

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST Taken to Rev. 4/21

File No. 147

DATE RECEIVED 4/21/88

REVIEW DATE ~~4/30/88~~ 5/2/88

DUE DATE 5/5/88

APPROVED 5/5/88

DISAPPROVED

WITHDRAWN

Docket No 05.0009, 0729

ADOPTED W/O HEARING X

EMERGENCY RULE

REVISOR APPROVED ✓

REVISOR DISAPPROVED

FIELD W/SEC.STATE

RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion

8/31/87 Date published in State Register

Yes Comments

~~Petition for Adoption of a Rule~~

✓ Board's Authorizing Resolution

✓ Proposed rule

~~216A.05, 216B.08 & 216B.243~~ Revisor's Certificate

✓ Notice of Intent to Adopt Rule

216A.05, 216B.08 & 216B.243 Statutory Authority

Yes Small Business Statement

Yes Expenditure of public money statement

Yes Signature

✓ Statement of Need and Reasonableness

Yes Small Business Statement

NO Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

1/5/88 Date 30/25 days before adoption

✓ Publication in State Register

1/11/88 Date 30/25 days before adoption

✓ Resolution Adopting 3/30/88

✓ Findings of Fact, Conclusions & Order Adopting

3/30/88 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney

Gregory Dithrich Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

~~Affidavit of Mailing Notice to Attorney General~~

CBE

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : May 9, 1988

TO : Caroline Robinson
PUC
American Center Building

FROM : CHRISTIE B. ELLER
Assistant Attorney General

PHONE : 6-9421

SUBJECT : In the Matter of the Adopted Rule Relating to Certificates of Need for Power Plants and Transmission Lines.

The above-referenced rule has been approved as to its legality by the Attorney General on May 5, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must establish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

CBE:nah
Enclosures

cc: Maryanne Hruby
Duane Harves

Public Utilities Commission

Adopted Permanent Rules Relating to Certificates of Need for Power Plants and Transmission Lines

Rules as Adopted

4220.0100 DEFINITIONS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. [See Repealer.]

Subp. 5. and 6. [Unchanged.]

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

Subp. 8. [See Repealer.]

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

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

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

Subp. 9. to 11. [Unchanged.]

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

Subp. 13. **LHVTL; large high voltage transmission line.** "Large high voltage transmission line" or "LHVTL" means a conductor of electrical energy as defined by Minnesota Statutes, section 216B.2421, subdivision 2, clause (b), and associated

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facilities necessary for normal operation of the conductor, such as insulators, towers, substations, and terminals.

Subp. 14. to 18. [Unchanged.]

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

Subp. 19. to 31. [Unchanged.]

4220.0200 PURPOSE OF RULES.

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

4220.0300 SCOPE.

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

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

4220.1100 PURPOSE OF CRITERIA.

The criteria for assessment of need must be used by the commission to determine the need for a proposed large energy facility under Minnesota Statutes, sections 216B.2421, subdivision 2, and 216B.243. The factors listed under each of

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the criteria set forth in part 4220.1300 must be evaluated to the extent that the commission considers them applicable and pertinent to a facility proposed under this chapter. The commission shall make a specific written finding with respect to each of the criteria.

4220.1200 CONSIDERATION OF ALTERNATIVES.

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

4220.1300 CRITERIA.

A certificate of need must be granted to the applicant on determining that:

A. [Unchanged.]

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

(1) to (4) [Unchanged.]

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

(1) to (4) [Unchanged.]

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

4220.2100 APPLICATION PROCEDURES AND TIMING.

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

Subp. 2. **Copies, title, table of contents.** The original

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

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

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

Subp. 5. and 6. [See Repealer.]

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

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the application date.

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

4220.2200 FILING FEES AND PAYMENT SCHEDULE.

Subpart 1. [Unchanged.]

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

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

4220.2300 CONTENTS OF APPLICATION.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Joint ownership and multiparty use.** If the proposed LEGF or LHVTL is to be owned jointly by two or more utilities or by a pool, the information required by this chapter must be provided by each joint owner for its system. If the facility is designed to meet the long-term needs, in excess of

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80 megawatts, of a particular utility that is not to be an owner, that utility must also provide the information required by this chapter. Joint applicants may use a common submission to satisfy the requirements of any part for which the appropriate response does not vary by utility.

4220.2350 ENVIRONMENTAL REPORT.

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

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

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

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

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

4220.2400 NEED SUMMARY AND ADDITIONAL CONSIDERATIONS.

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

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tables, graphs, and figures.

Subp. 2. [Unchanged.]

4220.2500 DESCRIPTION OF PROPOSED LEGF AND ALTERNATIVES.

An application for a proposed LEGF must include:

A. a description of the facility, including:

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

(2) to (5) [Unchanged.]

B. [Unchanged.]

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

(1) to (3) [Unchanged.]

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

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

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

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

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

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

D. and E. [Unchanged.]

4220.2600 DESCRIPTION OF PROPOSED LHVTL AND ALTERNATIVES.

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Each application for a proposed LHVTL must include:

A. [Unchanged.]

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

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

(2) to (8) [Unchanged.]

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

(1) to (4) [Unchanged.]

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

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

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

D. and E. [Unchanged.]

4220.2700 PEAK DEMAND AND ANNUAL ELECTRICAL CONSUMPTION FORECAST.

Subpart 1. [Unchanged.]

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

A. to D. [Unchanged.]

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

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

Subp. 3. **Forecast methodology.** An applicant may use a

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

A. to F. [Unchanged.]

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

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

A. and B. [Unchanged.]

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

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

The applicant shall discuss the assumptions made regarding:

A. to C. [Unchanged.]

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

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

F. [Unchanged.]

Subp. 6. [Unchanged.]

4220.2800 SYSTEM CAPACITY.

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

A. to C. [Unchanged.]

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

(1) to (13) [Unchanged.]

E. to I. [Unchanged.]

4220.2900 CONSERVATION PROGRAMS.

An application must include:

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

~~A.~~ B. to E. [Unchanged.]

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

4220.3000 CONSEQUENCES OF DELAY.

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

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4220.3300 TRANSMISSION FACILITIES.

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

A. [Unchanged.]

B. for underground transmission facilities:

(1) and (2) [Unchanged.]

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

C. to G. [Unchanged.]

4220.3400 THE ALTERNATIVE OF NO FACILITY.

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

A. to C. [Unchanged.]

4220.4100 CERTIFICATE OF NEED CONDITIONS AND CHANGES.

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

Subp. 2. to 4. [See Repealer.]

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

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

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

C. A change in power plant ownership smaller than the

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shall order further hearings if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part 4220.1300.

REPEALER. Minnesota Rules, parts 4220.0100, subparts 4 and 8; 4220.2100, subparts 5 and 6; and 4220.4100, subparts 2, 3, and 4, are repealed.

Approved by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAY 29 1998

Joan Anderson Growe
Secretary of State

10:20 A.M.

Public Utilities Commission

Proposed Permanent Rules Relating to Certificates of Need for Power Plants and Transmission Lines

Rules as Proposed

4220.0100 DEFINITIONS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. [See Repealer.]

Subp. 5. and 6. [Unchanged.]

Subp. 7. **Annual system demand.** "Annual system demand" means the highest system demand of a utility occurring during the 12-month period ~~beginning May 1 of the forecast year~~ ending with a given month.

Subp. 8. [See Repealer.]

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

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

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

Subp. 9. to 11. [Unchanged.]

Subp. 12. **LEGF; large electric generating facility.** "Large electric generating facility ~~(LEGF)~~" or "LEGF" means ~~any~~ an electric power generating unit or combination of units ~~at a single site and associated facilities designed for or capable of operation at a combined capacity of 50,000 kilowatts or more, or any facility of 5,000 kilowatts or more that requires oil, natural gas, or natural gas liquids as a fuel and for which an~~

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~~installation-permit-has-not-been-applied-for-by-May-19,-1977,~~ ~~pursuant-to-part-7005.0200~~ as defined by Minnesota Statutes, section 216B.2421, subdivision 2, clause (a).

Subp. 13. **LHVTL; large high voltage transmission line.** "Large high voltage transmission line ~~(LHVTL)~~" or "LHVTL" means a conductor of electrical energy as defined by Minnesota Statutes, section 216B.2421, subdivision 2, clause (b), and associated facilities ~~designed-for-and-capable-of-operation-at-a-nominal-voltage-of-200-kilovolts-or-more-with-more-than-80.4-kilometers-(50-miles)-of-its-length-in-Minnesota,-or-at-a-nominal-voltage-of-300-kilovolts-or-more-with-more-than-40.2-kilometers-(25-miles)-of-its-length-in-Minnesota.--Associated-facilities-shall-include-but-not-be-limited-to~~ necessary for normal operation of the conductor, such as insulators, towers, ~~and~~ substations, and terminals ~~operating-at-the-nominal-voltage~~.

Subp. 14. to 18. [Unchanged.]

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

Subp. 19. to 31. [Unchanged.]

4220.0200 PURPOSE OF RULES.

The purpose of this chapter is to specify the content of applications for certificates of need and to specify criteria for the assessment of need for large electric generating facilities and large high voltage transmission lines. ~~In-accordance-with-Minnesota-Statutes,-section-216B.243,-subdivision-2,-no-LEGF-or-LHVTL-shall-be-sited-or-constructed-in-Minnesota-without-the-issuance-of-a-certificate-of-need-by-the-director-pursuant-to-Minnesota-Statutes,-sections-116J.05-to-116J.30-and-consistent-with-the-criteria-for-assessment-of-need.~~

4220.0300 SCOPE OF RULES.

Subpart 1. **Facilities covered.** ~~Each~~ A person applying for

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

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

4220.1100 PURPOSE OF CRITERIA.

The criteria for assessment of need ~~shall~~ must be used by the ~~director in the determination of~~ commission to determine the need for a proposed large energy facility ~~pursuant to~~ under Minnesota Statutes, sections ~~116J.05 to 116J.30~~ 216B.2421, subdivision 2, and 216B.243. The factors listed under each of the criteria set forth in part 4220.1300 ~~shall~~ must be evaluated to the extent that the ~~director deems~~ commission considers them applicable and pertinent to ~~each~~ a facility proposed ~~pursuant to~~ under this chapter. The ~~director~~ commission shall make a specific written finding with respect to each of the criteria.

4220.1200 CONSIDERATION OF ALTERNATIVES.

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

4220.1300 CRITERIA.

A certificate of need ~~shall~~ must be granted to the applicant ~~if it is determined~~ on determining that:

A. [Unchanged.]

B. a more reasonable and prudent alternative to the

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proposed facility has not been demonstrated by a preponderance of the evidence on the record ~~by-parties-or-persons-other-than the-applicant~~, considering:

(1) to (4) [Unchanged.]

C. ~~it-has-been-demonstrated~~ by a preponderance of the evidence on the record ~~that~~, the proposed facility, or a suitable modification ~~thereof~~ of the facility, will provide benefits to society in a manner compatible with ~~protection-of~~ protecting the natural and socioeconomic environments, including human health, considering:

(1) to (4) [Unchanged.]

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

4220.2100 APPLICATION PROCEDURES AND TIMING.

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

Subp. 2. **Copies, title, table of contents.** ~~A-minimum-of 50-bound-copies-and-one-unbound-copy-of-the-application-shall-be filed-with-the-director.--The-director-may-require-additional bound-copies,-not-to-exceed-100-bound-copies-total.--All~~ The original and 13 copies of the application must be filed with the commission. The applicant shall provide copies of the application to other state agencies with regulatory responsibilities in connection with the proposed facility and to other interested persons who request copies. The applicant shall maintain a distribution list of the copies. Documents, forms, and schedules filed with the application ~~shall~~ must be typed on 8-1/2 inch by 11 inch paper except for drawings, maps, and similar materials. ~~Each~~ An application ~~shall~~ must contain a title page and a complete table of contents ~~which~~ that includes

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the applicable rule by the titles and numbers given in this chapter. The date of preparation and the applicant's name ~~shall~~ must appear on the title page, as well as on each document filed with the application.

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

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

Subp. 5. and 6. [See Repealer.]

Subp. 7. **Complete applications.** The ~~director~~ ~~shall~~ commission must notify the applicant within ~~15~~ 30 days of the receipt of an application if the application is not substantially complete. ~~Upon such~~ On notification, the applicant may correct any deficiency and may resubmit the application. ~~A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is then substantially complete.~~ If the revised application is substantially complete, the date of its submission is considered the application date.

Subp. 8. **Exemptions.** ~~Prior to the submission of~~ Before submitting an application, a person ~~may be~~ is exempted from any data requirement of this chapter ~~upon a written request to the~~

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~~director for~~ if the person (1) requests an exemption from specified rules, in writing to the commission, and ~~a showing by that person in the request~~ (2) shows that the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by ~~submission of~~ submitting another document. A request for exemption must be filed at least ~~20~~ 45 days ~~prior to submission of~~ before submitting an application. The ~~director~~ commission shall respond in writing to ~~each such~~ a request for exemption within ~~15~~ 30 days of receipt ~~including~~ and include the reasons for the decision. The ~~director~~ commission shall file a statement of exemptions granted and reasons ~~therefor prior to commencement of~~ for granting them before beginning the hearing.

4220.2200 FILING FEES AND PAYMENT SCHEDULE.

Subpart 1. [Unchanged.]

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

Subp. 3. **Payment required.** ~~No certificate of need shall be issued until all fees are paid in full.~~ The commission shall not issue its decision on the application until the outstanding set fee payments and additional billings under subparts 1 and 2 are paid by the applicant.

4220.2300 CONTENTS OF APPLICATION.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Joint ownership and multiparty use.** If the

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proposed LEGF or LHVTL is to be owned jointly by two or more utilities or by a pool, ~~all~~ the information required by ~~parts 4220.2400 and 4220.2700 to 4220.3000 shall~~ this chapter must be provided by each joint owner for its system. If the facility is designed to meet the long-term needs ~~,~~, in excess of ~~50~~ 80 megawatts~~,~~, of a particular utility that is not to be an owner, that utility ~~shall~~ must also provide ~~all~~ the information required by ~~parts 4220.2400 and 4220.2700 to 4220.3000~~ this chapter. Joint applicants may use a common submission to satisfy the requirements of any part for which the appropriate response does not vary by utility.

4220.2350 ENVIRONMENTAL REPORT.

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

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

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

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

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

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pending.

4220.2400 NEED SUMMARY AND ADDITIONAL CONSIDERATIONS.

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

Subp. 2. [Unchanged.]

4220.2500 DESCRIPTION OF PROPOSED ~~LARGE-ELECTRIC-GENERATING FACILITY~~ LEGF AND ALTERNATIVES.

~~Each~~ An application for a proposed LEGF ~~shall~~ must include ~~the following information~~:

A. a description of the facility, including:

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

(2) to (5) [Unchanged.]

B. [Unchanged.]

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

(1) to (3) [Unchanged.]

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

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

~~(5)~~ (6) the total cost in current dollars of a kilowatt-hour provided by it;

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

~~(6)~~ (8) its efficiency, expressed for a generating facility as the estimated heat rate, or expressed for a transmission facility as the estimated losses under projected

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maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations; and

~~(7) any~~ (9) the major assumptions made in providing the information in subitems (1) to ~~(6)~~ (8), including projected escalation rates for fuel costs and operating and maintenance costs, as well as projected capacity factors;

D. and E. [Unchanged.]

4220.2600 DESCRIPTION OF PROPOSED ~~LARGE HIGH VOLTAGE TRANSMISSION LINE~~ LHVTL AND ALTERNATIVES.

Each application for a proposed LHVTL ~~shall~~ must include ~~the following information:~~

A. [Unchanged.]

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

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

(2) to (8) [Unchanged.]

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

(1) to (4) [Unchanged.]

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

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

~~(6) any~~ (7) the major assumptions made in providing the information in subitems (1) to ~~(5)~~ (6);

D. and E. [Unchanged.]

4220.2700 PEAK DEMAND AND ANNUAL ELECTRICAL CONSUMPTION FORECAST.

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Subpart 1. [Unchanged.]

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

A. to D. [Unchanged.]

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

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

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

A. to F. [Unchanged.]

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

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

A. and B. [Unchanged.]

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

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

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The applicant shall discuss the assumptions made regarding:

A. to C. [Unchanged.]

D. the ~~assumptions made in arriving at any~~ data requested in subpart 2 that is not available historically or not generated by the applicant in preparing its own internal forecast;

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

F. [Unchanged.]

Subp. 6. [Unchanged.]

4220.2800 SYSTEM CAPACITY.

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

A. to C. [Unchanged.]

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

(1) to (13) [Unchanged.]

E. to I. [Unchanged.]

4220.2900 CONSERVATION PROGRAMS.

~~Each~~ An application ~~shall~~ must include ~~the following information~~:

A. to E. [Unchanged.]

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

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reducing the need for new ~~generating~~ generation and transmission facilities.

4220.3000 CONSEQUENCES OF DELAY.

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

4220.3300 TRANSMISSION FACILITIES.

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

A. [Unchanged.]

B. for underground transmission facilities:

(1) and (2) [Unchanged.]

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

C. to G. [Unchanged.]

4220.3400 THE ALTERNATIVE OF NO FACILITY.

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

A. to C. [Unchanged.]

4220.4100 CERTIFICATE OF NEED ~~MODIFICATIONS~~ CONDITIONS AND CHANGES.

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

Subp. 2. to 4. [See Repealer.]

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

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

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

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

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

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

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

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

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

REPEALER. Minnesota Rules, parts 4220.0100, subparts 4 and 8; 4220.2100, subparts 5 and 6; and 4220.4100, subparts 2, 3, and 4, are repealed.

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Desired products will support a full range of services such as Admissions, Accounting, Dietary, Electronic Charting, Pharmacy, Central Supply, Material Management, Medical Records, Plant Management, Utilization Review, and Quality Assurance. Of added importance is the ability to interface this information with several divisions at the State's central site.

It is the State's intent that this request is for information about packaged computer software that can handle facility applications with minor modification, not for detailed design and development of such a system.

Interested parties may obtain a Request for Information (RFI) document by calling or writing:

Connie J. Cobb, Director
State Facility MIS Project
Office of the Assistant Commissioner
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155
Telephone: (612) 297-2192

Information regarding the formal response to this request is outlined in the RFI document. Vendors wishing to be seriously considered in responding to a subsequent Request for Proposal, must also respond to the RFI. All formal responses must be received no later than October 2, 1987.

Minnesota Public Utilities Commission

Notice of Intent to Solicit Outside Information Regarding Proposed Rules Relating to Certificates of Need for Power Plants and Transmission Lines, Docket No. E-999/R-86-329

Notice is hereby given that the Minnesota Public Utilities Commission (Commission) is seeking information or opinions from outside sources in preparing to propose the adoption and amendment of rules relating to certificates of need for power plants and transmission lines, *Minnesota Rules*, parts 4220.0100-4220.4100. The most substantial changes relate to the following parts:

1. *Minnesota Rules*, part 4220.2350 ENVIRONMENTAL REPORT. Adoption of a new rule making it possible to consider part of the certificate of need application as the "draft environmental report" required under *Minnesota Rules*, part 4410.7100, subpart 5.

2. *Minnesota Rules*, part 4220.4100 CERTIFICATE OF NEED MODIFICATIONS. Amendment to reflect statutory changes and to more specifically describe procedures for handling post-application conditions and changes.

In addition to the above-described changes, other amendments reflect statutory changes, provide minor procedural changes, require additional economic or engineering data, delete certain requirements, and make minor changes in wording.

Persons or groups interested in examining a working copy of the above rules may call Kris Kline at 296-7124 for one free copy.

The adoption and amendment of the rules is authorized by *Minnesota Statutes*, Sections 14.06, 216A.05, 216B.08 and 216B.243 (1986), which collectively allow the Commission to promulgate rules regarding the certificate of need process.

The Commission requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views in writing or orally. Written or oral statements or comments should be directed to:

David Jacobson
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
Telephone: (612) 297-4562

Oral statements will be received during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday.

All statements of information and opinion will be accepted until Friday, October 9, 1987. Any written materials received by the Commission shall become part of the rulemaking record in the event that the rules are adopted and amended.

Dated: 20 August 1987

Mary Ellen Hennen
Executive Secretary

Public Utilities Commission

Outside Opinion Sought Concerning Amendments to Rules Governing the Certificate of Need Program for Electric Generating Facilities and High Voltage Transmission Lines

Notice is hereby given that the Minnesota Public Utilities Commission (the Commission) is considering amendments to Minnesota Rules, parts 4220.0100 to 4220.4100, governing the criteria for assessment of need and the contents of applications for certificates of need for large electric generating facilities and large high voltage transmission lines. These amendments will be promulgated under the authority of Minn. Stat. § 14.06 (1984), which authorizes the Commission to adopt rules setting forth the procedures which affect the public; Minn. Stat. § 216A.05, which authorizes the Commission to prescribe rules with respect to the control and conduct of the businesses coming within its jurisdiction; and Minn. Stat. § 216B.243, which requires the Commission to adopt rules and procedures regarding the certificate of need process.

The proposed amendments may address any of the sections of the rules, including: 1) definitions; 2) procedures for determining substantial completeness of applications; 3) the criteria for assessment of need; 4) application fees; 5) alternatives to proposed facilities; 6) technical, economic and environmental data for proposed facilities and reasonable alternatives; and 7) certificate of need modifications.

The Commission desires comments on any or all of these matters being considered. Interested or affected persons or groups may submit written statements of information or comment. Written statements should be addressed to:

David Jacobson
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

All written statements of information and comment will be accepted during normal business hours (8:00 a.m.–4:30 p.m.) until June 27, 1986. In order to be considered, comments must be received no later than 4:30 p.m. on Friday, June 27, 1986. Any written material received by the Commission shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rules are amended.

19 May 1986

Mary Ellen Hennen, Executive Secretary

Department of Transportation

Notice of Petition of City of Winona for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Winona has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a resurfacing project on Municipal State Aid Street 108 (Huff Street) from Sarnia Street to Broadway Street.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9919 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit a street width of 36 feet instead of the required width of 56 feet with parallel parking on one side.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

15 May 1986

Richard P. Braun
Commissioner of Transportation

OUTSIDE OPINION SOUGHT CONCERNING AMENDMENTS TO RULES GOVERNING THE CERTIFICATE OF NEED PROGRAM FOR ELECTRIC GENERATING FACILITIES AND HIGH VOLTAGE TRANSMISSION LINES

Notice is hereby given that the Minnesota Public Utilities Commission (the Commission) is considering amendments to Minnesota Rules, parts 4220.0100 to 4220.4100, governing the criteria for assessment of need and the contents of applications for certificates of need for large electric generating facilities and large high voltage transmission lines. These amendments will be promulgated under the authority of Minn. Stat. § 14.06 (1984), which authorizes the Commission to adopt rules setting forth the procedures which affect the public; Minn. Stat. § 216A.05, which authorizes the Commission to prescribe rules with respect to the control and conduct of the businesses coming within its jurisdiction; and Minn. Stat. § 216B.243, which requires the Commission to adopt rules and procedures regarding the certificate of need process.

The proposed amendments may address any of the sections of the rules, including: 1) definitions; 2) procedures for determining substantial completeness of applications; 3) the criteria for assessment of need; 4) application fees; 5) alternatives to proposed facilities; 6) technical, economic and environmental data for proposed facilities and reasonable alternatives; and 7) certificate of need modifications.

The Commission desires comments on any or all of these matters being considered. Interested or affected persons or groups may submit written statements of information or comment. Written statements should be addressed to:

David Jacobson
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

All written statements of information and comment will be accepted during normal business hours (8:00 a.m.-4:30 p.m.) until June 27, 1986. In order to be considered, comments must be received no later than 4:30 p.m. on Friday, June 27, 1986. Any written material received by the Commission shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rules are amended.

May 19, 1986

Mary Ellen Hennen, Executive Secretary

(8)

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter . . . . . Chairman
Harry Seymour Crump. . . . . Commissioner
Cynthia A. Kitlinski . . . . . Commissioner
Robert J. O'Keefe. . . . . Commissioner
Darrel L. Peterson . . . . . Commissioner

IN RE: NOTICE OF INTENT TO SOLICIT OUTSIDE INFORMATION REGARDING PROPOSED RULES RELATING TO CERTIFICATES OF NEED FOR POWER PLANTS AND TRANSMISSION LINES. DOCKET NUMBER E-999/R86-329.

COMMENTS OF OTTER TAIL POWER COMPANY

COMES NOW OTTER TAIL POWER COMPANY and for Information in the above-described Docket offers the following Comments as to those issues in which it has an interest:

4220.0100 DEFINITIONS Subp. 8c.

This subpart defines "construction" as meaning significant physical alternation of a site... "Significant" is a subjective term susceptible of much dispute. If a quantifiable substitute could be developed...perhaps in terms of amount of earth moved, or construction dollars booked, the certainty would be convenient for all parties.

4220.2500 A, together with 4220.0100 Subp. 8a.

This rule uses the MAPP URGE rating as the standard to discuss the effect of economies of scale on the facility size and timing. It is felt that since the URGE rating is based on actual operating test results, it is impossible to predict the actual URGE rating accurately enough to be used as a reliable standard. A facility is designed to a nameplate rating, and the actual URGE rating under MAPP procedures may be higher or lower than the nameplate rating. It is recognized that the goal is to use a standard which most accurately captures the real expectations and planning goals of the utility. Otter Tail will discuss this matter with other utility planners and communicate its thinking to the Commission staff and interested parties as soon as practicable.

4220.2700 Subp. 5 E.

The utility is here asked to discuss each assumption in its forecast including the effect of existing and future energy conservation programs on demand. It is not possible to make assumptions about the effect of programs which have not yet been legislated and Otter Tail does not try to make such guesses. The rule should either remain unchanged in this respect, or explicit language should make it clear that the rule does not require the utility to make any assumptions about the effect of non-existent government mandated programs.

4220.4100 Subp. 2a. Impermissible fuel types.

The existing rule should be eliminated. To the extent that this implies nuclear fuel, the rule and any legislation from which it is derived are patently an unconstitutional conflict with federal law. To the extent that it implies the use of one type of coal or fossil fuel rather than another it is an unwise interference with what should be market determinations in order to assure ratepayers of least cost fuel and plant operations. For example, the attempts of government in the seventies to intervene in the marketplace and proscribe use of natural gas proved to be highly adverse to ratepayers' economic interest and disruptive of market operation. Today industrial generators are building gas-fired self-generation, and selling the excess to utilities above cost, while the utilities are prevented from using the fuel to make the public utility network more cost-competitive.

Otter Tail believes it would be useful to have a public conference of persons interested in this rulemaking discuss some of the questions raised herein prior to publication of a proposed rule. This Company would be pleased to participate in such a conference.

Respectfully submitted,
OTTER TAIL POWER COMPANY

Katie Sasseville

Katherine E. Sasseville
General Counsel

215 South Cascade Street
Fergus Falls, MN 56573
(218) 739-8200

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of the Proposed Amendment of Rules of the Minnesota Public Utilities Commission Relating to Certificate of Need Applications for Large Electric Generating Facilities and Large High Voltage Transmission Lines

ISSUE DATE: January 6, 1988

DOCKET NO. E-999/R-86-329

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The construction of large electric generating facilities and large high voltage transmission lines requires a certificate of need, according to Minn. Stat. Section 216B.243 (1986). Amended rules governing certificate of need applications for new large electric generating facilities and large high voltage transmission lines were adopted by the Minnesota Energy Agency (MEA) in 1978 and again in 1979. Those amended rules replaced rules which were adopted by the MEA when the Certificate of Need Program began in 1975. The existing rules, Minn. Rules, parts 4220.0100 to 4220.4100, provide a list of informational requirements for certificate of need applications, certain specialized procedures for the need process, and a list of criteria according to which the applications are judged.

In 1983, the Legislature transferred administrative responsibility for the Certificate of Need Program to the Minnesota Public Utilities Commission (Commission). Laws of 1983, Chapter 289, Section 46. In accordance with Minn. Stat. Section 15.039, subd. 3 (1986), the amended rules adopted by the MEA must be used and enforced by the Commission until amended or repealed by the Commission.

The rules are being proposed for amendment at this time for two major reasons. First, the transfer of the certificate of need process to the Commission has caused certain terms and phrases used in the rules to be either meaningless or confusing. Second, several years of experience with the need process and the

existing rules have indicated that certain amendments would be in the public interest.

In preparation for this rulemaking proceeding, the Commission caused to be published in the State Register at 10 S.R. 2349 (May 26, 1986) a notice seeking outside opinion. Commission staff received several phone calls regarding that notice. However, the Commission received no written comments in response to that notice, nor any oral suggestions for specific language changes.

After preparing a first draft of proposed changes, the Commission caused to be published in the State Register at 12 S.R. 369 (August 31, 1987) a second notice seeking outside opinion. In response to that notice, the Commission received written comments from Otter Tail Power Company, Minnesota Power, and the Minnesota Environmental Quality Board (MEQB). In drafting the proposed amendments, the Commission carefully considered those written comments. The Commission also considered comments made about the rules over the several years they have been in effect. In addition, Commission staff discussed certain possible language changes with persons from the Department of Public Service, the State Planning Agency, Otter Tail Power Company, and Northern States Power Company. However, the proposed amendments were drafted by the Commission and its staff, based upon all of the experiences discussed above.

II. STATEMENT OF COMMISSION'S STATUTORY AUTHORITY

The Commission's authority to amend the subject rules is found in Minn. Stat. Section 14.06 (1986), which authorizes the Commission to adopt rules setting forth the procedures which affect the public; Minn. Stat. Section 216A.05 (1986), which authorizes the Commission to prescribe rules with respect to the control and conduct of the businesses coming within its jurisdiction; Minn. Stat. Section 216B.08 (1986), which authorizes the Commission to make rules in furtherance of its regulatory duties; and Minn. Stat. Section 216B.243 (1986), which requires the Commission to adopt procedures and criteria regarding the certificate of need process. Under these statutes, the Commission has the necessary statutory authority to adopt the proposed amended rules.

III. STATEMENT OF NEED

As indicated earlier, certain amendments are needed simply to recognize the transfer of the certificate of need process to the

Commission. For example, the existing rules still contain the terms, "director" and "Minnesota Energy Agency." Those terms need to be replaced by the currently accurate term, "Commission."

A second major consideration necessitating certain rule changes relate to the environmental review process administered by the MEQB under Minn. Rules, parts 4410.0200 to 4410.7800. Parts 4410.7000 to 4410.7800 provide that the Commission shall prepare an environmental report in conjunction with the processing of a certificate of need application for a large electric generating facility (LEGF) or a large high voltage transmission line (LHVTL). In 1986, the MEQB amended those rules to permit an alternative review process for LHVTLs under certain circumstances. Specifically, part 4410.7500 provides that alternative review shall be approved by the MEQB if the Commission demonstrates that the alternative review would meet certain conditions. The conditions are that the alternative review process must satisfy the content requirement of part 4410.7500, subp. 3, be included in the certificate of need hearing record, and be reviewed in accordance with part 4410.7100, subps. 5 to 12. The most efficient form of environmental review would be submission of the required data in the certificate of need application and evaluation of the data during the processing of that application. Before the Commission can request alternative review under part 4410.7500, it needs to make relatively minor changes and additions to its existing rules.

Certain other changes in the rules are needed to define terms used in the rules which currently are undefined, to clarify the circumstances under which the need for a previously-certified facility must be reevaluated, to bring terminology and procedures of the need process into conformance with the other processes administered by the Commission, and to add data requirements in technical areas where applications have been deficient in past certificate of need cases.

Finally, certain minor language changes have been made by the Revisor of Statutes in accordance with the procedures and conventions of that office. No further mention will be made of those changes.

IV. STATEMENT OF REASONABLENESS

The overall approach taken by the Commission to address the needs identified earlier is to propose only those amendments which enhance regulatory efficiency or which help eliminate misunderstandings between process participants. In past certificate of need cases, delays usually have been the result of

a lack of sufficient information at the beginning of the process. On several occasions, this has led to extensive discovery, lengthy cross-examination, or both. The Commission obviously cannot eliminate the need for discovery and cross-examination. However, it is reasonable for the Commission to propose amendments to the existing rules in areas where they are confusing or have led to difficulties in past cases.

The reasonableness of each proposed amendment is discussed below.

PART 4220.0100 DEFINITIONS.

Part 4220.0100, subp. 4. Agency.

The Commission proposes to delete the definition of the term "Agency." Deletion of this definition is reasonable because the transfer of the Certificate of Need Program to the Commission has rendered use of the term confusing and unnecessary.

Part 4220.0100, subp. 7. Annual system demand.

The Commission proposes to change the May 1-April 30 period for determining annual system demand to a flexible 12-month period ending with any given month. Amendment of this definition would help to eliminate confusion with respect to data for winter-peaking utilities. The confusion arises because the existing definition varies from the definition used by the Mid-Continent Area Power Pool (MAPP), of which all of the larger utilities in Minnesota are members. The amendment is reasonable because it is in accord with the MAPP definition familiar to Minnesota utilities and would not result in any loss of information.

Part 4220.0100, subp. 8. Director.

The Commission proposes to delete the definition of the term "director." Deletion of this definition is reasonable because the transfer of the Certificate of Need Program and reorganization of state agencies by the Legislature has made use of the term confusing and unnecessary.

Part 4220.0100, subp. 8a. Capacity factor.

The Commission proposes to add a definition of the term "capacity factor." The proposed definition is needed because the term is used without definition in part 4220.2500, item A, subitem (2). The definition is reasonable because it is consistent with standard use of the term within the electric utility industry and regulatory community.

Part 4220.0100, subp. 8b. Commission.

The Commission proposes to add a definition of the term "commission." The proposed definition is reasonable because it will help avoid needless repetition of the Commission's full name.

Part 4220.0100, subp. 8c. Construction.

The Commission proposes to add a definition of the term "construction." The proposed definition is needed because it is used in the rules without definition. It is reasonable because it is virtually the same as that used in the Minnesota Energy Act by the Legislature when the Certificate of Need Program was created in 1974. Minn. Stat. Section 116J.06, subd. 7 (1986). Reproduction of the full definition in the rules is reasonable because the statutory definition was not transferred to the Commission's enabling statute when the need process was transferred.

Part 4220.0100, subp. 12. LEGF; large electric generating facility.

The Commission proposes to replace the existing definition of LEGF with a cross-reference to the statutory definition set forth in Minn. Stat. Section 216B.2421, subd. 2(a) (1986). Several years ago, the Legislature amended the statutory definition as given in Minn. Stat. Section 216B.2421, subd. 2(a), thereby making the current definition in the rules inaccurate. The amendment is reasonable because it makes direct reference to the statutory definition without repeating it.

Part 4220.0100, subp. 13. LHVTL; large high voltage transmission line.

The proposed amendment is reasonable because it makes direct reference to the statutory definition in Minn. Stat. Section 216B.2421, subd. 2(b) (1986) without repeating it. Under the current statutory definition, the existing and amended definitions of the term are synonymous.

Part 4220.0100, subp. 18a. Nominal generating capability.

The Commission proposes to add a definition of the term "nominal generating capability." A size threshold for need jurisdiction is included in Minn. Stat. Section 216B.2421, subd. 2(a) (1986). As a result, there needs to be some objective measure of the power capability of a proposed LEGF available for comparison with the size threshold. The proposed definition provides such a measure. This

particular measure is reasonable because it is directly analogous to that in common use in the electric utility industry as a rating of the power capability of an existing generating facility. A time period is important in the definition because power must be capable of being sustained over a period of time to be usable to the applicant. It is appropriate to specify a measure which eliminates in-plant use, because a power plant is constructed to satisfy customer demands off the plant site.

PART 4220.0200 PURPOSE OF RULES.

The Commission proposes to amend this rule to delete the second sentence, which now states: "In accordance with Minnesota Statutes, section 216B.243, subdivision 2, no LEGF or LHVTL shall be sited or constructed in Minnesota without the issuance of a certificate of need by the director pursuant to Minnesota Statutes, sections 116J.05 to 116J.30 and consistent with the criteria for assessment of need." It is necessary and reasonable to change this rule because it is inaccurate in view of the transfer of the need process. It is reasonable to delete the second sentence, as proposed, because the intent of the sentence is already contained in Minn. Stat. Section 216B.243, subd. 2.

PART 4220.0300 SCOPE.

Part 4220.0300, subp. 1. Purpose.

The Commission proposes to renumber the existing language as subp. 1 and to add two sentences at the end of subp. 1 to read as follows: "The nominal generating capability of an LEGF is considered its size. If the nominal generating capability of an LEGF varies by season, the higher of the two seasonal figures is considered its size." The added language of the first sentence is reasonable because it ties the definition of "nominal generating capability" to the statutory size threshold for an LEGF. The added language of the second sentence is reasonable because it clarifies which of the seasonal numbers to use if the numbers are different. Seasonal variations can arise due to temperature variations and possibly other factors. Use of the higher number is reasonable for determining need jurisdiction because the current definition of LEGF in part 4220.0100, subp. 12 uses the language "designed for or capable of operation at." The Commission is aware of no reason to adopt a less restrictive interpretation of the statutory threshold than that which has been in effect in the current rules.

Part 4220.0300, subp. 2. Exemption.

The Commission proposes to add a new subp. 2 to read as follows: "Exemption. Notwithstanding subpart 1, a certificate of need is not required for a facility exempted by Minnesota Statutes, section 216B.243, subdivision 8." The proposed addition is reasonable because it specifically indicates that certain statutory exemptions override the provisions of subp. 1. Those exceptions were last reviewed and changed by the Legislature in Laws of 1985, Chapter 304, Section 1.

PART 4220.1100 PURPOSE OF CRITERIA.

The Commission proposes to amend part 4220.1100 to change the word "director" to "commission" and to change "116J.05 to 116J.30" to "216B.2421, subd. 2 and 216B.243." The proposed amendments are reasonable because they correct misleading references in the rules created by the transfer of the need process.

PART 4220.1200 CONSIDERATION OF ALTERNATIVES.

The Commission proposes to amend part 4220.1200 to change "director" to "commission." The proposed amendment is reasonable because it is in accord with changes caused by the transfer of the need process.

PART 4220.1300 CRITERIA.

Part 4220.1300, item B establishes as one of the criteria for a certificate of need that "a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant." The Commission proposes to amend part 4220.1300 by deleting from item B the phrase "by parties or persons other than the applicant." The proposed amendment is reasonable because it removes any possible argument that the rule improperly shifts the burden of proof away from the applicant. While it stands to reason that an applicant will not undercut its own proposal by showing there is a "more reasonable and prudent alternative" available, a few individuals and groups have argued in the past that the existing rules improperly shifts the burden of proof. Elimination of the phrase in question would remove that concern without adversely affecting the rule.

PART 4220.2100 APPLICATION PROCEDURES AND TIMING.

Part 4220.2100, subp. 1. Form and manner.

The Commission proposes to amend subp. 1 by changing "the director" to "this chapter." The proposed amendment is reasonable because it replaces a term (i.e., "the director") which was rendered meaningless by legislative changes affecting the process.

Part 4220.2100, subp. 2. Copies, title, table of contents.

The first two sentences of subp. 2 require the filing of 50 bound copies and one unbound copy of the application and allow the director to require additional bound copies, up to 100 total bound copies. The Commission proposes to replace these two sentences with the following: "The original and 13 copies of the application must be filed with the commission. The applicant shall provide copies of the application to other state agencies with regulatory responsibilities in connection with the proposed facility and to other interested persons who request copies. The applicant shall maintain a distribution list of such copies." This proposed procedure for distributing applications is consistent with that used by the Commission for rate cases and other filings. It contrasts with the procedure in the current rules, which requires the applicant to deliver up to 100 copies to the decision-maker for transmittal to other state agencies and other interested parties. The current procedure often has led to waste, because many copies wind up undelivered in the decision-maker's office. The proposed procedure is reasonable because it removes the Commission as an intermediary in the distribution process, which should help applicants to control their reproduction costs. The proposed procedure also should be less confusing to utility personnel, who will no longer be required to use different procedures for need cases and rate cases. It is reasonable to require applicants to keep distribution lists, because such lists will be needed to distribute copies of corrections to pages of the application. Such corrections were prepared and distributed by several past applicants.

Part 4220.2100, subd. 3. Changes to application.

The Commission proposes to amend subp. 3 by changing "hearing examiner" to "administrative law judge" and "director" to "commission." The name changes are reasonable because they are consistent with changes which have been made by the legislature since the rules were adopted. The Commission also proposes to add an additional sentence to

the end of subp. 3, as follows: "The applicant shall send to persons receiving copies of the application a like number of copies of changed or corrected pages." The proposed addition is reasonable because persons who receive copies of the applications should also receive copies of any necessary corrections. The proposed requirement to distribute corrections is not burdensome to applicants and is necessary to allow the public to participate meaningfully in the need process.

Part 4220.2100, subp. 4. Cover letter.

Subp. 4 requires the cover letter accompanying an application to specify the type of facility for which a certificate of need is sought and the number of copies of the application filed. The Commission proposes to eliminate the requirement to state the number of copies of the application filed. The proposed amendment is reasonable because it eliminates an unnecessary requirement. Under the proposed change to subp. 2, the number of applications submitted will be fixed and does not have to be indicated in response to this section.

Part 4220.2100, subp. 5. Public hearing.

The Commission proposes to delete subp. 5, which cross-references other rules concerning procedures for a contested case hearing on a certificate of need application. The proposed deletion is reasonable because the existing rule is unnecessary. It provides no procedural guidance missing from other applicable rules and statutes. In addition, the existing rule uses outmoded terms.

Part 4220.2100, subp. 6. Timely decision.

The Commission proposes to delete subp. 6, which requires a decision no later than six months from receipt of the application. The proposed deletion is reasonable because the existing language merely is repetitive of provisions of Minn. Stat. Section 216B.243, subd. 5 (1986).

Part 4220.2100, subp. 7. Complete applications.

The Commission proposes to amend subp. 7 by changing "director" to "commission." The name change for the decision-maker is reasonable because it is consistent with legislative intent in the transfer of the need process. The Commission also proposes to lengthen the period for reviewing applications for completeness from "15 days" to "30 days." This change is reasonable because review of an application for completeness is an important step which should be done with care. As indicated earlier, delays in

the processing of need cases have arisen because information was unavailable early in the hearing process. Allowing 30 days for review will provide time for interested parties to comment on the completeness of the application. This in turn will ensure that the completeness review is fair, open and thorough. This process could help identify possible areas of informational inadequacy at the earliest possible time. Allowing comments on the adequacy of filings is consistent with the procedure used by the Commission in its other processes, a procedure which has worked well.

The Commission also proposes to revise the final sentence of this subpart to read: "If the revised application is substantially complete, the date of its submission is considered the application date." The proposed revision to the final sentence is reasonable because it conveys the same meaning without repeating the statutory deadline.

Part 4220.2100, subp. 8. Exemptions.

The Commission proposes to amend subp. 8 by changing "director" to "commission." The proposed change is reasonable because it is consistent with the transfer of the need process. The Commission also proposes to change 1) the time for filing a request for exemption from 20 days prior to the submission of an application to 45 days prior to submission of an application and 2) the time for responding to such a request from 15 days to 30 days. The two time-length changes are reasonable because review of such requests by the Commission is an important and time-consuming procedure. The longer process should not lead to any delays, because initiation of the procedure is within the control of the applicant. Because application preparation takes several months, an applicant reasonably can be expected to make any exemption requests at least 45 days in advance of the planned application date. The longer review period will allow the Commission to receive comments on the request from interested parties.

PART 4220.2200 FILING FEES AND PAYMENT SCHEDULE.

Part 4220.2200, subp. 2. Payment schedule.

The second sentence of subp. 2 provides: "The applicant shall be notified prior to the time its application is acted upon by the director of any additional fees, which fees shall be paid within 30 days of notification." The Commission proposes to replace this language with the following: "The applicant must be notified of and billed for costs not covered by the fee described in subpart 1. The additional fees must be paid within 30 days of

notification." Removal of the term "director" is consistent with the Legislature's decision to transfer the Certificate of Need Program to the Commission. Removal of the time reference (i.e., "prior to the time the application is acted upon") would permit recovery of costs associated with administrative appeals, judicial appeals, and enforcement activities. In the past, failure to collect for these activities has contributed to a revenue deficit for the Certificate of Need Program, which has had to be covered by other funds. The proposed amendment also would allow the Commission to bill for actual costs associated with preparing the final order. Under the current rule, it has been necessary to estimate certain costs in order to issue a final bill prior to release of the order. The proposed language would provide for a billing before the order is released and at least one later billing to cover subsequent costs. Therefore, the proposed amendment is reasonable in that it would promote accuracy, administrative efficiency, and complete collection of program costs.

Part 4220.2200, subp. 3. Payment required.

Subp. 3 provides: "No certificate of need shall be issued until all fees are paid in full." The Commission proposes to replace this language with the following: "The commission shall not issue its decision on the application until the outstanding set fee payments and additional billings under subparts 1 and 2 are paid by the applicant." The proposed change is reasonable because it recognizes that in some cases a certificate of need will not be granted to the applicant. In addition, it allows recovery of all known costs up to the time of the decision, while recognizing that certain subsequent costs would have to be recovered by a later billing. Theoretically, collection of processing fees is more difficult after a certificate of need decision is issued. However, the Commission has had little trouble collecting from utilities to recover costs of other programs, implying that the risk of noncollection is minimal.

PARTS 4220.2300, CONTENTS OF APPLICATION.

Part 4220.2300, subp. 3. Joint ownership and multiparty use.

The existing rule requires certain additional information if a facility is "designed to meet the long-term needs (in excess of 50 megawatts) of a particular utility that is not to be an owner." The Commission proposes to change "50" to "80." The proposed change to "80" megawatts is reasonable because it is consistent with the new size threshold for

jurisdiction over an LEGF. It does not make sense to place more stringent requirements on a non-owner than on an owner, as the rules would do if this change is not made. The Commission also proposes to change both references to "parts 4220.2400 and 4220.2700 to 4220.3000" to "this chapter." This change is reasonable because it recognizes that responses to parts 4220.2500 and 4220.2600 could vary by utility. Finally, the Commission proposes to add the following additional sentence to subp. 3: "Joint applicants may use a common submission to satisfy the requirements of any part for which the appropriate response does not vary by utility." This addition is reasonable because it promotes efficiency and flexibility.

PART 4220.2350 ENVIRONMENTAL REPORT.

Part 4220.2350, subp. 1. Draft report.

Proposed subp. 1 provides that if the application is for an LHVTL, the information submitted in accordance with parts 4220.2400, 4220.2600, and 4220.2900 to 4220.3400 must be designated by the applicant as its "draft environmental report" and shall be distributed in accordance with Minn. Rules, part 4410.7100, subp. 5. Proposed subp. 1 is reasonable because it designates clearly the information which must be included to cover the draft environmental report content requirements described in Minn. Rules, part 4410.7500, subp. 3. The proposed requirement for distribution of the draft environmental report in accordance with Minn. Rules, part 4410.7100, subp. 5 is reasonable because it is a requirement for alternative environmental review as provided for by Minn. Rules, part 4410.7500, subp. 4, item C.

Part 4220.2350, subp. 2. Written responses.

Proposed subp. 2 requires the applicant to submit written responses to all substantive comments entered into the record and requires the responses to become part of the record of the proceeding. This proposed addition is reasonable because it is in accord with the requirement for responses to substantive comments, as given in Minn. Rules, part 4410.7100, subp. 7. It is logical that the preparer of the draft report should respond to meaningful comments. The Commission itself should not issue such responses, because the hearing process will be in the hands of the administrative law judge at this point in the process. Commenting on a portion of the record while the case is in progress is awkward for the decision-maker in the need process.

Part 4220.2350, subp. 3. Final report.

Proposed subp. 3 provides that the "final environmental report" consists of the draft environmental report, written comments, and the applicant's responses to comments, and that the final report shall be distributed in accordance with Minn. Rules, part 4410.7100, subp. 5. This proposed addition is reasonable because it provides for the efficient assembly and distribution of a final report, in accordance with Minn. Rules, part 4410.7100, subps. 5, 8 and 10. Inclusion of the responses ensures that the public will be able to review responses to the concerns raised about the proposed facility and practicable alternatives.

Part 4220.2350, subp. 4. Notice of final report.

Proposed subp. 4 provides that, upon completing the final environmental report, the applicant shall cause to be published in the EQB Monitor a notice indicating such completion. This proposed rule is reasonable because members of the public not actively involved in the hearing process have a right to know that this important report is complete and available for review. Furthermore, such notice is required by Minn. Rule, part 4410.7100, subp. 10.

Part 4220.2350, subp. 5. Supplements.

Proposed subp. 5 requires the applicant to prepare a supplement to the final environmental report if the tests described in Minn. Rules, part 4410.3000, subps. 1 and 2 are met and a certificate of need proceeding on the proposed facility is pending. This proposed rule is reasonable because any proposed changes in a project requiring additional need review should be analyzed for environmental implications. This rule is in accord with Minn. Rules, part 4410.7100, subp. 12.

PART 4220.2400 NEED SUMMARY AND ADDITIONAL CONSIDERATIONS.

Part 4220.2400, subp. 1. Need summary.

The Commission proposes to change "director" to "commission". The proposed change is reasonable because it is in accord with the transfer of the need process to the Commission by the Legislature.

PART 4220.2500 DESCRIPTION OF PROPOSED LEGF AND ALTERNATIVES.

Item A, subitem (1) of part 4220.2500 requires an application for a proposed LEGF to include "a description of the generating capacity of the facility, which includes a discussion of the effect of the economies of scale on the facility type and timing." The Commission proposes to change this language to read as follows: "the nominal generating capability of the facility, as well as a discussion of the effect of the economies of scale on the facility size and timing." The proposed change is reasonable because it more specifically requires the applicant to indicate the size of the proposed facility. The size of the facility is needed to determine whether the Commission has jurisdiction over the facility. The size also is needed to calculate the fee in accordance with Minn. Rules, part 4220.2200 and to calculate the portions of the applicant's generation requirements which would be satisfied by the facility.

The Commission proposes to add a new subitem (4) after existing subitem (3) of item C to require a discussion, for the proposed facility and for each alternative, of "its fuel costs in current dollars per kilowatt-hour." This proposed addition to item C is reasonable because the fuel cost is extremely important in determining the total cost of electricity from a particular alternative. While the requested information can be inferred from responses to the existing rules, it is reasonable that such information should be provided explicitly. In the past, members of the public have stressed the importance of having such data in the application. Providing the fuel cost data will not be burdensome to an applicant, because the data logically is a necessary input into the decision to apply for a particular type of generating facility.

The Commission proposes to add a new subitem (7) of item C to require a discussion of "an estimate of its effect on rates system-wide and in Minnesota, assuming a test year beginning with the proposed in-service date." This proposed addition is reasonable because the public is keenly interested in knowing the effect of utility proposals on the cost of a basic need (i.e., electricity). The rate effect of a proposal cannot necessarily be calculated from the other required information because of the way rates are set by regulatory commissions. Addition of a generating plant to a utility's rate base causes a rate impact early in the life of a plant greater than would be implied by levelized costs. In addition, rate effects of a particular system addition are moderated by the existence of other generating units on the utility's system. Providing rate information will not be burdensome to applicants, because they logically should assemble such data before proceeding with a particular generation option.

The Commission proposes to amend the last subitem of item C to reflect the necessary renumbering of the other subitems and to add the following: "including projected escalation rates for fuel costs and operating and maintenance costs, as well as projected capacity factors." This proposed change is reasonable because it clarifies the type of assumptions for which information is expected. Such assumptions are necessary for the applicant to weigh the considered alternatives, so providing this information will not be burdensome.

PART 4220.2600 DESCRIPTION OF PROPOSED LHVTL AND ALTERNATIVES.

The Commission proposes to amend item B, subitem (1) to require a discussion of the availability of alternatives to the facility, including "new generation of various technologies, sizes, and fuel types." This proposed change is reasonable because it clarifies the type of generation information that is expected. Because generating facilities vary greatly, as do their costs and environmental effects, consideration of a single generation option is an insufficient response, unless generation simply cannot satisfy the alleged need for the proposed facility. Three of the main categories of differences between generating facilities are technology, size, and fuel type, implying that such differences should be considered by an applicant in weighing alternatives.

The Commission proposes to add a new subitem after existing subitem (4) of item C requiring, for the proposed facility and for each alternative, "an estimate of its effect on rates system-wide and in Minnesota, assuming a test year beginning with the proposed in-service date." This proposed addition is reasonable because the public is keenly interested in knowing the effect of utility proposals on the cost of electricity. As indicated earlier, the rate effect cannot necessarily be calculated directly from the other information required by the rules, indicating the need for a separate requirement.

The Commission proposes to amend the last subitem in item C to reflect renumbering of the other subitems. This is reasonable because it makes the rules internally consistent.

PART 4220.2700 PEAK DEMAND AND ANNUAL ELECTRICAL CONSUMPTION FORECAST.

Part 4220.2700, subp. 2. Content of forecast.

Item E of subp. 2 requires submission of "the estimated annual revenue requirement per kilowatt-hour." The Commission proposes to amend item E by adding "for the system in current dollars." The proposed change in item E

is reasonable because it clarifies the requirement. In the past, there has been confusion whether the requirement applied to the proposed facility or the applicant's system as a whole.

Item F of subp. 2 requires submission of "the applicant's system weekday load factor by month." The Commission proposes to amend item F by adding "estimated average" and "in other words, for each month, the estimated average of the individual load factors for each weekday in the month." This proposed change is reasonable because it clarifies how the load factor is to be calculated. In the past, utilities have interpreted the requirement in at least two different ways. It is reasonable to allow estimates of these load factors, because many calculations are necessary to provide an exact number. Such load factors are useful because they provide a rough indication of the potential for and desirability of load management and other load-leveling programs.

Part 4220.2700, subp. 3. Forecast methodology.

The Commission proposes to amend subitem G by deleting the words "to the agency" from the phrase "forecasts submitted to the agency under chapter 4100." The proposed change is reasonable because the forecasts required by chapter 4100 no longer are submitted to the decision-maker in the need process. This was a secondary result of the transfer of the need process to the Commission.

Part 4220.2700, subp. 4. Data base for forecasts.

The Commission proposes to amend subp. 4 to change "director" to "commission" and "hearing examiner" to "administrative law judge." The proposed changes are reasonable because the new names are consistent with current terminology and statutes.

Part 4220.2700, subp 5. Assumptions and special information.

Item D of subp. 5 requires submission of a discussion of the assumptions made regarding "the assumptions made in arriving at any data requested in subpart 2 that is not available historically or not generated by the applicant in preparing its own internal forecast." The Commission proposes to delete the words "the assumptions made in arriving at." The proposed deletion in item D is reasonable because it removes an unintended repetition of "assumptions" in the current rules. No change in meaning is intended.

Part 4220.4100, subp. 1. Authority of commission.

The Commission proposes to amend subp. 1 to change all references of "director" to "commission." The proposed changes are reasonable because they reflect the transfer of the need process to the Commission.

Part 4220.4100, subp. 3a. Proposed changes in size, type, and timing.

The proposed content of this subpart is a reorganization of existing subps. 2 and 3. Some new language also is added. The Commission proposes to change the title to "Proposed changes in size, type and timing." The proposed new title is reasonable because it reflects the content of the subpart. The lead-in to the items is reasonable because it requires changes proposed by an applicant to the certified size, type, or timing to conform to provisions of items A through H. This language introduces in general terms what is required by the items.

Proposed item A essentially is contained in the first sentence of existing subp. 2, item B. The minor changes between the existing and proposed languages are reasonable because they reflect the transfer of the certificate of need process to the Commission.

Proposed item B is a modification of existing subp. 3, item A. It is reasonable to permit utilities some flexibility in facility size to allow for changing conditions. The Commission proposes that changes in size of a certified facility be allowed without recertification up to the lesser of 80 megawatts or 20 percent of the certified capacity of the facility. Eighty megawatts is the threshold size determined by the Legislature for need jurisdiction over most types of power plants. It is therefore logical that plant size increases greater that 80 megawatts should not be allowed without further review by the Commission. The Commission proposes to use 20 percent as the primary limit on size increases allowed without recertification. The 20 percent threshold is commonly used in other certificate of need rules to identify a change in existing plant capacity requiring review by the Commission. Under the proposed rule, the 20 percent limit would apply to all certified facilities up to 400 megawatts. For plants over 400 megawatts, the limit would be 80 megawatts.

Proposed item C is a new provision, which states: "A change in power plant ownership smaller than the lesser of 80 megawatts or 20 percent of the capacity approved in a certificate of need issued by the commission does not

require recertification." This proposed item is reasonable because it is a logical extension or companion of proposed item B. A change in facility ownership achieves much the same purpose as a change in facility size - an adjustment to changes in projected demand or capacity availability which become apparent subsequent to the completion of a certification proceeding. Because of their similarity of purpose, both changes should be handled according to the same general procedure.

Proposed item D is a paraphrase of the second sentence in existing subp. 2, item B. The new language would extend the reporting requirement to changes of facility size and of ownership shares. Such a requirement is reasonable because the Commission needs to know the status of certified facilities for a variety of reasons, such as approving depreciation schedules, considering a plant's effect on reasonableness of rates, and answering questions from the public. The requirement would not impose a burden on the applicant because it could be satisfied with a simple, short filing.

Proposed item E is virtually the same as existing subp. 3, item B, subitem (1). It is reasonable to renumber this provision because it fits better into subp. 3a as restructured.

Proposed item F is a new provision, which states: "A design change required by another state agency in its permitting process for certified facilities is not subject to review by the Commission, unless the change contradicts the basic type determination specified by the certificate of need." Just as minor length changes resulting from the actions of another agency are not reviewable by the Commission, as provided by item E, other minor design changes should not be either. This provision is a reasonable precaution against overlapping jurisdiction and unnecessary delays in the construction of needed facilities. However, it is necessary and reasonable to limit such changes as indicated in the proposed rule, because implied changes in the basic type determination could alter the basis upon which the Commission issued the certificate of need.

Proposed item G is virtually the same as existing subp.3, item B, subitem (2). It is reasonable to renumber this provision because it fits better into subp. 3a as restructured.

Proposed item H is a new provision which would cover all other situations not covered by items A through G. The rule establishes a procedure in which the applicant informs the Commission of a desired change in size, type, timing, or

ownership. The applicant must provide a copy of its submission to each intervenor in the certificate of need proceeding on the facility. Intervenors then have 15 days to comment on the proposed change. The Commission has 45 days from the date of the applicant's request to review the proposal and notify the applicant whether the change is acceptable without further review. The rule also provides that the Commission shall order further hearings if the change, had it been known at the time of the need decision on the facility, could reasonably have resulted in a different decision. The addition is necessary to clarify the procedure used by the Commission to determine whether a proposed change requires recertification of the proposed facility. Lack of such a procedure has proved troublesome in past certification cases. The specified procedure would ensure that interested parties received notice of the proposed change, as well as an opportunity to comment on it. The time requirements specified in the rule ensure an orderly and timely consideration of the request. The 15-day and 45-day deadlines strike a reasonable balance between providing sufficient time to consider the change and preventing unnecessary delay. Finally, the criterion specified in the rule for deciding whether recertification is necessary is reasonable because it is directly tied to the previous certification decision. Under the criterion, new hearings would be ordered if and only if the proposed change could reasonably affect the certification decision. For the reasons given above, adoption of the proposed item would be reasonable and in the public interest.

Part 4220.4100, subp. 4. Permissible fuel types.

The Commission proposes deletion of this current rule, which states: "When a certificate of need is granted for the proposed facility, or modification thereof, the director shall state which fuel types are not permitted in supplying the additional generation capacity certified."

This current rule was adopted in 1975 amid concern over the use of fuel oil and natural gas for base-load generation of electricity. Demand forecasts by electric utilities pointed to the construction of many new power plants by the turn of the century. Those high demands did not materialize, and only two large power plants have been constructed in Minnesota since 1975. The Commission doubts that the rule serves any useful function at the present time. While avoidance of generation using fuel oil and natural gas still makes sense from a public policy standpoint, the high cost of those fuels relative to other fuels likely makes regulatory restrictions on their use unnecessary. Further, the Commission could restrict use of certain fuels under subpart 1 of part 4220.4100, given adequate support in the

record. Therefore, the Commission believes this subpart is unnecessary and should be repealed.

V. SMALL BUSINESS CONSIDERATIONS

Minn. Stat. Section 14.115 (1986) requires a state agency to mitigate the effects of new rules or amendments to existing rules on small businesses and to aid small businesses in participating in the rulemaking process. The Commission has considered a number of factors in determining whether Minn. Stat. Section 14.115 (1986) applies to this rulemaking procedure.

There are two types of entities which might be required to submit need applications under these rules and with might be considered "small businesses" in some context. The first type are smaller electric utilities. The second are individuals or companies which build cogeneration or small power production facilities as defined in the Federal Power Act, United States Code, Title 16, sections 796(18)(A) and 796(17)(A). Based upon the state's 12 years of certificate of need history, the Commission believes it is extremely unlikely that any other types of small businesses would be affected directly by these rules and the proposed amendments thereto.

The Commission notes that in Minn. Stat. Ch. 216B and 237, it has been authorized by the Legislature to regulate gas and electric utilities. Some of the basic tenets of utility regulation are: utilities are affected with a deep public interest; utilities are obligated to provide satisfactory service to the entire public on demand; and utilities are obligated to charge fair, non-discriminatory rates. A general freedom from substantial direct competition and the opportunity to make a fair return on investment are among the benefits utilities receive from regulation. Given this regulatory scheme, it is clear that the Legislature views utilities differently from other concerns defined as small businesses. The degree of governmental intervention in the operations of a public utility is considerably higher than for other types of businesses.

Even if some small utilities could be viewed as "small businesses" as that term is defined, they, nevertheless, would be excepted from the small business statute.

The Commission finds that Minn. Stat. Section 14.115, subd. 7 (1986) establishes exceptions to the general obligations created by the statute and applies to rules promulgated by the Commission. In pertinent part, it states:

> Subd. 7. Applicability. This section does not apply to: (c) service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals, providers of medical care, daycare centers, group homes and residential care facilities;

The Commission finds that utilities fall within this broad definition. They are certainly "service businesses regulated by government bodies for standards and costs." The words following the phrase "such as" merely provide some examples of businesses regulated by government and are not exclusive.

As for the second type of entity discussed above, qualifying cogenerators and small power producers, they are explicitly exempted from the need process by Minn. Stat. Section 216B.243, subd. 8 (1986), as long as the production facility would be smaller than 80 megawatts. It is unlikely that a small company would build a facility which could produce electric power in excess of 80 megawatts.

In the unlikely event that any small business, as that term is defined, would be directly affected by the rules, the existing rules provide a mechanism for reducing the impact of the rules on such small businesses. Proposed part 4220.2100, subp. 8, provides that an applicant may request exemption from any data requirement in the rules. Such applicants would be required to show that the data requirement is unnecessary or could be satisfied by submission of substitute information. In addition, the rules permit applications to be processed in much less time than the statutory guideline of six months. In the past, applications have been processed in three months or less when the proposed facilities have not been determined to present environmental or other hazards to the public. To go beyond these provisions would circumvent legislative intent as described in Minnesota Statutes, Chapters 116B, 116C, 116D and 216B.

VI. CONCLUSION

Based upon the foregoing, the proposed amendments to Minn. Rules, parts 4220.0100 to 4220.4100 are both needed and reasonable.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rules Governing Certificate of Need for Electric Rules, Minn. Rules, parts 4220.0100 to 4220.4100.

DOCKET NO. E-999/R-86-329

DECLARATION OF COUNSEL

I, Gregory D. Dittrich, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0729.

_____

Gregory D. Dittrich
Special Assistant
Attorney General

MINNESOTA public utilities COMMISSION

Proposed Rules Governing Certificates of Need for Power Plants and Transmission Lines, Minn. Rules, parts 4220.0100 to 4220.4100, Docket No. E-999/R-86-329.

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Public Utilities Commission (Commission) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. Section 14.22 to 14.28 (1986). The Commission's authority to adopt the rule is set forth in Minn. Stat. Sections 216A.05, 216B.08, 216B.243 (1986).

All persons have until 4:30 p.m. on February 10, 1988, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

If a public hearing is required, the Commission will proceed pursuant to Minn. Stat. Sections 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Caroline Robinson
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-9617

The proposed rules may be modified if the modifications are supported by data and views submitted to the Commission and do not result in a substantial change in the proposed rule as noticed.

The proposed rules, if adopted, will amend the existing rules governing the certificate of need process for power plants and transmission lines. A copy of the proposed rules is enclosed.

AMERICAN CENTER building • kellogg and robert sts • saint paul, mn 55101

One free copy of the rules is available upon request from Kris Kline at (612) 296-7124.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Kris Kline at (612) 296-7124.

You are hereby advised, pursuant to Minn. Stat. Section 14.115 (1986), "Small business considerations in rulemaking," that the proposed rules will impact small electric utilities and small businesses which build cogeneration or small power production facilities. Small electric utilities are service businesses regulated by government bodies for standards and costs and, therefore, are exempt from this statute. Small businesses which build cogeneration or small power production facilities are exempt from the certificate of need process if the facilities produce less than 80 megawatts of electrical power. See Minn. Stat. Section 216B.243 (1986). For those small businesses which build cogeneration or small power production facilities that produce electric power in excess of 80 megawatts, the proposed rules require additional data in technical areas where certificate of need applications have been deficient in past cases. However, the impact on these businesses has been reduced in the proposed rules by providing that applicants may request an exemption from the data requirements and by permitting the processing of applications in less than six months under certain conditions.

The adoption of these rules by the Commission will not require the expenditure of public money by local public bodies or have a direct impact on agricultural land. Therefore, Minn. Stat. Section 14.11 (1986) is not applicable to this rulemaking proceeding.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule submitted to the Attorney General, must submit a written request to Caroline Robinson at the above address.

MS Hennen

Mary Ellen Hennen
Executive Secretary

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Dawn M. Walker, being first duly sworn, deposes and says:

That on the 5th day of January, 1988 (s)he served the attached

Notice of Intent to Adopt Rules with Copy of Proposed Permanent Rules

Docket No. E-999/R-86-329

X By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

X By depositing in State of Minnesota Inter Office Mail.

X By personal service

to all persons at the addresses indicated below and/or on the attached lists:

Commissioners
Greg Dittrich
Caroline Robinson
Dave Jacobson
Rosellen Condon

Dawn M Walker

Subscribed and sworn to before me,
a notary public, this 7th day of
March, 1988.

Sharon L. Juen
Notary Public

SHARON L. JUEN
NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNTY
MY COMM. EXPIRES JAN. 19, 1991

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rules Governing Certificates of Need for Power Plants and Transmission Lines, Minn. Rules, parts 4220.0100 to 4220.4100.

DOCKET NO. E-999/R-86-329

CERTIFICATE OF ACCURACY OF RULEMAKING MAILING LIST

STATE OF MINNESOTA)
) ss.LIST
COUNTY OF RAMSEY)

Dawn M. Walker, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. Sections 14.14, subd. 1a and 14.22 (1986) that their names be placed on the Minnesota Public Utilities Commission's rulemaking mailing list is accurate, complete, and current as of this 5th day of January, 1988.

Dawn M Walker
Dawn M. Walker

Subscribed and sworn to before me

this 18th day of April, 1988.

Sharon L. Juen
Notary Public

SHARON L. JUEN
NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNTY
MY COMM. EXPIRES JAN. 19, 1991

Disk 21A

RULEMAKING LIST
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Subp. 9. and 10. [Unchanged.]

Subp. 11. **Clothing and personal needs allowance of a minor.** The parents of a patient or resident who is an unmarried, dependent child ~~shall be~~ are responsible for meeting the ~~patient's~~ child's clothing and personal needs allowance in addition to the amount they are determined able to pay to meet the cost of care.

REPEALER. Minnesota Rules, part 9515.1100, is repealed.

Public Utilities Commission

Proposed Permanent Rules Relating to Certificates of Need for Power Plants and Transmission Lines

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Public Utilities Commission (Commission) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* Section 14.22 to 14.28 (1986). The Commission's authority to adopt the rule is set forth in *Minnesota Statutes* Sections 216A.05, 216B.08, 216B.243 (1986).

All persons have until 4:30 p.m. on February 10, 1988, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

If a public hearing is required, the Commission will proceed pursuant to *Minnesota Statutes* Sections 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Caroline Robinson
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780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-9617

The proposed rules may be modified if the modifications are supported by data and views submitted to the Commission and do not result in a substantial change in the proposed rule as noticed.

The proposed rules, if adopted, will amend the existing rules governing the certificate of need process for power plants and transmission lines. The proposed rules are published below. One free copy of the rules is available upon request from Kris Kline at (612) 296-7124.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Kris Kline at (612) 296-7124.

You are hereby advised, pursuant to *Minnesota Statutes* Section 14.115 (1986), "Small business considerations in rulemaking," that the proposed rules will impact small electric utilities and small businesses which build cogeneration or small power production facilities. Small electric utilities are service businesses regulated by government bodies for standards and costs and, therefore, are exempt from this statute. Small businesses which build cogeneration or small power production facilities are exempt from the certificate of need process if the facilities produce less than 80 megawatts of electrical power. See *Minnesota Statutes* Section 216B.243 (1986). For those small businesses which build cogeneration or small power production facilities that produce electric power in excess of 80 megawatts, the proposed rules require additional data in technical areas where certificate of need applications have been deficient in past cases. However, the impact on these businesses has been reduced in the proposed rules by providing that applicants may request an exemption from the data requirements and by permitting the processing of applications in less than six months under certain conditions.

The adoption of these rules by the Commission will not require the expenditure of public money by local public bodies or have a direct impact on agricultural land. Therefore, *Minnesota Statutes* Section 14.11 (1986) is not applicable to this rulemaking proceeding.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule submitted to the Attorney General, must submit a written request to Caroline Robinson at the above address.

Mary Ellen Hennen
Executive Secretary

Rules as Proposed

4220.0100 DEFINITIONS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. [See Repealer.]

Subp. 5. and 6. [Unchanged.]

Subp. 7. **Annual system demand.** "Annual system demand" means the highest system demand of a utility occurring during the 12 month period ~~beginning May 1 of the forecast year~~ ending with a given month.

Subp. 8. [See Repealer.]

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

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

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

Subp. 9. to 11. [Unchanged.]

Subp. 12. **LEGF; large electric generating facility.** "Large electric generating facility ~~(LEGF)~~" or "LEGF" means ~~any~~ an electric power generating unit or combination of units ~~at a single site and associated facilities designed for or capable of operation at a combined capacity of 50,000 kilowatts or more; or any facility of 5,000 kilowatts or more that requires oil, natural gas, or natural gas liquids as a fuel and for which an installation permit has not been applied for by May 19, 1977, pursuant to part 7005.0200~~ as defined by Minnesota Statutes, section 216B.2421, subdivision 2, clause (a).

Subp. 13. **LHVTL; large high voltage transmission line.** "Large high voltage transmission line ~~(LHVTL)~~" or "LHVTL" means a conductor of electrical energy as defined by Minnesota Statutes, section 216B.2421, subdivision 2, clause (b), and associated facilities ~~designed for and capable of operation at a nominal voltage of 200 kilovolts or more with more than 80.4 kilometers (50 miles) of its length in Minnesota, or at a nominal voltage of 300 kilovolts or more with more than 40.2 kilometers (25 miles) of its length in Minnesota. Associated facilities shall include but not be limited to~~ necessary for normal operation of the conductor, such as insulators, towers, ~~and~~ substations, and terminals ~~operating at the nominal voltage~~.

Subp. 14. to 18. [Unchanged.]

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

Subp. 19. to 31. [Unchanged.]

4220.0200 PURPOSE OF RULES.

The purpose of this chapter is to specify the content of applications for certificates of need and to specify criteria for the assessment of need for large electric generating facilities and large high voltage transmission lines. ~~In accordance with Minnesota Statutes, section 216B.243, subdivision 2, no LEGF or LHVTL shall be sited or constructed in Minnesota without the issuance of a certificate of need by the director pursuant to Minnesota Statutes, sections 116J.03 to 116J.30 and consistent with the criteria for assessment of need.~~

4220.0300 SCOPE ~~OF RULES~~.

Subpart 1. **Facilities covered.** ~~Each~~ A person applying for a certificate of need for an LEGF or an LHVTL shall provide ~~all~~ the

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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

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

4220.1100 PURPOSE OF CRITERIA.

The criteria for assessment of need ~~shall~~ must be used by the ~~director~~ in the determination of commission to determine the need for a proposed large energy facility ~~pursuant to~~ under Minnesota Statutes, sections 216H.03 to 216H.20 to 216B.2421, subdivision 2, and 216B.243. The factors listed under each of the criteria set forth in part 4220.1300 ~~shall~~ must be evaluated to the extent that the ~~director deems~~ commission considers them applicable and pertinent to ~~each~~ a facility proposed ~~pursuant to~~ under this chapter. The ~~director~~ commission shall make a specific written finding with respect to each of the criteria.

4220.1200 CONSIDERATION OF ALTERNATIVES.

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

4220.1300 CRITERIA.

A certificate of need ~~shall~~ must be granted to the applicant if it is determined or determinations that:

A. [Unchanged.]

B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record ~~by parties or persons other than the applicant~~, considering:

(1) to (4) [Unchanged.]

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

(1) to (4) [Unchanged.]

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

4220.2100 APPLICATION PROCEDURES AND TIMING.

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

Subp. 2. **Copies, title, table of contents.** ~~A minimum of 50 bound copies and one unbound copy of the application shall be filed with the director. The director may require additional bound copies, not to exceed 100 bound copies total.~~ All The original and 13 copies of the application must be filed with the commission. The applicant shall provide copies of the application to other state agencies with regulatory responsibilities in connection with the proposed facility and to other interested persons who request copies. The applicant shall maintain a distribution list of the copies. Documents, forms, and schedules filed with the application ~~shall~~ must be typed on 8-1/2 inch by 11 inch paper except for drawings, maps, and similar materials. ~~Each~~ An application ~~shall~~ must contain a title page and a complete table of contents ~~which~~ that includes the applicable title by the titles and numbers given in this chapter. The date of preparation and the applicant's name ~~shall~~ must appear on the title page, as well as on each document filed with the application.

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

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

Subp. 5. and 6. [See Repealer.]

Subp. 7. **Complete applications.** The ~~director shall~~ commission must notify the applicant within ~~15~~ 30 days of the receipt of an application if the application is not substantially complete. ~~Upon such~~ On notification, the applicant may correct any deficiency and may resubmit the application. ~~A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is then substantially complete.~~ If the revised application is substantially complete, the date of its submission is considered the application date.

Subp. 8. **Exemptions.** ~~Prior to the submission of~~ Before submitting an application, a person ~~may be~~ is exempted from any data requirement of this chapter ~~upon a written request to the director for it~~ if the person (1) requests an exemption from specified rules, in writing to the commission, and ~~a showing by that person in the request~~ (2) shows that the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by ~~submission of~~ submitting another document. A request for exemption must be filed at least ~~20~~ 45 days ~~prior to submission of~~ before submitting an application. The ~~director~~ commission shall respond in writing to ~~each~~ such a request for exemption within ~~15~~ 30 days of receipt ~~including~~ and include the reasons for the decision. The ~~director~~ commission shall file a statement of exemptions granted and reasons therefor ~~prior to commencement of~~ for granting them before beginning the hearing.

4220.2200 FILING FEES AND PAYMENT SCHEDULE.

Subpart 1. [Unchanged.]

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

Subp. 3. **Payment required.** ~~No certificate of need shall be issued until all fees are paid in full.~~ The commission shall not issue its decision on the application until the outstanding set fee payments and additional billings under subparts 1 and 2 are paid by the applicant.

4220.2300 CONTENTS OF APPLICATION.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Joint ownership and multiparty use.** If the proposed LLGF or LHVTL is to be owned jointly by two or more utilities or by a pool, all the information required by ~~parts 4220.2400 and 4220.2700 to 4220.3000 shall~~ this chapter must be provided by each joint owner for its system. If the facility is designed to meet the long-term needs (, in excess of ~~50~~ 80 megawatts), of a particular utility that is not to be an owner, that utility ~~shall~~ must also provide ~~all~~ the information required by ~~parts 4220.2400 and 4220.2700 to 4220.3000~~ this chapter. Joint applicants may use a common submission to satisfy the requirements of any part for which the appropriate response does not vary by utility.

4220.2350 ENVIRONMENTAL REPORT.

Subpart 1. **Draft report.** If the application is for an LHVTL, the information submitted under parts 4220.2300, 4220.2600, and 4220.2900 to 4220.3400 must be designated by the applicant as its "draft environmental report" and distributed in accordance with part 4410.7100, subpart 5.

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

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

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

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

4220.2400 NEED SUMMARY AND ADDITIONAL CONSIDERATIONS.

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

Subp. 2. [Unchanged.]

4220.2500 DESCRIPTION OF PROPOSED ~~LARGE ELECTRIC GENERATING FACILITY~~ LEGF AND ALTERNATIVES.

~~Each~~ An application for a proposed LEGF ~~shall~~ must include ~~the following information~~:

A. a description of the facility, including:

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

(2) to (5) [Unchanged.]

B. [Unchanged.]

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

(1) to (3) [Unchanged.]

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

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

~~(5)~~ (6) the total cost in current dollars of a kilowatt hour provided by it;

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

~~(6)~~ (8) its efficiency, expressed for a generating facility as the estimated heat rate, or expressed for a transmission facility as the estimated losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations; and

~~(7) any~~ (9) the major assumptions made in providing the information in subitems (1) to ~~(6)~~ (8), including projected escalation rates for fuel costs and operating and maintenance costs, as well as projected capacity factors;

D. and E. [Unchanged.]

4220.2600 DESCRIPTION OF PROPOSED ~~LARGE HIGH VOLTAGE TRANSMISSION LINE~~ LHVTL AND ALTERNATIVES.

Each application for a proposed LHVTL ~~shall~~ must include ~~the following information~~:

A. [Unchanged.]

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

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

(2) to (8) [Unchanged.]

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

(1) to (4) [Unchanged.]

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

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

~~(6) any~~ (7) the major assumptions made in providing the information in subitems (1) to (5) (6);

D. and E. [Unchanged.]

4220.2700 PEAK DEMAND AND ANNUAL ELECTRICAL CONSUMPTION FORECAST.

Subpart 1. [Unchanged.]

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

A. to D. [Unchanged.]

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

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

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

A. to F. [Unchanged.]

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

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

A. and B. [Unchanged.]

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

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

The applicant shall discuss the assumptions made regarding:

A. to C. [Unchanged.]

D. the ~~assumptions made in arriving at any~~ data requested in subpart 2 that is not available historically or not generated by the applicant in preparing its own internal forecast;

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

F. [Unchanged.]

Subp. 6. [Unchanged.]

4220.2800 SYSTEM CAPACITY.

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

A. to C. [Unchanged.]

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

(1) to (13) [Unchanged.]

E. to I. [Unchanged.]

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4220.2900 CONSERVATION PROGRAMS.

~~Each~~ An application ~~shall~~ must include ~~the following information~~

A. to E. [Unchanged.]

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

4220.3000 CONSEQUENCES OF DELAY.

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

4220.3300 TRANSMISSION FACILITIES.

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

A. [Unchanged.]

B. for underground transmission facilities:

(1) and (2) [Unchanged.]

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

C. to G. [Unchanged.]

4220.3400 THE ALTERNATIVE OF NO FACILITY.

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

A. to C. [Unchanged.]

4220.4100 CERTIFICATE OF NEED ~~MODIFICATIONS~~ CONDITIONS AND CHANGES.

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

Subp. 2. to 4. [See Repealer.]

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

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

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

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

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

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

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

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

H. If an applicant determines that a change in size, type, timing, or ownership other than specified in this subpart is necessary for a large generation or transmission facility previously certified by the commission, the applicant must inform the

commission of the desired change and detail the reasons for the change. A copy of the applicant's submission to the commission must be sent to each intervenor in the certificate of need hearing proceeding on the facility. Intervenors may comment on the proposed change within 15 days of being notified of the change. The commission shall evaluate the reasons for and against the proposed change and, within 45 days of receipt of the request, notify the applicant whether the change is acceptable without recertification. The commission shall order further hearings if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part 4220.1300.

REPEALER. Minnesota Rules, parts 4220.0100, subparts 4 and 8, 4220.2100, subparts 5 and 6, and 4220.4100, subparts 2, 3, and 4, are repealed.

Executive Orders

Emergency Executive Order No. 87-18: Rescuing Stranded Motorists in Polk County, Minnesota

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this Executive Order:

WHEREAS, the Sheriff of Polk County, Minnesota has requested assistance in rescuing stranded motorists in Polk County, Minnesota due to a severe winter storm and, WHEREAS, Polk County and other local agencies have exhausted all other available resources in their efforts to rescue stranded motorists; NOW, THEREFORE, I order:

1. The Adjutant General of Minnesota to order to active duty on and after December 30, 1987, in service of the State, such elements of the military forces of the State and equipment as are necessary to rescue stranded motorists in Polk County, Minnesota. These forces shall be utilized for a period of time as necessary.

2. The cost of subsistence, transportation, fuel, and pay and allowances of said individuals shall be defrayed from the general fund of the State as provided for in *Minnesota Statutes* Sections 192.49, Subdivision 1; 192.51 and 192.52.

Pursuant of *Minnesota Statutes 1986*, Section 4.035, this Order shall be effective December 30, 1987 and shall remain in effect until rescinded by proper authority or it expires in accordance with Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF I have set my hand this 31st day of December 1987.

Rudy Perpich
Governor

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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MINNESOTA PUBLIC UTILITIES COMMISSION

329

(16)

United Power Association
ELK RIVER, MINNESOTA 55330-0800 612-441-3121

February 1, 1988

Ms. Caroline Robinson
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Subject: Proposed Permanent Rules Relating to Certificates of Need for Power Plants and Transmission Lines

Dear Ms. Robinson:

The purpose of this correspondence is United Power Association's response to the Notice of Intent to Adopt Rules Without a Public Hearing concerning the subject matter as published in the State Register on January 11, 1988.

4440.01 DEFINITIONS:

The definition of the term "construction" is not consistent with the definition of that term in the siting statute, Minnesota Statutes, section 116C.52, subd. 7. Since the siting law and the certificate of need law prohibit "construction" prior to issuance of the applicable certificates/permits, it would seem advisable that the definition of the term in each instance would be the same.

4220.2350 ENVIRONMENTAL REPORT:

Subp. 1 and subp. 3 refer to part 4410.7100, subp. 5. This is erroneous because we believe part 4410.7100 has been renumbered 7850.0200.

4220.2700 PEAK DEMAND AND ANNUAL ELECTRICAL CONSUMPTION FORECAST:

Subp. 5., E. The effect of existing and future energy conservation programs under federal or state legislation on long-term electrical demand; and--.

We can understand the need to discuss assumptions of existing federal or state mandated conservation programs. However, we cannot understand the need to discuss future programs that may or may not be mandated by federal or state legislation.

Sincerely,

Philip O. Martin
General Manager

Comms.
Caroline
Dave J.
Roselle/Carol

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I Johnene A. Bednarek, being first duly sworn, deposes and says:

That on the 20th, day of April, 1988 (s)he served the attached

Letter to Christi Eller, Dated 4/20/88, Docket No. E999/R-86-329, and an Adopted Permanent Rules Relating to Certificates of Need for Power Plants and Transmission Lines, Dated 4/4/88.

XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Caroline R. (Received 15 other attachments)
David J.
Carol C.
Rosellen C.
Greg D..
Rick L.

Christi Eller
Office of the Attorney General
515 Transportation Building
St. Paul, MN 55155
(Received 15 other attachments)

Also see attachments.

Subscribed and sworn to before me, Johnene A. Bednarek

a notary public, this 22nd day of April, 1988.

Sharon L. Juen
Notary Public

SHARON L. JUEN
NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNTY
MY COMM. EXPIRES JAN. 19, 1991

Mailing List for Certificate of Need Rule
Docket No. E-999/ 6-329

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STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Amendment of Rules Relating to Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, Minn. Rules, parts 4220.0100 to 4220.4100

ISSUE DATE: April 20, 1988

DOCKET NO. E-999/R-86-329

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE AMENDMENTS

The above-entitled matter came on for decision before the Minnesota Public Utilities Commission (Commission) on the thirtieth day of March, 1988. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Commission, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, and after considering all of the evidence adduced upon the records, files and proceedings herein, the Commission, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the Commission's intent to adopt the above rules without a public hearing was published in the State Register on January 11, 1988, and was sent by mail to all persons on the list maintained by the Commission pursuant to Minn. Stat. Sections 14.14, subd. 1a and 14.22 (1986) on January 5, 1988.

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

3. All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The 30-day comment period, as set out in the notice, expired on February 10, 1988.

4. No requests for public hearing were received during the comment period.

5. No requests for notice of submission to the Attorney General were received by the Commission.

6. Any modifications to the proposed rules as published in the State Register and mailed to persons on the Commission's rulemaking list must not constitute a "substantial change" in accordance with Minn. Rules, part 2010.1000, governing Standards of Review by the Attorney General. That rule states as follows:

A rule must be disapproved by the Attorney General if ...there is a substantial change in the rule as adopted from the proposed rule as noticed. A change, by additions or deletions or other modifications to a proposed rule, is substantial if it:

1) affects classes of persons who could not reasonably have been expected to comment on the proposed rules as originally noticed;

2) introduces significant new subject matter which a reasonable person, on the basis of the proposed rule as originally noticed, would not have anticipated would occur during the rulemaking proceeding; or

3) makes a major substantive change that was not raised by the proposed rule as originally noticed in such a way as to invite reaction.

7. During the comment period the Commission received written comments from United Power Association (UPA) on February 3, 1988, and from the Department of Public Service (DPS) on February 10, 1988. The Commission finds that modifications to the proposed rules are justified by the record in this proceeding, as discussed in items a. and b. below.

a. The DPS and UPA both suggested changes to proposed part 4220.2700, subp. 5, item E. The DPS recommended that the phrase "under federal or state legislation" be eliminated because all conservation programs should be considered, not just those required by such legislation. UPA indicated that it cannot understand the need to discuss future programs that may or may not be mandated by federal or state legislation; therefore, UPA recommended deletion of the words "and future." The Commission notes that the intent of this rule is to require applicants to disclose all of their conservation

assumptions and not to impose any particular assumptions on applicants. The Commission believes that the comments of the DPS and UPA indicate that that intent is not being conveyed clearly by the proposed language. Therefore, the Commission will modify the item by deleting the phrases "existing and future" and "under federal or state legislation." The Commission believes this language satisfies the concerns of both commenting parties. This change is not substantial because it merely clarifies the Commission's intended meaning and does not change the classes affected by the rule. It is necessary and reasonable because it helps to eliminate misunderstanding of the rule as proposed.

b. The DPS suggested that part 4220.2900 should be expanded to include load management programs as items specifically requiring discussion in response to the rule. The DPS suggested replacement of the phrase "conservation and efficiency programs" with the phrase "conservation and efficiency programs, and programs designed to control or manage peak load." The Commission's interpretation of the existing rule is that load management programs should be considered in response to the rule. However, the Commission agrees with the DPS that the rule could be made clearer in that respect. The Commission also agrees with the DPS that load management efforts can have an important impact on the need for generation or transmission facilities. However, the suggested change would be lengthy and repetitive. The Commission will instead add the phrase "including load management" at the end of item A. This revision clarifies the meaning of the rule in a very simple way and is therefore necessary and reasonable. It is not a substantial change because it changes neither the intended meaning of the rule nor the classes affected by the rule.

8. The Commission adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Commission hereby incorporates the Statement of Need and Reasonableness into these findings except as modified in Finding No. 7 above.

9. The Commission finds that additional modifications sought by the parties in their comments should not be made for the reasons given below.

a. The DPS suggested that parts 4220.2500 and 4220.2600 be modified by adding to item B of each part the phrase "Any combination of energy conservation improvements, required by the Commission pursuant to 216B.241." The Commission understands and appreciates the concern expressed by the DPS that conservation be treated as an alternative to construction of a large generation or transmission facility. However, conservation and load management programs have traditionally been treated as reductions in forecast demand before any consideration is given to building new facilities. The proposal of the DPS would treat programs for demand reduction in two different ways, which would be confusing and unnecessary. Therefore, the Commission will not adopt the DPS's suggested change.

b. The DPS also indicated disagreement with the Commission's proposed repeal of part 4220.4100, subp. 4. At pages 21-22 in the Statement of Need and Reasonableness, the Commission explained that:

> This current rule was adopted in 1975 amid concern over the use of fuel oil and natural gas for base-load generation of electricity. Demand forecasts by electric utilities pointed to the construction of many new power plants by the turn of the century. Those high demands did not materialize, and only two large power plants have been constructed in Minnesota since 1975. The Commission doubts that the rule serves any useful function at the present time. While avoidance of generation using fuel oil and natural gas still makes sense from a public policy standpoint, the high cost of those fuels relative to other fuels likely makes regulatory restrictions on their use unnecessary. Further, the Commission could restrict use of certain fuels under subpart 1 of part

4220.4100, given adequate support in the record. Therefore, the Commission believes this subpart is unnecessary and should be repealed.

For these reasons, the Commission will adopt the repeal of that subpart and therefore will not adopt the recommendation of the DPS.

c. UPA indicated that the Commission's proposed definition of the word "construction" in part 4220.0100, subp. 8c is inconsistent with the definition in Minn. Stat. Section 116C.52, subd. 7. The Commission recognizes that the two definitions are not the same. Nevertheless, the Legislature undoubtedly knew that when it enacted the laws creating the need and siting processes. As indicated in the Statement of Need and Reasonableness at page 5, the Commission's proposed definition is nearly identical with the definition created by the Legislature when the need process was enacted in 1974. For the reasons given in the Statement of Need and Reasonableness, the Commission will adopt its proposed definition.

d. UPA also indicated that subparts 1 and 3 of part 4220.2350 refer to part 4410.7100, which has been renumbered by the Revisor as part 7850.0200. The Commission recognized this problem when the proposed amendments were adopted and asked the Revisor how to deal with it. The Revisor indicated that the renumbering was a mistake and would be corrected in the next printing of Minnesota Rules. The Commission was advised to use the old number in this rulemaking process.

10. The above-captioned rules are needed and reasonable.

CONCLUSIONS

1. The Minnesota Public Utilities Commission duly acquired and has jurisdiction over this proceeding pursuant to Minn. Stat. Sections 216A.05, 216B.08, and 216B.243 (1986).

2. The Commission published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.

3. The Commission has complied with all relevant legal and procedural requirements of statute and rule.

4. The two modifications to the proposed rules are supported by the record and do not result in a substantial change in the proposed rule.

ORDER

1. The Commission hereby adopts amendments to Minn. Rules, parts 4220.0100 to 4220.4100, relating to certificate of need applications for large electric generating facilities and large high voltage transmission lines.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

MINNESOTA public utilities COMMISSION

April 20, 1988

Ms. Christi Eller, Assistant Attorney General
Office of the Attorney General
515 Transportation Building
St. Paul, MN 55155

Re: In the Matter of Proposed Rules governing Certificate of Need Applications for Large Electric Generating Facilities and Large High Voltage Transmission Lines, Minn. Rules, parts 4220.0100 to 4220.4100, Docket No. E-999/R-86-329.

Dear Ms. Eller:

On March 30, 1988, the Minnesota Public Utilities Commission adopted the above-captioned rules. Enclosed for your review are the following:

1. Rules as adopted.

2. Findings of Fact, Conclusions, and Order Adopting Rule Amendments.

3. Resolution Adopting Rule Amendments and Certificate of Resolution Adopting Rule Amendments.

4. Notices of Intent to Solicit Outside Opinion (10 S.R. 2349, May 26, 1986, and 12 S.R. 369, August 31, 1987).

5. Copies of written comments received pursuant to Notices of Intent to Solicit Outside Opinion.

6. Authorization to Proceed with Adoption of Rules Without Public Hearing and Certificate of Authorizing Resolution.

7. Notice of Intent to Adopt Rules Without a Public Hearing and rules as published (12 S.R. 1396, January 11, 1988).

8. Comments received during the comment period.

9. Notice of Intent to Adopt Rules Without a Public Hearing and rules as mailed.

10. Affidavit of Mailing the Notice of Intent to Adopt Rule Without a Public Hearing and Certificate of Mailing List.

AMERICAN CENTER building • kellogg and robert sts • saint paul, mn 55101

11. Rules as proposed.

12. Statement of Need and Reasonableness.

13. Declaration of Counsel.

Very truly yours,

Caroline Robinson
Rules Attorney
(612) 296-9617

Enclosures
cc: Attached Mailing List

Mailing List for Certificate of Need Rule
Docket No. E-999/R-86-329

Philip O. Martin
General Manager
United Power Association
Elk River, Minnesota 55330-0800
(612) 441-3121

James A. Roberts
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30 West Superior Street
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Douglas R. Larson
Rates Analyst
Minnesota Department of Public Service
790 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Proposed Rule

Missing Certificate from Revisor
called Caroline - in the mail

Authority

1. 216A.05 Functions + Powers for D.P.S.
2. 216B.08, authorized to Make rules in furtherance of the purposes of Laws 1974, ch 429.

~~3/22~~ -

OR — 3. 216B.243 subd 6. Establish a schedule of fees (by rules)

subd 1 - Authority OK -

Rule

p. 4 line 35-36 "substantially complete" — not a standard but substantial OK

p 12 - lines 36 - p 13 lines 1-4. OK

vague?

copies missing p 12

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Amendment of Rules Relating to Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, Minn. Rules, parts 4220.0100 to 4220.4100	ISSUE DATE: April 20, 1988 DOCKET NO. E-999/R-86-329 FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE AMENDMENTS

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2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

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8. The Commission adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Commission hereby incorporates the Statement of Need and Reasonableness into these findings except as modified in Finding No. 7 above.

9. The Commission finds that additional modifications sought by the parties in their comments should not be made for the reasons given below.

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10. The above-captioned rules are needed and reasonable.

CONCLUSIONS

1. The Minnesota Public Utilities Commission duly acquired and has jurisdiction over this proceeding pursuant to Minn. Stat. Sections 216A.05, 216B.08, and 216B.243 (1986).

2. The Commission published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.

3. The Commission has complied with all relevant legal and procedural requirements of statute and rule.

4. The two modifications to the proposed rules are supported by the record and do not result in a substantial change in the proposed rule.

ORDER

1. The Commission hereby adopts amendments to Minn. Rules, parts 4220.0100 to 4220.4100, relating to certificate of need applications for large electric generating facilities and large high voltage transmission lines.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I Johnene A. Bednarek, being first duly sworn, deposes and says:

That on the 20th, day of April, 1988 (s)he served the attached

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE AMENDMENTS, Docket No. E999/R-86-329

XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Caroline R.
David J.
Carol C.
Rosellen C.
Greg D..
Rick L.

Christi Eller
Office of the Attorney General
515 Transportation Building
St. Paul, MN 55155

Also see attachments.

Subscribed and sworn to before me, Johnene A. Bednarek

a notary public, this 22nd day of April, 1988.

Sharon L. Juen
Notary Public

SHARON L. JUEN
NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNTY
MY COMM. EXPIRES JAN. 19, 1991

Mailing List for Certificate of Need Rule
Docket No. E-999, 86-329

Philip O. Martin
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Executive Director
Environmental Quality Board
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Douglas R. Larson
Rates Analyst
Minnesota Department of Public Service
790 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rules Governing Certificate of Need for Electric Rules, Minn. Rules, parts 4220.0100 to 4220.4100.

DOCKET NO. E-999/R-86-329

DECLARATION OF COUNSEL

I, Gregory D. Dittrich, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0729.

Gregory D. Dittrich
Special Assistant
Attorney General

(11)

CERTIFICATE OF AUTHORIZING RESOLUTION
Docket No. E-999/R-86-329

I, Mary Ellen Hennen, do hereby certify that I am the Executive Secretary of the Minnesota Public Utilities Commission, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Public Utilities Commission duly and properly called and held on the 2nd day of December, 1987, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Executive Director of the Minnesota Public Utilities Commission (Commission) is hereby granted the authority to sign and to give notice of the Commission's intent to adopt, without a public hearing, the attached amendments to rules governing Certificates of Need for Power Plants and Transmission Lines, Minn. Rules, parts 4220.0100 to 4220.4100, to all persons who have registered their names with the Commission for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's certification as required by Minn. Stat. Section 14.07, subd. 2 (1986).

BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Executive Secretary is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for and Notice of Hearing, as well as acting as the Commission's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed by name this 2nd day of December, 1987.



Mary Ellen Hennen
Executive Secretary

AUTHORIZATION TO PROCEED WITH AMENDMENT
OF RULES WITHOUT A PUBLIC HEARING
Docket No. E-999/R-86-329

BE IT RESOLVED, that the Executive Secretary of the Minnesota Public Utilities Commission (Commission) is hereby granted the authority to sign and to give notice of the Commission's intent to adopt, without a public hearing, the attached amendments to rules governing Certificates of Need for Power Plants and Transmission Lines, Minn. Rules, parts 4220.0100 to 4220.4100, to all persons who have registered their names with the Commission for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's certification as required by Minn. Stat. Section 14.07, subd. 2 (1986).

BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Executive Secretary is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for and Notice of Hearing, as well as acting as the Commission's representative at all hearings.

Barbara Beerhalter

Barbara Beerhalter
Chair

RESOLUTION ADOPTING RULE AMENDMENTS

Docket No. E-999/R-86-329

BE IT RESOLVED, that the Minnesota Public Utilities Commission (Commission) hereby approves and adopts the amendments to rules governing the Certificate of Need Electric Rules pursuant to the authority vested in the Commission by Minn. Stat. Sections 216A.05, 216B.08, and 216B.243 (1986).

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Executive Secretary is authorized to make any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's Certificate as required by Minn. Stat. Section 14.28 (1986).

BE IT FURTHER RESOLVED, that the Commission adopts the attached Findings of Fact, Conclusions, and Order Adopting Rule Amendments and that the Executive Secretary is hereby authorized to sign the above-mentioned document on behalf of the Commission and to perform the necessary acts to provide that the rule shall have the force and effect of law.

Barbara Beerhalter
Officer of the Commission

Robert J. O'Keefe
Attest by one other Commission member

CERTIFICATE OF RESOLUTION ADOPTING RULE AMENDMENTS
Docket No. E-999/R-86-329

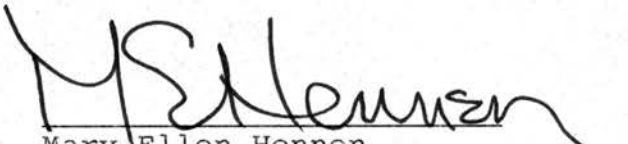
I, Mary Ellen Hennen, do hereby certify that I am the Executive Secretary of the Minnesota Public Utilities Commission, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Public Utilities Commission duly and properly called and held on the 30th day of March, 1988, that a quorum was present at said meeting, that a majority of those present voted of the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Minnesota Public Utilities Commission hereby approves and adopts the amendments to rules governing the Certificate of Need Electric Rules pursuant to the authority vested in the Commission by Minn. Stat. Sections 216A.05, 216B.08, and 216B.243 (1986).

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Executive Secretary is authorized to make any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's Certificate as required by Minn. Stat. Section 14.28 (1986).

BE IT FURTHER RESOLVED, that the Commission adopts the attached Findings of Fact, Conclusions, and Order Adopting Rule Amendments and that the Executive Secretary is hereby authorized to sign the above-mentioned document on behalf of the Commission and to perform the necessary acts to provide that the rule shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 30th day of March, 1988.



Mary Ellen Hennen
Executive Secretary

MINNESOTA PUBLIC UTILITIES COMMISSION

RECEIVED

APR 21 1988

ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

April 20, 1988

Ms. Christi Eller, Assistant Attorney General
Office of the Attorney General
515 Transportation Building
St. Paul, MN 55155

Re: In the Matter of Proposed Rules governing Certificate of Need Applications for Large Electric Generating Facilities and Large High Voltage Transmission Lines, Minn. Rules, parts 4220.0100 to 4220.4100, Docket No. E-999/R-86-329.

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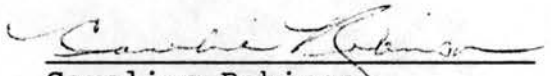
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Caroline Robinson
Rules Attorney
(612) 296-9617

Enclosures
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Mailing List for Certificate of Need Rule
Docket No. E-999/[redacted]-86-329

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