each case within the public process." The Committee felt that the proposed language would be "an excellent tool to allow local input to establish which of the... considerations were most important ..." It is not clear whether the proposed language would merely indicate

that no weighting is intended by the order of listed criteria, or whether the proposed language would require establishing a procedure to assign quantified weights to the criteria. The Board finds that it is unnecessary to clarify its intent that no weighting is implied by the order of listed criteria. The suggestion of a quantified weighting procedure raises several significant questions: who should be responsible for assigning weights to the criteria, how should weights be assigned, and at what point during the process should weights be assigned? Incorporating such a weighting procedure in the rules would be a substantial change from the rules as proposed that would require additional hearings. The Board finds that the proposed language is unnecessary and confusing.

59. Testimony in St. Paul established that the Legislature has given the Minnesota Department of Natural Resources rule-making authority for wild, scenic and recreational rivers. There is, therefore, no need for the Board to adopt such a rule when another agency has the authority already.

60. The recommendation from the committee to prohibit transmission lines which are "likely" to impair public health has some merit. However, similar language is included in the statute which requires the Board to investigate such possible effects as a matter of course. The committee did not demonstrate the need for such language in these rules.

61. The recommendation from the committee to change subparagraph 1 under H will likely cause the Board severe interpretational problems. The suggestion to include any lands designated

"for the benefit of present and future generations" is too vague as is the suggestion to also protect other "similar" public or private lands. It should be noted here, as pointed out by Staff, that with such broad language the committee is basically repeating the requirement for analysis specified under proposed rule MEQB 73H.2.

62. The Minnesota/Wisconsin Power Suppliers Group recommended changes for proposed rule MEQB 73H.1 have merit. Capitalization of "state and national parks and state scientific and natural areas" serves to more clearly state that these areas have been specifically identified and protected by action of federal or state government. Also, deletion of the words "set aside" and insertion of "designated for preservation" in that place more clearly states the reason for designation of these areas. Finally, deletion of the word "unusual" in proposed rule MEQB 73H.1.b is appropriate because of the uncertain meaning of the word as used in this rule.

63. Some minor changes are in order for proposed rule MEQB 73H.2. The Power Plant Siting Advisory Committee proposed that the words "Existing and projected" be removed from rule MEQB 73H.2.a(1), pointing out the inconsistency between that item and the others listed under subparagraph a, and relying on the word "potential" in subparagraph a to apply the meaning of existing and projected to all of the categories listed under subparagraph a. Also, the word "mitigate" in MEQB 73H.2.b should be changed to "minimize" as suggested by the committee and the Hearing Examiner for purposes of clarity. (Pub. Ex. 6; HE Report #36, p. 38)

64. Comments at the hearing indicated that it is desirable to add the greatest possible emphasis in the rules for the protection of agriculaural lands. (See, for example Tr. VII, pp. 82-83) These comments are supported by the statute and by the testimony of the Power Plant Siting Advisory Committee, Senator Olhoft (Tr. VII p. 99) and Representative Delbert Anderson (Tr. VII, p. 54). The committee proposed a modification of the language contained in MEQB 73H.2.b(3) which brings that rule in line with the language of the Power Plant Siting Act. The proposed modification calls out the Legislature's expressed purpose for inclusion of that consideration in Minn. Stat. §116C.57, Subd. 4; that purpose being the minimization of adverse impacts of transmission lines on agricultural lands.

65. According to the Hearing Examiner there is no statutory authority for the statement "economic considerations alone shall not justify approval of these designated lands" which appears at the end of MEQB 73H.1. (HE Report #37, p. 40)

66. The Board specifically finds that such language is authorized consistent with the intent of the Legislature to preserve the designated areas mentioned in MEQB 73H.1. It is further noted that the language refers only to the specified designated lands and that such lands comprise a very insignificant amount of land in the state. (Pub. Ex. 2) Contrary to the notion expressed by the Hearing Examiner the subject language does not deter or prevent

the Board from assessing direct and indirect economic impacts as required by the Power Plant Siting Act. Also, similar language appears in MEPA in a broad policy statement concerning permit issuance. (Minn. Stat. §116D.04, Subd. 6)

67. Rule MEQB 73H should be deleted and rewritten as follows:

"H. Criteria for the Evaluation of Routes. In selecting a route and issuing a construction permit, the Board shall seek to minimize adverse human and environmental impact, maximize the efficient use of resources, and ensure continuing electric power system reliability.

1. Considerations for the Designation of a Route and Issuance of a Construction Permit. The Board shall make an evaluation of the following considerations prior to issuance of a construction permit. In its evaluation of route alternatives, the Board shall consider the characteristics of a given geographical area, identify the potential impacts, and apply methods to minimize adverse impacts so that it may select a route with the least adverse impact.

a. Identification of Geographical Characteristics and Potential Impacts. The Board shall identify the geographical characteristics and potential impacts in the following categories:

(1) Human settlement, including development patterns;

(2) Economic operations, including agricultural, forestry, recreational and mining operations;

(3) The natural environment and public land, including natural areas, wildlife habitat, waters, recreational lands and lands of historical and/or cultural significance;

(4) Reliability, cost and accessibility.

b. Methods of Minimizing Impacts. In selecting a route with the least adverse impact, the Board shall make an evaluation of each of the following categories:

(1) Existing land use or management plans, and established methods of resource management;

(2) Routes along or sharing existing rights-of-way;

(3) Routes along survey and natural division lines and field boundaries so as to minimize interference with agricultural operations;

(4) Structures capable of expansion in transmission capacity through multiple circuiting or design modifications to accommodate future high voltage transmission lines; and

(5) Alternate structure types and technologies.

2. Designated Lands. Certain lands within the state have been designated for preservation by action of the state or federal government for the benefit of the people

and for future generations. No route shall be designated by the Board through State or National Wilderness Areas. No route shall be designated by the Board through State or National Parks and State Scientific and Natural Areas unless:

a. A route in a designated area would not materially damage or impair the purpose for which the land was designated; and

b. Circumstances exist in all alternate routes which would be more severely detrimental to humans or the environment if any alternate were selected.

In the event that such an area is approved, the Board may require the applicant to take measures to minimize impacts which adversely affect the unique character of designated lands. Economic considerations alone shall not justify approval of these designated lands. No route shall be designated by the Board in violation of federal or state statute or law, rule or regulation.

68. MEQB 73I. Board Action. No significant issues were raised with respect to this proposed rule. It was properly justified in the Statement of Need and Evidence.

69. MEQB 73J. Construction Plans. This rule requires the utility to provide the Board with its preliminary construction plans at least 60 days prior to construction, showing that the right-of-way of the transmision line is within the route designated by the Board. The rule allows the Board to suspend the time limit if it can be

shown that earlier construction will not preclude proper review of the plans. The utility may make changes in the preliminary plans without formality; it must simply notify the Board in writing.

70. Senator Wayne Olhoft questioned the Board's authority to propose the rule. Later, the Hearing Examiner concluded that the Board has no authority for the rule (HE Report #68, p. 63) In a comment to the Hearing Examiner, Mr. Anderson on behalf of MP&L, stated that he favored a 30 day limit over a 60 day limit. (Com. 1, p. 4) The question raised by Senator Olhoft was certainly appropriate; however, the conclusion drawn by the Hearing Examiner was premature and without factual support in the record.

71. The issue centers around the question of whether requiring preliminary plans 60 days prior to construction constitutes a "delay". The only testimony which addresses the question of delay was presented by Staff in response to a question by Senator Olhoft. The Senator asked:

> "In reference to proposed Rules 73J and 74J, where do you find your statutorial authority to require such potential delays?" (Tr. VII, p. 64)

Staff responded, in part:

> "What the Board is doing with this proposed rule is requiring the utility to tell the Board what its plans are. This is not a delay, because the utility does not go out and begin construction the day after the route is designated. They don't know what route they are going to get until the route is designated. So they begin with (the preparation of) preliminary plans, which are later finalized. Preliminary plans are delivered to the Board, so we know what they are doing... It's only a delay if the utility has preliminary plans less than 60 days before they are final (and are prepared to begin construction). But they can work that internally." (Tr. VII, p. 65)

Staff argued further in comments to the Hearing Examiner:

> "...designation of a route does not mean immediate construction, but rather, it marks the beginning of the utility's detailed right-of-way studies and the ultimate determination of a centerline. The Board in designating a route and issuing a construction permit has "acted" in the sense implied by the Power Plant Siting Act... the Board's responsibilities are not over on the day of construction permit issuance... certain matters are subject to interpretation and therefore require review by the Board prior to construction." (Com. 17 pp. 27-28); and finally

"The Board has the authority to designate a route of variable width; up to 1.25 miles. This leaves a distinct possibility of several different specific centerline combinations within a single route. The Board also has the authority (indeed, the duty) to specify the manner in which the right-of-way is prepared for construction. Lacking a specific centerline, this is a matter open to interpretation, and requires review by the Board's staff. (Com. 8)

According to Staff, in the only testimony that addressed the question, the preliminary plan requirement does not constitute a delay unless the utility is ready to construct less than 60 days after it has submitted its prelimilary plans to the Board. The fact of whether it is likely that a utility would be ready to construct in less than 60 days from the submission of preliminary plans to the Board is not a matter of record; though common sense indicates that the matter is certainly within the control of the utility. Mr. Anderson indicates a preference for 30 days, though it is difficult to ascertain the reason why. Staff went on to state that it believes the utility could "work that internally", apparently meaning that since the utility knows what its anticipated construction schedule will be, it should be able to plan to have preliminary plans available for Board review 60 days prior to that date.

72. Sorting through what has been established in the record and recognizing the concern expressed by Senator Olhoft, the Board finds that rule MEQB 73J is necessary for the Board to properly administer its official responsibilities under the Power Plant Siting Act and that the rule is authorized by the Act and that 60 days is a reasonable amount of time in advance of construction to receive the preliminary plans.

73. MEQB 74 Procedure for Designation of a Site and Issuance of a Certificate of Site Compatibility

This rule establishes the procedure for siting large electric power generating plants. It specifies what information must by contained in a utility's application and gives the Board the option of rejecting an application when the information requirements are not fulfilled. It provides for site

evaluation committees, the public advisor and information meetings. It specifies how sites may be proposed. It provides for public hearings and the criteria for siting large electric power generating plants. And finally, it specifies how the Board makes its decision and provides for the administration of a certificate of site compatibility. Rule MEQB 74 closely parallels rule MEQB 73 in form, and in many cases, in substance. Many points raised and discussed herein with respect to rule MEQB 73 apply equally to the corresponding section in rule MEQB 74. Rather than repeating the arguments contained in the discussion of these points, a reference will be made to the finding previously written.

74. The Power Plant Siting Act (Minn. Stat. § 116C.57, subd. 1) directs the Board to prescribe the form and manner in which a utility must apply to the Board for a certificate of site compatibility for a large electric power generating plant. Parts A and B of rule MEQB 74 as amended herein are reasonable and necessary to accomplish this.

75. Mr. John Herman suggested in a comment submitted to the Hearing Examiner that the Board require applications for certificates of site compatibility to be submitted in the form of a draft environmental impact statement, similar to what is required for applications for a construction permit. (Com. 26, pp. 16-17) Similarly, the Hearing

Examiner found this suggestion to be meritorous (HE Report #19, p. 19), stating that the reasonableness of such organization had been established in the Statement of Need and Evidence. The Board agrees; however, one small change is necessary. As it explained in the Statement of Need, the Board is requiring applications for a construction permit to be submitted in the form of a draft environmental impact statement because "such proposals to construct high voltage transmission lines often also require review under the Minnesota Environmental Policy Act. In such cases the EIS format is a consistent and well-established organization of information which would facilitate simultaneous review under the two laws." Following similar logic the application for a certificate of site compatibility should be submitted in the form of an "environmental report" as described in 6 MCAR § 3.030. The language of paragraph A under MEQB 74 should be amended to read:

> "A. Content of an Application for a Certificate of Site Compatiblity. The application for a certificate of site compatibility filed with the Board shall <u>be consistent in form with an environmental report as outlined in the Minnesota Environmental Quality Board's Environmental Review Program Rules and shall</u> contain any information necessary to make the evaluation required in MEQB 74H and the following:"

76. No comments were received regarding MEQB 74A.1, 2, 3, 4 and 6. These items are reasonable and necessary for the reasons given in the Statement of Need and Evidence (MEQB Ex. 2; HE Report #19, p. 10)

77. Issue surrounding MEQB 74A.5 is discussed in finding #23 of this report. It is found to be reasonable and necessary.

78. Issue surrounding MEQB 74A.7 is discussed in finding #24 of this report. It is found to be reasonable and necessary.

79. Discussion of the issue raised by the Minnesota/Wisconsin Power Suppliers Group concerning MEQB 74A.8 is found in finding #25 of this report. As amended below it is found to be reasonable and necessary.

> "8. The certificate of need ~~application submitted to the Minnesota Energy Agency~~, if available, or an acknowledgement of the acceptance of a substantially complete certificate of need application by the Minnesota Energy Agency, if a certificate of need is required by Minn. Stat. §116H;"

80. Finding #26 discusses a minor change which should be made to proposed rule MEQB 74A.9. As amended below it is found to be reasonable and necessary.

> "9. A statement of proposed ownership of the ~~utility~~ facility as of the day of filing and an affidavit authorizing the applicant to act on behald of ~~the owners~~ those planning to participate in the project."

81. The Hearing Examiner found it to be appropriate to require "a listing of the federal and state permits that may be required for the proposed site" as an informational requirement under MEQB 74A. The Board agrees and finds it reasonable and necessary. An item should be listed under MEQB 74 A as follows:

> "8. A listing of federal or state permits that may be required for each proposed site." (renumber remaining sections.)

82. The Minnesota/Wisconsin Power Suppliers Group pointed out some ambiguity as to whether the last paragraph of MEQB 74A "applies to new application(s) only or also to applications at some point in the regulatory process." They proposed the following change which clarifies the rule and which is found to be reasonable and necessary for that purpose.

> "After Board adoption and publication of its inventory of large electric power generating study areas the utility shall in all new applications filed with the Board either apply for sites located within the inventory..." (The remaining language stays the same.)

83. Findings #28-35 discuss the issues raised concerning proposed rule MEQB 74B. It is found to be reasonable and necessary as amended below:

"B. Acceptance of an Application For a Certificate of Site Compatibility. The Board shall either accept or reject an application for a certificate of site compatiblity ~~no later than 50 days after the application was filed with the Board~~ at its first regularly scheduled meeting after the application is filed with the Board, provided the application is filed at least 30 days prior to that meeting. If the Board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the Board 10 days in advance of a regularly scheduled meeting, the Board shall reconsider the application at that meeting. If the Board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the application, the Board shall initiate the study, public participation and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information which the Board deems necessary to process the application."

84. Little discussion took place regarding proposed rule MEQB 74C. However, Staff, in a memo to the Hearing Examiner, proposed some new language which is intended to provide basic guidelines for committee operation. As amended below MEQB 74C is found to be reasonable and necessary.

> "C. Site Evaluation Committee. Upon acceptance of an application for a certificate of site compatibility, the Board shall appoint a site evaluation committee consistent with the Act. The Board shall provide guidance to the committee in the form of a charge."

85. MEQB 74D. Public Advisor

Findings 40-43 discuss the issues involved with proposed rule MEQB 74D. It is found to be reasonable and necessary as amended below.

> "D. Public Advisor. The public advisor shall be available to affected ~~and~~ or interested citizens to advise them on how to effectively participate in the site designation process. The public advisor's duties shall include providing advice on appropriate methods and techniques of public involvement in the site designation process. However, ~~all persons given advice or aid in connection with participation in large electric power facilities siting proceedings are hereby informed that~~ the public advisor is not authorized to give legal advice or advice which may affect the legal rights of the person being advised. ~~In no case shall any person rely to his possible legal dis-~~

~~advantage-or-such-advice-or-information."~~

86. MEQB 74E. Information Meetings

Issues surrounding proposed rule MEQB 74E have been previoiusly discussed in findings 43 and 44. It is found to be reasonable and necessary as amended below.

"E. Information Meetings. The Board shall hold at least two information meetings as follows:

1. After acceptance of an application for a certificate of site compatiblity, the Board shall hold at least one information meeting in the area affected by the applicant's proposal to explain the site designation process and to respond to questions raised by the public.

2. Prior to the public hearings held to consider the sites approved for consideration by the Board, the Board shall hold ~~at-least-one~~ an information meeting in each county in which a site is proposed to be located to explain the site designation process, to present major issues and alternatives under consideration by the Board, and to respond to questions raised by the public."

87. MEQB 74F. Site Proposals.

Time constraints similar to those discussed in findings #48,49 and 51 exist during the siting process which make it impossible for the Board to allow as much time for site proposals as some suggest. Because the time constraints are similar, the Board finds it reasonable to make the same adjustment for site proposals as it did for route proposals. MEQB 74F is found to be reasonable and necessary with the following amendment.

"3. The proposal must be presented to the chairman of the Board or his designee within ~~60~~ 70 days of acceptance of the application by the Board... (The remaining language stays the same.)

88. MEQB 74G Public Hearings.

No significant issue was raised concerning this rule. The Statement of Need and Evidence properly justified its need and reasonableness.

89. MEQB 74H Criteria for the Evaluation of Sites.

Proposed rule MEQB 74H specifies the criteria for the evaluation of sites. As it is proposed, it is divided into three parts: exclusion criteria, avoidance criteria and selection criteria. This three-tiered approach has been carried over from rules previously adopted by the Board and is intended to provide a framework of policy direction and an organization of the important issues in siting power plants.

90. Representative Gaylin Den Ouden suggested that perhaps the order of the three main sections of rule MEQB 74H could have the effect of leading people to believe that the sections are organized according to their importance. In order to dispell that notion, and arrest any possible misunderstandings, the Board finds it reasonable and necessary to reorder the sections under H so that the site selection criteria appear first, followed by exclusion criteria and avoidance criteria. (However, all references to rules in this report will refer to the citations as proposed.)

91. MEQB 74H.1.a.

MEQB 74H.1.a, as amended herein, is reasonable and necessary as a simple and general statement that large electric power generating plants cannot be sited in violation of any law or rule and, as a corollary, the plant must be licensable to be located at a particular site. (HE Report #40, p. 43)

92. The MPCA staff suggested that rule MEQB 74H.1.a. be amended to read, in part: "No large electric power generating plant shall be sited ~~in violation~~ which may violate any federal or state statute or law, rule or regulation." It further recommended additional language which requires the utility to bear the burden of demonstrating that the proposed site will be in compliance.

Clearly, a utility must propose a site which it believes will be licensable and it must attempt to demonstrate the licensability of a proposed facility in order for a site to be designated. Whether or not a site is licensable is a matter that must be determined during the siting process and that determination cannot be made without the input of the permitting agencies, such as the MPCA. The Legislature recognized the need for participation of state agencies with permitting authority in the siting process in Minn. Stat. §116.61, Subd. 3 where it declared, "State agencies authorized to issue permits required for

construction of large electric power generating plants... shall participate in and present the position of the agency at public hearings...on specific site... designations of the Board, which position shall clearly state whether the site ... being considered for designation ... will be in compliance with state agency standards, regulations or policies." (Emphasis added)

The essence of this legislative language is that the Board, with substantial input from permitting agencies, must determine during the siting process whether a proposed site is licensable. Inclusion of the phrase "which may violate" in this rule would render the rule meaningless. Obviously from the Board's point of view, any proposed power plant is capable of violating the standards prescribed by the various permitting agencies. Since no utility would logically propose a site it believes to be unlicensable, the burden of demonstrating that a site is unlicensable unavoidably falls upon those agencies with permitting authority. It is then up to the Board to make a determination in light of the facts before it. (Com. 17, p. 33) MPCA staff made the point that it is difficult or impossible for MPCA to determine the licensability of a power plant before EIS preparation; therefore, by MPCA's own terms placing the same burden upon a utility would be unreasonable. (HE Report #40, pp. 43-44)

93. Testimony of Staff and the Minnesota/Wisconsin Power Suppliers Group, and a point raised by the Hearing Examiner indicates that for the sake of clarity, the second sentence of rule MEQB 74H.1.a should be amended to read:

> "... No ~~area~~ site shall be selected in which a large electric power generating plant ..."

94. MEQB 74 H.1.b. and MEQB 74H.2.a as amended herein are reasonable and necessary to recognize state or federal actions to designate and protect certain lands within the state. The observance of such laws is the result of the Board's interpretation of the use that can be made of lands within these designated areas together with an assessment of the potential for adverse environmental effects which a large electric power generating plant may create and which would be incompatible with the purpose for which the land was designated. Observance of such laws is reasonable and necessary. Using this line of reasoning, the Board is unable to extend extraordinary protection to farmland. The Board is simply unable to do so lacking a legal mandate; a mandate which was not provided by the 70th Legislature in its thorough review of the Power Plant Siting Act. The Board must, however, attempt to minimze the disruption to valuable and productive farmland each time it considers a site for a power plant pursuant to MEQB 74H.3.g.

As is implied by the headings, the difference between exclusion and avoidance criteria is a matter of degree. Exclusion criteria denote certain lands, which, if sanctioned for use as a power plant site, would constitute a violation of the law. The Board is making a similar statement by means of the power plant avoidance areas. However, the lands called out therein are not as important to the state, according to the law,as those specified in the exclusion section. Use of an avoidance area for a power plant site is possible if such use creates less adverse human and environmental impact than available alternate sites.

95. The suggestion to capitalize (with initial capitalization) the specific areas which must be excluded or avoided due to their designated status is reasonable and meritorious because it would clarify that the listed areas are specific, legally designated areas and not simply general areas about the state (e.g. wilderness areas vs. Wilderness Areas)

96. Two significant issues were raised concerning proposed rule MEQB 74H.1.b. The Minnesota/Wisconsin Power Suppliers Group testified that it is necessary for the "undeveloped" portion of a site to be excepted from the exclusion imposed in this rule. Both the Power Plant Siting Advisory Committee and the MPCA staff recommended that the Board be required to consider the effects of a proposed site on lands which are located outside of the site boundaries. Staff supported both recommendations. (Com. 17)

97. The record lacks a clear showing that there is a need for the suggestion made by the Minnesota/Wisconsin Power Suppliers Group. The utilities argue that "situations can and will arise where the physically developed portion of the site ... will be located well outside the land use district of the river but control of development within the land use district of the river will be required by the utility for security reasons and for compliance with state and federal regulations." And later, "... future residential development or other imcompatible land uses could occur between the plant and the river thus forcing the plant into noncompliance." It is unclear what is meant by "well outside the land use district of the river" in the utilities testimony but it is the Board's impression that if a facility is located "well outside" of the land use district of a river, the noncompliance problems alluded to by the utility should not be problems.

98. In light of the previous discussion, an adaptation of the concept suggested by the Power Plant Siting Advisory Committee and the MPCA staff is in order. The rule as proposed recognizes that certain lands designated for preservation should be protected from use as a power plant site; however, the rule ignores possible effects which may harm such areas even though a plant is located outside of their boundaries. These effects can and should be analyzed. Rule MEQB 74H.1.b. should be amended to read:

"b. The following land areas shall not be certified as a site for a large electric power generating plant except for use for water intake structures, or water pipelines: nNational pParks; nNational hHistoric sSites and lLandmarks; nNational hHistoric dDistricts; nNational wWildlife rRefuges; nNational mMonuments; nNational wWild, sScenic and rRecreational rRiverways; sState wWild, sScenic and rRecreational rRivers and their land use districts sState pParks; nNature eConservancy pPreserves; sState sScientific and nNatural aAreas; and sState and nNational wWilderness aAreas. If the Board includes any of these lands within a site, for use for water intake structures or water pipelines it may impose appropriate conditions in the certificate of site compatibility which protect these lands for the purpose for which they were designated. The Board shall also consider the adverse effects of proposed sites on these areas which are located wholly outside of the boundaries of these areas."

99. MEQB 74H.1.c.

In this rule the Board is recognizing that water is one of the most important resources necessary for power plant operation. A proven replenishable water supply is required to properly assess the possible impact of power plant water use on other water users and ultimately to protect the public from reduction or loss of energy production. The prohibition against ground water mining recognizes the

potential for severe environmental effects and that better uses of such water can be made. The rule is reasonable and necessary as proposed. (Com. 14, p. 2)

100. MEQB 74H.1.d.

No reasons were given by the Staff or any other person to support the inclusion of MEQB 74 H.1.d. in the rules. Since the rule "is simply restating the prohibition specified in state law," it does not appear to be necessary. (Com. 14, p. 2)

101. MEQB 74H.2.a.

As discussed in finding #93 of this report this section of the rule recognizes federal or state action which has been taken to designate certain lands within the state for preservation and is found to be reasonable and necessary. However, as discussed earlier the names of the disignated areas should be capitalized to help avoid confusion.

102. MEQB 74H.2.b.

As pointed out by the Hearing Examiner, the second sentence in this rule is ambiguous and should be deleted. The first sentence is reasonable and necessary to point out that access routes and storage facilities associated with power plants should not be located in avoidance areas. (HE Report #45, p. 50)

103. MEQB 74H.2.c.

The provisions of this rule are reasonable and necessary for the reasons indicated for MEQB 74H.1.c. in finding #98 of this report. The rule further formulates policy regarding the use of ground water. Here the Board is further discouraging the use of sites which may result in heavy reliance on ground water even though such use would not result in "material adverse effects on ground water in and adjacent to the area." (Com. 14, p. 2)

104. MEQB 74H.3. Site Selection Criteria

The selection criteria listed under MEQB 74H.3 are intended to serve as a guide in selecting sites for power plants. Each criterion is intended to represent a specific policy which, when taken alone, has merit. Taken as a whole, the criteria represent the trade-offs the Board must consider on a case by case basis. (Com. 14, p. 3; HE Report #48, p. 51) As proposed, or amended herein, the criteria listed under MEQB 74H.3 are found to be reasonable and necessary.

105. Some general criticism of MEQB 74H.3. noted, "There is very little allowance made for future technologies." (Tr. II, p. 88). Although no specific rule deals with "future technologies," the rule is found by the Board to be sufficiently broad to allow for consideration of any means to "minimize adverse human and environmental impact," whatever the existing technology. (HE Report #48, p. 51)

106. MEQB 74H.3.a

Selection criterion "a" points out the obvious fact that displacement of people is an adverse impact and the Board must attempt to minimize such displacement. There were no criticisms of the rule. (Com. 14, p. 3; HE Report #49, p. 51)

107. MEQB 74H.3.b

Selection criterion "b" recognizes that a power plant site has adverse effects on people beyond displacement. A power plant location near a community will cause visual impacts at relatively great distances and audible impacts to local residents; impacts which in some cases will continue for the life of the facility. Here the Board is seeking to minimize these types of impacts. Construction and operation of a large power plant will, at least temporarily, bring many people into an area and pose a strain on the institutions designed to serve the community. A site could also possibly require the removal of an institution. In some cases, such as a cemetery, removal could have very severe impacts. This criterion emphasizes the importance of communities and their institutions and requires the Board to consider whether local institutions such as hospitals, schools and churches are capable of handling a sudden influx of people.

108. MEQB 74H.3.c

Criterion "c" was originally proposed by the Minnesota Department of Health and recognizes that even though there are standards for the safe operation of a power plant designed to protect human health and welfare, new studies

constantly increase our knowledge and may raise serious issues before appropriate standards can be promulgated. The Board is required to make this consideration in Minn. Stat. § 116C.57, Subd. 4(1)

109. MEQB 74H.3.d.

Site selection criterion "d" requires the Board to attempt to avoid the major alteration of any aspects of the natural environment which are considered "rare, unique or of unusual importance." Human aesthetic perceptions and the critical balance of nature are eroded by the destruction of rare, unique or unusual environmental objects. (Com. 14, p. 4; HE Report #52, p. 52)

110. MEQB 74H.3.e and f.

No comments or criticisms were proferred regarding MEQB 74H.3.e. or f. Both of these provisions were supported in the testimony of the Staff. (Com. 14, p. 4)

111. MEQB 74 H.3.g.

This rule was proposed consistent with the legislative mandate that site location allow for "the efficient use of resources." Farmland, mineral lands and lands managed for timber production are examples of the types of lands referred to in this criterion. There were several suggestions to tailor this criterion more to suit agricultural interests such as adding the word "agricultural" to the phrase "valuable and productive." As found by the Hearing Examiner, inclusion of such language would

restrict the rule to farmland and exclude mineral and timber lands. (Tr. VI, p. 20) The Board verifies Staff's acknowledgement that "farmland is certainly one of the major concerns in siting and routing (Tr. 111, p. 20), but cannot extend that concern to the exclusion of other valuable and productive uses of land within the state. However, specific mention of several important land uses as examples does serve to clarify the rule and should be added for that reason. The rule is reasonable and necessary if amended as follows:

> "g. Preferred sites minimize the removal of valuable and productive ~~land~~ agricultural, forestry, or mineral land from ~~other necessary~~ their uses."

112. MEQB 74H.3.h.

Criterion "h" is yet another policy statement which expresses concern over water use by power plants. It recognizes that there are different interests and priorities in competition for Minnesota's water resources. Examples are: farming (for irrigation), human consumption, mining, recreation, wildlife, logging and milling, and other industrial uses. This rule requires the Board to inspect the use being made of the water resources intended to be used for power plant operation at each proposed site and

attempt to choose a site which minimizes conflicts between users. (Com. 14, p. 4) Implicit in this discussion is that water consumption by power plants be minimized. The rule is reasonable and necessary and was not criticized during the hearing.

113. MEQB 74H.3.i

This rule is intended to inject into the site selection process a recognition of potential hazards which may result from a power plant accident. It recognizes that the materials or technologies necessary for plant operation and the products produced by a plant, if exposed due to an accident, can be harmful to people or the natural environment. Sites can be selected which inherently possess less danger due to accidents. As acknowledged by Staff, the Power Plant Siting Advisory Committee suggestion to amend the rule more closely conveys the intent of the criterion. It should be amended to read:

> "i. Preferred sites minimize potential accident hazards and possible related adverse effects with respect to geology. (Com. 17, p. 35)

114. MEQB 74H.3.j.

Criterion "j" is proposed consistent with the legislative mandate requiring the Board to promote the efficient use of resources. Power plants consume a considerable amount of energy to produce energy. Current and developing technologies provide for the use of waste energy, and the Board must explore the possibility of such use on a case by case basis (Com. 14, p. 5)

115. MEQB 74H.3.k.

This criterion is reasonable and necessary if amended to read:

"k. Preferred sites ~~are-located-near~~ minimize the distance to large load centers."

Discussion was heard on all sides of this issue. The Power Plant Siting Advisory Committee and the MPCA staff suggested the deletion of MEQB 74H.3.k. The committee's view is that deletion of site selection criterion k would have the effect of affording the Board greater flexibility. (Pub. Ex. 6, p. 7) The MPCA staff pointed out that areas near large load centers are characteristically those areas where "major" environmental quality compliance problems exist. (Pub. Ex. 23, p. 19)

Staff supported the rule stating, "... that large load centers are the source of much of the demand for energy and are often capable of providing a site location which will allow for the minimization of many of the other criteria." (Com. 14, p. 5) CO-REG asserted that farm lands should not be used for plant sites and that plant sites near load centers would reduce the impact of transmission lines. (Tr VI, pp. 12, 27, 47; Public Exs. 7-16) The same position was taken by MPIRG and others (Pub. Ex. 24, p. 5; Tr. VIII, p. 59; Tr. X, p. 67; Com. 19, p. 2; Com. 20)

116. The criteria listed under MEQB 74H.3 are intended to represent specific policies which when considered in a vacuum have merit. Taken as a whole, the criteria represent the trade-offs that the Board must consider on a case-by-case basis. Reasonable arguments have been offered on both sides of this question which in a given instance may or may not have merit when all factors are considered. However, no one showed that the basic concept underlying criterion "j" was invalid. The criterion should be left included in the rule. However, as pointed out by the Hearing Examiner the meaning of the criterion is more clearly conveyed if reworded in the manner specified above.

117. MEQB 74H.3.1.

Staff testified that this criterion "forwards the concept that the adverse effects of additional generating units at existing sites may be only of an incremental nature as compared with the impacts of a totally new site." (Com 14, p. 5) MPCA staff registered concern over this criterion stating that a "concentration of power plants can create major problems with environmental degradation ...", and suggested its deletion. (Pub. Ex. 23, p. 19) The Power Plant Siting Advisory Committee suggested that the rule be supplemented with the language, "if their expansion or continued use can be demonstrated to have equal or less adverse impact than feasible alternative sites." (Pub. Ex. 6, p. 9)

118. Language similar to that offered by the Power Plant Siting Advisory Committee should help to satisfy the concern expressed by MPCA staff and at the same time clarify the rule. As amended below it is found to be reasonable and necessary.

"1. Preferred sites maximize the use of already existing operating sites <u>if expansion can be demonstrated to have equal or less adverse impact than feasible alternative sites."</u>

119. <u>MEQB 74H.3.m.</u>

Criterion "m" extends the concept of MEQB 74H.2.b, and recognizes that new railroad spurs or highways necessary for plant construction and operation are impacts outside of the site boundaries, but are intrinsically part of the considerations necessary in comparing sites. (Com. 14, p. 5; Com. 22, p. 17)

120. <u>MEQB 74H.3.n.</u>

Criterion "n" utilizes the same concept as criterion "1" but extends it into the future in cases where existing sites are not available. MPCA staff favors deletion of this criterion. The Power Plant Siting Advisory Committee suggests a slight modification of its language for purposes of clarification. For reasons previously discussed (see finding #116 in this report) this criterion has merit; however the modification proposed by the Power Plant Siting Advisory Committee should be adopted. Rule MEQB 74H.3.n is amended to read:

"n. Preferred sites allow for ~~larger-rather-than smaller-generating-capacity~~ <u>future expansion.</u>

121. MEQB 74H.3.o.

Criterion "o" recognizes that transmission lines necessary for plant operation, like highways and railroads, are a necessary part of the impacts caused by a power plant and that analysis of such impacts in general terms may lead to the designation of a site which is superior to other seemingly "equal" sites. This criterion was generally supported during the hearing. (Tr. VI, p. 25; Com. 26, p. 17; Pub. Ex. 6) It was suggested that the Board consider specific routes at the time of siting. (See Tr. XI, pp. 23-24) The Board finds the suggestion to have merit, but in light of the regulatory process which has been established it is unreasonable. The Board will not know which route(s) will be needed or selected for the operation of a site at the time of siting by virtue of the fact that the regulatory lead time for siting is significantly longer than for transmission lines. All that will be known about the transmission line requirements of a proposed site at the time of siting is the probable end points because transmission line needs are contingent upon several parameters which are in a dynamic state at that stage of planning. (Com. 13, pp. 6-7, Tr. XI, pp. 93-4) The Board does affirm its belief that an assessment of the transmission line needs of a power plant be considered at the siting stage, however it must be recongized that the best possible assessment is somewhat general at that point.

122. Two suggestions were made to the effect that costs should be minimized during the siting process and that a new criterion should be listed. The Power Plant Siting Advisory Committee suggested the following language:

> "Preferred sites minimize electrical costs to the consumer." (Pub. Ex. 6, p. 8)

The Committee supported its recommendation with the following testimony:

> Energy cost to the consumer both residential as well as commercial will be significant factor in determining the future quality of life in Minnesota. ... [Many families will likely] experience reduced living standards to the extent that electrical generation costs are needlessly increased. ... Utilities need not be overly concerned about costs since they are guaranteed a fair rate of return. No consumer advocate plays a role in the process nor is the major electrical cost regulating body (the Public Service Commission) represented on the EQB. Major state agencies that are represented on the EQB pursue goals which often have the effect of increasing the cost of generating electricity. In view of the failure of the process to provide consumer input, cost must be elevated as a constraint in the siting process. (Pub. Ex. 6, pp. 8-9)

The Minnesota/Wisconsin Power Suppliers Group proposed the following criterion:

> "Preferred sites minimize the costs of constructing and operating the facility."

The Hearing Examiner found both of these suggestions to be reasonable and necessary. (HE Report #64, p. 58)

123. After careful consideration the Board finds the Minnesota/Wisconsin Power Suppliers Group proposed criterion to be preferable over that proferred by the Committee because it is not within the jurisdiction of the Board to consider "costs to the consumer;" that is a matter within the domain of the Public Service Commission. The Board finds further that the concept forwarded by these two proposals does have merit and is fully justified in Minn. Stat. §116C.57, Subd. 4. and is reasonable and necessary as a criterion for the evaluation of proposed sites. The Board would however like to state for the record that this criterion is only one of sixteen criteria for site selection and it is not the Board's intention to allow additional costs to discourage it from selecting sites which are more sound environmentally or aesthetically, or because environmental and aesthetic values are difficult to quantify. Rule MEQB 73H.3 should be amended by adding the following subparagraph.

> "p. Preferred sites minimize the costs of constructing and operating the facility."

124. MEQB 74I. Board Action.

Rule MEQB 74I was a topic of significant discussion. The MPCA staff recommended that the Board issue a "preliminary" certificate of site compatibility at the conclusion of its site designation procedure; then, subsequent to preparation and approval of an environmental impact statement, issue a "final" certificate of site compatibility.

According to MPCA staff testimony, it is the intent of the MPCA suggestion to achieve a higher degree of consistency between the Power Plant Siting Act and MEPA. This is to be accomplished through recognition of the environmental impact statement as "the proper forum where all considerations in the decision-making process can be properly focused." (Pub. Ex. 23)

125. The MPCA recommendation raises a fundamental issue relevant to these proposed rules: What is the proper forum for considering alternate sites and ultimately designating a site? Both the Power Plant Siting Act and the rules adopted pursuant to MEPA specifically address this question. The Power Plant Siting Act specifically directs the Board to designate a site and issue a certificate of site compatibility within one year after acceptance of an application. A six month extension may be taken by the Board for good cause. It is clear that the Legislative intent is that the certificate issued by the Board be final,

not preliminary in nature. It is further noted that Minn. Stat. §116C.61, Subd. 1 declares that the site certificate issued by the Board is "the sole site approval required to be obtained by the utility."

The MEPA rules reinforce this concept. Rule 6 MCAR §3.025 outlines the sequential environmental review process for large electric power generating plants specifically foreclosing re-review of decisions already made along the way. Minn. Rule 6 MCAR §3.025 requires an environmental report on the certificate of need to be completed during the certificate of need proceedings, an environmental report on each site that is considered at the siting public hearings which is to be completed prior to those public hearings, and an environmental impact statement which is to be prepared subsequent to the designation of a site and which shall not consider alternative sites or the need for the facility.

126. MPCA comments submitted after the hearing are more properly addressed under the Minnesota Environmental Policy Act rules which specify the "time and manner" of EIS's. MEQB 74I is both reasonable and necessary as proposed.

127. MEQB 74J. Certificate Administration

There is no provision for timing in this proposed rule, in contrast to the parallel rule for routes, and therefore

no ability for delay. The rule was properly justified in the Statement of Need and Evidence and is reasonable and necessary with a minor amendement to clarify its intent (See Com. 17, p. 38) which shall read as follows:

> "J. Certificate Administration. Following issuance of a certificate of site compatibility, the Board may require the applicant to supply such plans and information as it deems necessary to determine whether the plant, as proposed or operated, is in compliance with the conditions of the certificate of site compatibility."

128. MEQB 75 Advisory Committees. This rule is reasonable and necessary to inform the public of the existence and purpose of the Board's advisory committees. (MEQB Ex. 2, p. 19)

129. MEQB 75A. Route and Site Evaluation Committees. The purpose of this rule is to inform the public of the existence and purpose of route and site evaluation committees. Even though route and site evaluation committees are listed in rules MEQB 73 and 74 as an element in the routing or siting process, the committees are noted here under the title "Advisory Committees" along with the other types of advisory committees as an informational item. (MEQB Ex. 2, p. 19)

130. Numerous suggestions were made for specific requirements of membership on route and site evaluation committees. Notably, Representative Gaylin Den Ouden voiced a desire that there be a guarantee that evaluation committees have "as many as possible" local representatives. (Tr. x, p. 42) Other suggestions included a requirement that citizen groups formed in opposition to a project be represented on evaluation committees. (Tr. XI, pp. 10-11)

131. In the Power Plant Siting Act (Minn. Stat. §116C.59, subd. 1) the minimum requirements for committee membership are set forth by the Legislature. In the following subdivision (Minn. Stat. §116C.59, Subd. 2) the Legislature directs the Board to "adopt broad spectrum citizen participation as a principle of operation". (Emphasis added) Staff testified that committee membership is generally composed of people

who live in the area affected by a route or site, by people with special knowledge useful to the evaluation of a route or site and by people from groups with a special interest in energy and environmental matters. (Tr. X, pp. 18, 37-44; Tr. 111, p. 11) Based on Staff testimony, the concerns for specific interests to be represented on the evaluation committees should be satisfied, albeit the guarantee is still lacking in the rules. However, the Board finds that a specific listing of interests to be represented on evaluation committees beyond that stated by the Legislature could have a limiting effect on committee membership and is contrary to the legislative mandate for "broad spectrum" citizen participation.

132. MEQB 75B. Power Plant Siting Advisory Committee. The only substantial issue raised concerning this proposed rule was raised by the Power Plant Siting Advisory Committee (Pub. Ex. 6). The committee suggested that the term of service of its members be extended from one year to two years and that half of the members of the committee be appointed in alternate years.

133. The Board finds the committee's suggestion to have merit for the reasons given. However, because the Board is not prohibited from doing so in its present rules and because the Board is presently uncertain of its ability to obtain 2 year commitments from people for substantial amounts of their time, it finds this amendment to be unnecessary and possibly unreasonable.

134. The Power Plant Siting Advisory Committee suggested that a part "C" be added to MEQB 75 for the sake of public information, repeating the statutory provision which allows for a scientific advisory committee. (Pub. Ex. 6) The Hearing Examiner found the suggestion "to be reasonable but not particularly necessary since such scientific committees are specifically authorized by Minn. Stat. §116C.59, Subd. 4." (HE Report #71, p. 64) The Board agrees with the Hearing Examiner and finds accordingly.

135. MEQB 76 Notice This rule is necessary to ensure that the public is adequately advised of the Board's acceptance of applications for sites and routes and related information meetings and hearings in sufficient time for reaction and participation in the process. These provisions are reasonable as a furtherance of the stated legislative policy to encourage broad spectrum citizen participation as a principle of operation. (Tr. 1, p. 41; HE Report #72, p. 65) As pointed out by Staff, the notice provisions contained in these rules are vastly improved over the former rules. (Com. 17, p. 39; Tr. II)

136. The Power Plant Siting Advisory Committee suggested that notice be given to each contiguous county in which a route or site is proposed. (Pub. Ex. 6, pp. 10-11) The Hearing Examiner in his report suggests that such notice requirements be included in the rules as "discretionary with the Board. (HE Report #72, pp. 65-66)

137. The Board finds the suggestion of the Power Plant Siting Advisory Committee to have merit, but that it is not always a reasonable requirement as pointed out by NSP (Tr. IX, p. 21). The suggestion of the Hearing Examiner to make the giving of such notice "discretionary" would serve to unbind the Board from publishing expensive and rigorous notice in areas where there is no need, but the rule certainly does not prohibit giving notice of that nature. The Board can find no need for such a requirement.

138. As a result of the many suggestions for further specification of the duties of the public advisor and the registration of concern that the public advisor be active early in the process before the avenues of public input are closed, and finally, to remove an improperly used pronoun, the Board finds it reasonable and necessary to amend MEQB 76A.5 as follows:

> "5. The name and function of the public advisor and the place where ~~he~~ that person can be reached;"

139. Two amendments are in order to clarify part B of MEQB 76. To compensate for a change made in rules MEQB 73E and MEQB 74E regarding the new requirement for an additional information meeting, it is reasonable and necessary to specify that maps which may be included in notice of such meetings will include only those routes approved for study by the Board, or those proposed by the utility in the application, at the time that the Board publishes the notice. Also, for purposes of clarification a technical change suggested by

Staff in a comment to the Hearing Examiner is reasonable and necessary. (Com. 17, p. 39) MEQB 76B should be amended to read:

"B. Information Meetings. Notice and agenda of public information meetings of the Board consistent with the Act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under MEQB 73F.2 or 74F.1,2 and 3, or by resolution of the Board pursuant to MEQB 73F or 74F, as of the time of notice."

The first change should also be made to part C so that it reads:

"C. Public Hearings. Notice and agenda of public hearings shall be given by the Board consistent with the Act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or route or site that is an accepted proposal under MEQB 73F.2 or 74F.1,2 and 3, or by resolution of the Board pursuant to MEQB 73F or 74F."

140. MEQB 77 Emergency Certification

MEQB 77 is necessary to implement the mandate of Minn. Stat. § 116C.57, Subd. 3. As indicated by Staff, the emergency provision, by definition, is used rarely and only in unusual circumstances. (Tr. 1, pp. 82-95) The suggestions to delete this rule in its entirety are ill-considered given the statutory mandate for the establishment of emergency procedures. (HE Report #73, p. 68) The rule is reasonable and necessary as amended below.

141. Many of the comments dealing with MEQB 77 failed to recognize that the purpose of MEQB 77A and B is to determine whether an emergency exists. If so determined, then the applicant must still submit its proposal to the Board for environmental review. (Tr. VIII, pp. 146-148; Com. 24, p. 7) In fact, the only divergence from the normal procedure in the emergency provisions is the shortened review period and the elimination of the guarantee of public input under MEQB 73F.2 and MEQB 74F.1, 2 and 3. (See Com. 10 and Com. 12, pp. 39-40 and finding #143 for revision of MEQB 77C) (HE Report #73, p. 68) The elimination of the guarantee of the general public's right to propose alternatives is a reasonable and necessary measure for the Board to take. (MEQB Ex. 2, p. 22) The shortened review period is required by Statute.

142. The Power Plant Siting Advisory Committee pointed out the need to hold an information meeting prior to the public hearings on the determination of an emergency. Amendments to proposed rules MEQB 73E and 74E have already made such meetings a requirement. (Com. 17, p. 39)

143. Mr. John Herman pointed out an inconsistency in the language of MEQB 77B.1 which should be amended. This part of the rule was intended to solicit the special expertise of the Minnesota Energy Agency, but not to the exclusion of other persons. MEQB 77B.1 should be amended to read:

> "1. Any evidence offered by the Minnesota Energy Agency or any other person;"

144. Finally, a change alluded to in finding #140 should be incorporated into part C of MEQB 77 for purposes of clarification. (Com. 10 and 17) MEQB 77.C should be amended to read:

> "C. Board Action. If the Board determines that an emergency exists, then the route or site designation procedures prescribed in MEQB 73 and MEQB 74, with the exception of MEQB F.2 and MEQB 74F.1, 2 and 3, shall be followed except that the Board shall designate a route and issue an emergency construction permit or designate a site and issue an emergency certificate of site compatibility within 195 days of the application."

145. MEQB 78 Exemption of Certain Routes

The form and manner in which a utility must apply to the Board for exemption of a route from the Power Plant Siting Act and the associated rules is set forth in MEQB 78, as directed by Minn. Stat. §116C.57, subd. 5. The rule effectively excludes from the public examination process transmission lines for which there are few, if any, alternatives and/or no objections. In addition to the fact that the Power Plant Siting Act requires the provision for such exemption, the rule is reasonable and necessary to expedite transmission line routes which do not engender public objection and which do not have potential for significant environmental effects. (HE Report #74, pp. 69-70; MEQB Ex. 2, p. 22; Tr. I, pp. 43-44)

146. The Power Plant Siting Advisory Committee recommended that the utility be required to send a notice and description of an exemption application to any person owning land adjacent to property crossed by the proposed route as well as to all owners of land whose land is to be crossed by the proposed route. In a memo to the Hearing Examiner, Staff explained that this issue was explored at length by the Legislature and it was the Legislature's desire that this requirement not be made because of the difficulty and expense involved. (Com. 17, p. 40; Pub. Ex. 6) The notice section of rule MEQB 78 repeats statutory language but is necessary insofar as that information is very important to persons potentially affected by the rule.

147. MEQB 79 Improvement of Acquired Routes and Sites.

MEQB 79A is reasonable and necessary to inform the public that a route permit or a site certificate, once granted, is valid for four years. If no action is taken within four years, the utility must certify to the Board that the conditions upon which the certificate or permit was issued are substantially unchanged. Because the Act is silent regarding the appropriate Board action in case of significant changes in the conditions or circumstances under which the certificate or permit is issued, the rule is reasonable in establishing two procedures for the Board to follow, i.e., either re-certification or new hearing. (MEQB Ex. 2, p. 23; Tr. I, p. 44; HE Report #75, p. 72)

148. MEQB 79B received no comment or criticism. Staff testified that this "provision is similar to provision that was in the old rules,... [and] has been very useful in the past to make minor adjustments in routing when unforseeable circumstances have arisen, or when all affected landowners and the utility are in agreement that the adjustment is an improvement over the route specified in the construction permit." (Tr. I, pp 44-45) It is both a reasonable and necessary provision for that reason.

149. MEQB 80 Revocation or Suspension

MEQB 80 is reasonable and necessary to reiterate provisions of Minn. Stat. §116C.645 as they relate to the revocation or suspension of a permit or certificate. The purpose served by such rule is to advise members of the public as well as utilities that a permit or certificate is granted with the understanding that it was issued based on truthful information in the application, that its conditions would be complied with, that safety standards would be maintained, and that there would be no material violation of the provisions of the PPSA or any rule promulgated pursuant pursuant thereto or any order of the Board. It is clear that this rule provides the "teeth" necessary for the Board to review and enforce permits and certificates granted. The rule found general support in comments provided to the Examiner. (Com. 5, p. 4; Com. 26, p. 20)

150. Minn. Stat. §116C.645 (1977) provides that the Board may revoke or suspend a site certificate or a construction permit after a full and fair hearing and making findings that: the utility knowingly made a false statement during the siting process which affected the results; the utility failed to comply with material conditions or safety standards of the permit; or the utility committed a material violation of the Act, the rules adopted thereunder, or an order of the Board.

These rules establish criteria for determining the necessity for such a hearing, the criteria to be used to determine whether there has been a violation and the remedial options available to the Board if a violation is found.

151. The Act provides no statement concerning who may initiate the revocation or suspension process or how that initiation should come about. MEQB 80A is necessary to establish the process.

The Board or anyone might be in possession of information that could lead to the finding of a violation. As a result, it is proper to allow anyone to attempt to initiate the process. However, the hearing required by the Act must be a formal, contested-case hearing which would involve the expenditure of large sums of public and private funds and staff time. As a result, the proposed rule requires that anyone wishing to begin the process for the Board's consideration must establish a "prima facie" showing of a violation by affidavit or documentation in order to initiate the hearing process.

Since the process of siting and constructing power plants or lines involves lengthy and detailed testimony, some of which may be erroneous, and extensive construction activity sometimes covering large areas, there is a substantial likelihood of some sort of technical "violation" in nearly all projects. As a result, the Board has retained discretion concerning whether or not a hearing ought to be initiated.

There may be times when a violation has occurred, but the utility has already offered or has already corrected the matter, or there may be times when a violation is only of a trivial nature. In either situation, the Board ought not be forced to begin a lengthy contested case hearing.

If the Board initiates an action to determine whether or not there was a violation and whether there ought to be a revocation or suspension, there must be guidelines for the hearing as required in Minn. Stat. §116C.645. In that statute, the Legislature established that the utility may respond to any evidence against it and may present rebuttal or mitigating evidence to the Board. In determining whether or not there has been a violation and whether or not the violation is substantial or ought to be corrected or can be corerected, the Board has set forth in MEQB 80B four criteria for consideration at the heairng. The first criterion is whether or not a violation actually has occurred. That test is set forth by the statute. Secondly, the Board must determine whether or not the violation will result in any significant adverse environmental effects. If the violation is only of a trivial nature, then there need not be a revocation or suspension and any mitigating or rebuttal testimony by the utility will indicate whether or not the violation was of a trival nature. Thirdly, the Board must determine whether or not the violation can be corrected or ameliorated. If the violation can be corrected, then

different types of remedies would be available than if the violation cannot be corrected. Fourthly, the Board must decide whether or not the potential remedies of revocation and suspension would otherwise jeopardize the utility's electrical system reliability. If the utility's electrical system reliability will be severely impaired by revocation or suspension, the Board is obligated by statute to consider other potential remedies.

Finally, if the Board does initiate action to consider revocation or suspension under MEQB 80B, the Board has proposed a series of potential remedies in the event a violation is determined to have occurred. Pursuant to the testimony of Mr. John Herman, the potential remedies have been listed as either 1) revoke or suspend the permit or certificate, 2) require the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension; or 3) require corrective measures and suspend the permit or certificate. The Board had initially proposed a more complicated series of specific remedies for specific situations. Mr. Herman's testimony is convincing in that the Board's remedies ought not be limited by specific findings, but should be listed as potential remedies to be applied at the Board's discretion to any particular violation. The Board must be able to revoke or suspend the permit or certificate as is provided in the statute. Secondly, the Board must be able to require

the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension, for otherwise there would be no reason to revoke or suspend if the violation can be corrected. Thirdly, the Board ought to have the authority to suspend temporarily while corrective or ameliorative measures are being undertaken to avoid further complications caused by construction or operation in violation of the construction permit.

152. Rule MEQB 80 should be deleted and rewritten as follows:

MEQB 80 REVOCATION OR SUSPENSION

A. Initiation of Board Action.

The Board may initiate action to consider revocation or suspension of a construction permit or certificate of site compatibility on its own motion or upon the request of any person who has made a prima facie showing by affidavit and documentation that a violation of the act has occurred as set forth in Minn. Stat. §116C.645 or these rules.

B. Board Action.

If the Board initiates action to consider revocation or suspension of a construction permit or certificate of site compatibility, it will consider in a hearing under Minn. Stat. §116C.645 the following matters:

(1) Whether a violation of any of the conditions in Minn. Stat. §116C.645 has occurred;

(2) Whether the violation will result in any significant additional adverse environmental effects;

(3) Whether the results of the violation can be corrected or ameliorated; and

(4) Whether a suspension or revocation of a permit or certificate will impair the utility's electrical power system reliability.

If the Board finds that a violation of Minn. Stat. §116C.645 or these rules has occurred, it may (1) revoke or suspend the permit or certificate, (2) require the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension, or (3) require corrective measures and suspend the permit or certificate.

153. MEQB 81 Annual Hearing. This rule is reasonable and necessary to establish a time when the annual hearing mandated by the Power Plant Siting Act is to be held. (MEQB Ex. 2, p. 25)

154. MEQB 82 Assessment, Application Fee

MEQB 82 is reasonable and necessary to provide a means for the billing and collection of assessments and application fees prusuant to the Act. It is properly justified in the Statement of Need and Evidence (MEQB Ex. 2, p. 26)

CONCLUSIONS

1. Due, timely and adequate notice of the hearing was properly served and published by the Board. All other substantive and procedural requirements of statute and rule have been fulfilled.

2. The need for and reasonableness of the rules as proposed, or as amended herein, has been shown by an affirmative presentation of facts by the Board.

3. The Board has demonstrated its statutory authority to adopt the proposed rules.

ORDER OF ADOPTION

The Minnesota Environmental Quality Board hereby adopts the proposed rules MEQB 71 through MEQB 82, as amended herein, as rules reasonable and necessary to carry out its responsibilities pursuant to the Power Plant Siting Act.

Dated this 9th day of March, 1978

Peter Vanderpoel

Peter Vanderpoel, Chairman
Minnesota Environmental Quality Board

EXHIBIT D-12

In The Matter of the Rules Proposed for Adoption by the Minnesota Environmental Quality Board Relating to Power Plant Siting and Transmission Line Routing.

EQB-78-005-MG

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Donald A. Kannas do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

D A Kannas

DONALD A. KANNAS
Special Assistant
Attorney General

Dated: 20 Mar 1978

EXHIBIT D-10

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone _____

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Mary Sullivan, do hereby certify that I am the Administrator of the Minnesota Environmental Quality Board, a board duly authorized under the laws of the State of Minnesota, and that the attached is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Environmental Quality Board duly and properly called and held on the 30th day of August, 1977; that a quorum was present at said meeting; and that a majority of the members of the Board voted for the resolution.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 21st day of March, 1978.

Mary Sullivan
Administrator

Subscribed and sworn to
before me this 21st
day of March, 1978.

Notary Public

AN EQUAL OPPORTUNITY EMPLOYER

D-10

Environmental Quality Board

RESOLUTION OF THE
MINNESOTA ENVIRONMENTAL QUALITY BOARD
ORDER FOR HEARING

Ms. Brooks moved:

WHEREAS, in May 1977, the Legislature significantly amended the Power Plant Siting Act of 1973; and

WHEREAS, the Minnesota Environmental Quality Board (hereinafter the Board) has been directed to adopt permanent rules to give effect to the purposes of Minn. Stat. 116C.51 et. seq. (1977) pursuant to Chapter 15;

NOW, THEREFORE BE IT RESOLVED:

THAT the Board approve for hearing the proposed Rules MEQB 71-82; and

THAT the Chairman of the Board be authorized to order public hearings and to take such actions as are necessary thereto.

Seconded by Mr. Millhone, the motion carried unanimously with Vanderpoel, Brooks, Gardebring, Harrington, Lawson, Lukermann, Magnuson, Millhone, Ohman and Walker voting aye.

ADOPTED: August 30, 1977

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