

June 13, 2002

TO: EQB Board Members

FROM: Alan Mitchell (Phone 651-296-3714)  
Manager, Power Plant Siting Program

SUBJECT: **Amendment of Power Plant Siting Rules**

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**Proposed Amendments to Power Plant Siting Rules.** The Board is being asked to begin the formal rulemaking process to adopt amendments to the Power Plant Siting Rules, which are found in Minnesota Rules chapter 4400. Included with the Board packet are the proposed amendments, a Statement of Need and Reasonableness explaining each of the provisions in the rules, and a Resolution authorizing rulemaking and directing the Chair to perform the tasks necessary to complete the rulemaking process. Also included is a second Resolution stating that the proposed amendments will be applied as interim guidance until final rules can be adopted, replacing an earlier version of the draft rules which the Board established as interim guidance in October 2001.

**Background.** In 2001 the Minnesota Legislature significantly changed the Power Plant Siting Act (Minn. Stat. §§ 116C.51 – 116C.69) when it passed what has come to be called the Energy Security and Reliability Act of 2001. Minn. Laws 2001, ch. 212. These changes in the Act necessitate amendments to the EQB's Power Plant Siting Rules. In addition, the rules have not been amended since 1990, and recent experience, a changing electric utility industry, and a growing demand for electricity all support updating the rules.

The EQB staff first prepared draft amendments to chapter 4400 in July 2001. These draft amendments were distributed to interested persons, including Minnesota utilities, the Sierra Club, the Izaak Walton League, and other interested individuals, and the public was invited to comment on the draft amendments. On September 10, 2001, a notice appeared in the State Register indicating that the EQB was considering amending chapter 4400 and inviting comments from the public about possible amendments to the rules. Several parties did submit written comments. In October 2001, the Board acted to establish draft amendments as interim guidance. Since then, the staff has continued to work with the interested parties and to revise the draft amendments. The present version in your packet contains a number of revisions from the October interim guidance.

**Rulemaking Process.** Under state administrative law, when an agency intends to adopt rule amendments, the agency must initially decide whether to schedule a public hearing with an administrative law judge or to simply give notice of its intent to adopt rules and provide a public comment period. If an agency does not schedule a public hearing, 25 people can petition for a rulemaking hearing, and then a hearing will be required. In this case, the EQB has already received a petition for a public hearing with 25 signatures, so a hearing is required.

While most of what is contained in the proposed rules is acceptable to the interested parties, there are a few provisions for which various parties would like to see changes. Perhaps the most controversial of the rule amendments is Part 4400.0650, entitled Exemptions to Permitting Requirement for Certain Existing Facilities. This rule provides that certain modifications can be made at existing power plants and transmission lines without the need for a site permit or route permit from the EQB. Each of the provisions in this rule is explained in the Statement of Need and Reasonableness. This provision and a few others will likely be the focus of the public comments at the rulemaking hearing.

The proposed Resolution that is included in the Board packet authorizes the holding of a public hearing on the amendments and authorizes the Chair to perform such tasks as are required to complete the rulemaking process. It will take two months or so before a hearing can be held. The Governor's Office must review the material and an administrative law judge must be assigned. Notice must be published in the State Register at least 30 days before the hearing commences.

After the hearing ends, the administrative law judge will take about a month to write a report and make a recommendation. Once the judge's report is available, the matter can be brought to the Board for final action. It is likely to be November or December before the rules can come before the Board for adoption.

**Interim Guidance.** There is a second proposed Resolution in your packet. This Resolution states that the Board intends to apply the proposed amendments as interim guidance, to use in processing pending projects until the rules can be finally adopted, and replacing the October 18 interim guidance the Board adopted last October. It is appropriate to continue to recognize the need to rely on the draft rules as interim guidance because it is likely that permit applications for projects will be submitted to the EQB before the rulemaking process can be completed.

**Staff Recommendation.** The staff recommends that the Board authorize the commencement of formal rulemaking. The staff recommends that the Board adopt the proposed Resolution authorizing rulemaking and directing the Chair to perform the tasks necessary to complete the process. The staff also recommends that Board adopt a second Resolution continuing the use of the proposed amendments as interim guidance until such time as final rules can be adopted.