

**POSSIBLE AMENDMENTS TO
MINNESOTA RULES PARTS 4410.7000 TO 4410.7500
DRAFT
AUGUST 12, 2002**

4410.0200. DEFINITIONS AND ABBREVIATIONS.

Subp. 38. **High voltage transmission line.** “High voltage transmission line” has the meaning given in part ~~4400.0200-~~4410.7610.

Subp. 41. Large electric power generating plant. “Large electric power generating plant” has the meaning given in ~~4400.0200~~ 4410.7610.

4410.4300. MANDATORY EAW CATEGORIES.

Subp. 3. **Electric generating facilities.** For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of between 25 megawatts and 50 megawatts, or more, the EQB shall be the RGU. For electric power generating plants and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, environmental review shall be conducted in accordance with the requirements of parts 4410.7600 to 4410.7690 and chapter 4400.

Subp. 6. **Transmission lines.** For construction of a transmission line at a new location with a nominal capacity of between 70 kilovolts and 100 kilovolts or more with 20 or more miles of its length in Minnesota, the EQB shall be the RGU. For transmission lines and associated facilities designed for and capable of operating at a nominal voltage of 100 kilovolts or more, environmental review shall be conducted in accordance with the requirements of parts 4410.7600 to 4410.7690 and chapter 4400.

4410.4400. MANDATORY EIS CATEGORIES.

Subp. 3. **Electric generating facilities.** For construction of a large electric power generating plant, environmental review shall be conducted in accordance with the requirements of parts 4410.7600 to 4410.7690 and chapter 4400. ~~pursuant to part 4410.7000, the EQB shall be the RGU.~~

Subp. 6. **Transmission lines.** For construction of a high voltage transmission line, environmental review shall be conducted in accordance with the requirements of parts 4410.7600 to 4410.7690 and chapter 4400. ~~pursuant to part 4410.7400, the EQB shall be the RGU.~~

**SPECIAL RULES FOR CERTAIN
ELECTRIC POWER GENERATING PLANTS
AND HIGH VOLTAGE TRANSMISSION LINES**

4410.7600. APPLICABILITY AND SCOPE

Subpart. 1. **Applicability.** Minnesota Rules part 4410.7600 to 4410.7690 apply to any high voltage transmission line project or large electric power generating plant project for which a certificate of need or other need determination is required by the Public Utilities Commission under applicable law.

Subp. 2. **Scope.** Minnesota Rules part 4410.7600 to 4410.7690 establish the requirements for the conduct of environmental review of proposed projects before the Public Utilities Commission for consideration of need. No other environmental review shall be required at the need stage for high voltage transmission lines and large electric power generating plants. Additional review at the EQB permitting stage will be required under Minnesota Rules chapter 4400.

4410.7610. DEFINITIONS

Subpart 1. **Scope.** For the purposes of parts 4410.7600 to 4410.7690, the following terms and abbreviations have the meanings given them.

Subp. 2. **Chair.** “Chair” means the person who is the chair of the Environmental Quality Board.

Subp. 3. **Environmental assessment.** “Environmental assessment” means a written document that describes the human and environmental impacts of a proposed large electric power generating plant or high voltage transmission line and alternatives to the project and methods to mitigate anticipated adverse impacts.

Subp. 4. **High voltage transmission line or HVTL.** “High voltage transmission line” or “HVTL” means a conductor of electric energy and associated facilities designed for and capable of operating at a nominal voltage of 100 kilovolts or more either immediately or without significant modification. Associated facilities shall include, but not be limited to, insulators, towers, substations, and terminals.

Subp. 5. **Large electric power generating plant or LEPGP.** “Large electric power generating plant” or “LEPGP” means electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50 megawatts or more.

Subp. 6. **Mail.** “Mail” means either the United States mail or electronic mail by e-mail.

Subp.7. **Public Utilities Commission or PUC.** “Public Utilities Commission” or “PUC” means the Minnesota Public Utilities Commission .

4410.7620. ENVIRONMENTAL REVIEW AT CERTIFICATE OF NEED STAGE.

Subpart 1. **Environmental assessment required.** The Environmental Quality Board shall prepare an environmental assessment on a proposed high voltage transmission line or a proposed large electric power generating plant at the certificate of need stage. The environmental assessment shall contain information on the human and environmental impacts of the proposed project associated with the size, type, and timing of the project, system configurations, and voltage. The environmental assessment shall also contain information on alternatives to the proposed project and shall address mitigating measures for anticipated adverse impacts.

Subp. 2. **Certificate of need application.** Any person who submits an application to the Public Utilities Commission for a certificate of need for a LEPGP or a HVTL pursuant to Minnesota Statutes § 216B.243 shall at the same time submit a copy of the application and all accompanying materials required by the PUC to the EQB.

Subp. 3. **Transmission planning report.** Any person who submits a transmission planning report to the Public Utilities Commission with a request for certification of a high voltage transmission line pursuant to Minnesota Statutes § 216B.2425 shall at the same time submit a copy of the report and all accompanying materials required by the PUC to the EQB.

4410.7630. PROCESS FOR PREPARATION OF ENVIRONMENTAL ASSESSMENT.

Subpart 1. **Public meeting.** The Environmental Quality Board shall hold a public meeting within 30 days after receipt of an application for a certificate of need or receipt of a transmission planning report seeking certification of a high voltage transmission line. At least ten days prior to the meeting, the EQB shall mail notice of the meeting to those persons on the EQB list maintained pursuant to Minnesota Rules part 4400.1350 and to those persons on the general service list maintained by the Public Utilities Commission under Minnesota Rules part 7829.0600. The EQB shall also publish notice of the meeting in the *EQB Monitor* and by posting the notice on the EQB Web page. The public meeting must be held in a location that is convenient for persons who live near a proposed project.

Subp. 2. **Conduct of public meeting.** The EQB shall make available at the public meeting a copy of the certificate of need application or transmission planning report. The EQB staff shall explain the process for preparation of the environmental assessment. At the public meeting, the public must be afforded an opportunity to ask questions and present comments and to suggest alternatives and possible impacts to be evaluated in the environmental assessment. The EQB shall keep an audio recording of the meeting. The EQB shall provide at least seven days from the day of the public meeting for the public to submit written comments regarding the proposed project.

Subp. 3. **Applicant role.** The applicant shall provide representatives at the public meeting who are capable of answering questions about the proposed project.

Subp. 4. **Alternatives and impacts.** Any person desiring that a particular alternative to the proposed project or a possible adverse impact of the project be considered in the environmental assessment shall identify the alternative or impact to be included, shall provide an explanation of why the alternative or impact should be included in the environmental assessment, and shall submit all supporting information the person wants the chair to consider. The chair shall provide the applicant with an opportunity to respond to each request that is filed. The chair shall include the alternative or impact in the environmental assessment only if the person has established that such evaluation will assist the PUC in its decision on the certificate of need application or HVTL certification request.

Subp. 5. **Chair decision.** Within ten days after close of the public comment period, the chair shall issue an order determining the following:

- A. the alternatives to be addressed in the environmental assessment;
- B. the specific potential impacts to be addressed;
- C. the schedule for completion of the environmental assessment; and
- D. other matters to be included in the environmental assessment.

Once the chair has issued an order regarding the environmental assessment, the matters to be evaluated in the environmental assessment shall not be changed except upon a decision by the chair that substantial changes have been made in the project or substantial new information has arisen significantly affecting the potential environmental effects of the project or the availability of reasonable alternatives. The chair may elect to bring to the EQB Board any decisions regarding what should be included in the environmental assessment.

Subp. 6. **Notice of decision.** At the time of the chair decision, the EQB shall mail the order to those persons who have requested to be notified.

Subp. 7. **Time frame for completion of environmental assessment.** The EQB shall complete the environmental assessment in accordance with the schedule determined by the chair. In establishing the schedule for completion of the environmental assessment, the chair shall take into account any applicable statutory deadlines, the number and complexity of the alternatives and impacts to be addressed, and the interests of the public, the applicant, the PUC, and the EQB.

Subp.8. **Content of environmental assessment.** The environmental assessment must include:

- A. a general description of the proposed project;
- B. a list of alternatives to the proposed project to be addressed;
- C. a general discussion of the potential impacts of the proposed project and each alternative on the human and natural environmental;
- D. a general discussion of mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified for the proposed project and each alternative analyzed;
- E. an analysis of the feasibility of each alternative considered;
- F. a list of permits required for the project, and
- G. a discussion of other matters identified by the chair.

Subp. 9. **Incorporation of information.** In preparing an environmental assessment, the EQB may incorporate information and data from environmental assessments prepared on earlier projects if the information or data is pertinent to the analysis.

Subp. 10. **Notification of availability of environmental assessment.** Upon completion of the environmental assessment, the EQB shall publish notice in the EQB Monitor of the availability of the environmental assessment and mail notice of the availability of the document to those persons who have asked to be notified. The EQB shall provide a copy of the document to the PUC and to any other public agency with authority to permit or approve the proposed project. The EQB shall post the environmental assessment on the agency's Web page, if possible.

4410.7640. AGENCY ASSISTANCE

The Environmental Quality Board may request another state agency to assist in the preparation of an environmental assessment. Upon request, another state agency shall provide in a timely manner any unprivileged data or information to which it has reasonable access concerning the matters to be addressed in the environmental assessment and shall assist in the preparation of the environmental assessment when the agency has special expertise or access to information.

4410.7650. APPLICANT ASSISTANCE

The Environmental Quality Board may request the applicant for a certificate of need or for certification of a HVTL to assist in the preparation of an environmental assessment. Upon request, the applicant shall provide in a timely manner any unprivileged data or

information to which it has reasonable access and which will aid in the expeditious completion of the environmental assessment.

4410.7660. ENVIRONMENTAL ASSESSMENT TO ACCOMPANY PROJECT

Subpart 1. **PUC hearing.** The Public Utilities Commission shall not commence a public hearing pursuant to Minnesota Statutes chapter 14 on a request for a certificate of need or certification of a HVTL until after the environmental assessment has been delivered to the PUC. The PUC may schedule the public hearing prior to the time the environmental assessment is available. The EQB staff shall be available at the hearing on the project to answer questions about the environmental assessment and to respond to comments about the document.

Subp. 2. **Completeness of environmental assessment.** At the time the PUC makes a final decision on a certificate of need application or a request for certification of a HVTL, the PUC shall determine whether the environmental assessment and the record created in the matter address the issues identified by the chair in the decision made pursuant to part 4410.7630, subpart 5. The PUC may direct the EQB to prepare a supplement to the environmental assessment if the PUC determines that an additional alternative or impact should be addressed.

Subp. 3. **Consideration of environmental assessment.** The environmental assessment shall be considered by the PUC in making a final decision on a certificate of need or HVTL certification request. The environmental assessment shall be considered by state and local agencies with authority to review and authorize a LEPGP or HVTL.

4410.7670. ALTERNATIVE REVIEW

Subpart 1. **Alternative form of review.** The requirements under parts 4410.7600 to 4410.7690 for preparation of an environmental assessment on a LEPGP or HVTL for which a determination of need by the Public Utilities Commission has been requested is approved as an alternative form or review. An environmental assessment is the only state environmental review document required to be prepared on a LEPGP or HVTL at the time a decision regarding need is sought from the Public Utilities Commission. No environmental assessment worksheet or environmental impact statement or other environmental report shall be required as part of the need process.

Subp. 2. **Review during permitting process.** Environmental review at the permitting stage before the Environmental Quality Board on a project for which a certificate of need from the PUC is sought or for which certification of a HVTL under the transmission planning process is requested from the PUC shall be conducted in accordance with Minnesota Rules chapter 4400. The EQB shall incorporate into the review conducted under chapter 4400 any information or data from the environmental assessment prepared under these rules that is appropriate.

4410.7680. COSTS OF PREPARATION OF ENVIRONMENTAL ASSESSMENT.

Subpart 1. **Applicant required to pay costs.** The applicant for a certificate of need for a large electric power generating plant or a high voltage transmission line shall pay the Environmental Quality Board the reasonable costs incurred by the EQB in preparing the environmental assessment.

Subp. 2. **Payment schedule.** The applicant shall submit a minimum payment of \$5000 to the EQB at the time the application or request is filed with the Public Utilities Commission. Additional payments shall be made within thirty days of notification by the agency that additional fees are necessary for completion of the environmental review. After preparation of the environmental assessment, the EQB shall provide the applicant with a final accounting. The applicant shall make the final payment within thirty days of notification, or the agency shall refund any excess payments within thirty days of the final accounting.

4410.7690. EMERGENCY PERMITS

The provisions of parts 4410.7600 to 4410.7680 shall not apply to emergency situations and applications for emergency permits shall be considered under the requirements of Minnesota Rules part 4400.4050.

REPEALER. Minnesota Rules parts 4410.7000, 4410.7100, 4410.7200, 4410.7300, 4410.7400, and 4410.7500 are repealed.

EXPLANATION OF PROPOSED AMENDMENTS TO CHAPTER 4410

4410.0200. Definitions and Abbreviations. The amendments here are to simply clarify that the definition of these terms can be found in this chapter of the rules rather than referring to chapter 4400. The definitions, however, in both chapters are identical.

4410.4300. Mandatory EAW Categories. This provision applies to smaller projects for which a certificate of need and an EQB permit are not required but for which an Environmental Assessment Worksheet prepared by the EQB has been required for many years. An EAW will still be required but the jurisdictional limits have to be changed to correspond with the changes in the Power Plant Siting Act. The proposed language also explains that for larger projects, environmental review is required under other provisions.

4410.4400. Mandatory EIS Categories. This language clarifies that environmental review of large electric power generating plants and high voltage transmission lines is to be conducted in accordance with the requirements of Minnesota Rules chapter 4400 and parts 4410.7600 to 4410.7690.

4410.7600. APPLICABILITY AND SCOPE.

Self explanatory.

4410.7610. DEFINITIONS.

Same as the proposed definitions in the chapter 4400 amendments.

4410.7620. ENVIRONMENTAL REVIEW AT CERTIFICATE OF NEED STAGE.

This provision establishes the requirement for preparation of an environmental assessment when a utility requests a need decision from the PUC. The need decision could either be the traditional certificate of need or the new certification process as part of the transmission planning report.

One reason for calling the required document an environmental assessment is to minimize the number of different documents that have to be created as part of the review of large electric energy facility. An environmental assessment is the document that the EQB is required to prepare on the smaller projects when they come before the EQB for a permit. Calling this document an environmental report, or an environmental and alternative report, could lead to confusion as the public and the applicants try to sort out the differences between the various documents that have to be prepared. As we gain experience preparing environmental assessments, utilities, the agencies, and the public will come to know what an environmental assessment entails.

The draft language provides that the EQB will be the agency to prepare the environmental assessment. Another option under consideration is for the Minnesota Pollution Control Agency to prepare the environmental assessment on power plants and the EQB to prepare the document on transmission lines.

The draft language requires an applicant for a certificate of need or for certification of one or more transmission lines to submit a copy of the application or the transmission planning report to the EQB at the time the application or report is filed with the PUC. There is no attempt in these rules to define what is required to be included in the report, and that will be determined by the Public Utilities Commission. If the PUC should determine that the application is incomplete, the applicant would have to supplement the application or report and reapply and the process for preparing the environmental assessment would start again upon reapplication.

4410.7630. PROCESS FOR PREPARATION OF ENVIRONMENTAL ASSESSMENT.

This part is the crux of the new rules. This explains how the EQB will prepare the environmental assessment. A similar process would be followed by the Pollution Control Agency if the PCA should be responsible for preparation of the environmental assessment on power plants. I think everybody (the utilities, the PUC, other agencies, and the public) is aware of how difficult it is to afford the public opportunity to participate in the process and complete the environmental review within the timeframes stated in the statutes. With large controversial projects, it may be impossible to complete all tasks within the short timeframes allowed. But there are a number of aspects to this new approach that will help to expedite decisionmaking.

1. The new transmission planning process will help to expedite things by getting local government and the public involved sooner in the planning process than they have been in the past. Hopefully, by the time the projects come to the agencies for decision, the public will have had an opportunity to identify and explore various options. This should help us focus on the truly feasible alternatives.

2. As we get a couple of environmental assessments completed, we can take advantage of the work that will have been done and incorporate this work into subsequent assessments. The rules specifically recognize that we're not going to invent the wheel every time. Information on emissions from a coal fired power plant and a natural gas fired power plant are going to be the same each time such a project is proposed, for example. Also, by relying on the expertise of various agencies, we should be able to not only expedite the preparation but ensure the quality of the analysis.

3. By getting the EQB involved at the certificate of need stage, we have the same agency doing the environmental review throughout the process, which could result in a shorter time from submission of the certificate of need application to issuance of the EQB site or route permit.

4. Not every project is going to be controversial. We should be able to administer these requirements on the smaller projects within a couple of months. EQB staff just completed two environmental assessments on small projects within a matter of weeks (the Solway HVTL and the St. Bonifacius power plant expansion, although neither one required a CON).

The following discussion addresses each of the subparts of the rule. The process is based on the chapter 4400 amendments and much of the language is taken from those rules.

Subp. 1. Public Meeting. We think we can schedule a public meeting within 30 days after the application is submitted. Notice of the meeting must be given. Using both the EQB general list and the PUC general list should reach those persons who are most likely to be interested in a LEPGP or a HVTL. Also, publication on the EQB webpage will help reach interested persons. The public generally wants more than ten days notice, but it isn't possible to give more than this if the EA is to be completed within just a few months. Also, the public is usually aware of the projects before the application is actually submitted.

Subp. 2. Conduct of Public Meeting. This is the time for the public to ask questions about the project. This is also a time for the public to identify matters they want included in the EA. The public will also be given an additional seven days after the meeting to submit written comments.

Subp. 3. Applicant Role. The applicant is the one who knows the most about the project at this early stage, and there must be representatives present to answer questions.

Subp. 4. Alternatives and Impacts. This provision affords the public an opportunity during the public meeting and the comment period to suggest alternatives and impacts to consider as part of the EA. The public must do more than simply make suggestions, however. There must be good reason to include the suggestions.

Subp. 5. Chair Decision. In order to keep things moving, the Board will delegate to the Chair, the authority to decide what will be included in the EA. The Chair can elect to bring the matter to the Board, however. The criteria for amending the matters to be included in the environmental assessment is taken from the chapter 4400 language.

Subp. 6. Notice of Decision. Self explanatory.

Subp. 7. Timeframe. The EQB will do its best to expedite completion of the EA. The Chair will take into account the issues affecting the timing, including statutory deadlines, and establish a schedule for completing the EA.

Subp. 8. Content of EA. This is taken from chapter 4400 language.

Subp. 9. Incorporation of information. The language here is intended to convey the message that much of what goes into an EA at the CON stage is broad and general. It is not going to change much from project to project when specific sites and routes are not being investigated. Hopefully, the fact that the information is general will result in the EA being completed quickly after a couple of them are complete.

Subp. 10. Notification. Self explanatory.

4410.7640. AGENCY ASSISTANCE.

This provision recognizes what is already the law – that the EQB can call on other agencies for assistance. We already know that the PCA data on emissions that are included the Department of Commerce’s energy plan will be an important part of the analysis for new power plants. Also, we may have to call on the Department of Commerce for help with certain socioeconomic factors and with cost figures. Perhaps the Department of Health will be called on to address certain issues, and the Department of Agriculture may help with its expertise.

4410.7650. APPLICANT ASSISTANCE

This provision is included to recognize that the applicant often is the best source of information. It is not unique that a project proposer is expected to provide much of the data that goes into environmental review documents. The language recognizes that an applicant may not be required to go out and get data that is does not already have or cannot readily obtain. However, in some instances, it may take longer for the EQB to obtain the data than if the applicant obtained it.

4410.7660. ENVIRONMENTAL ASSESSMENT TO ACCOMPANY PROJECT

Subp. 1. PUC Hearing. A main purpose for conducting environmental review is to ensure that agencies with decisionmaking authority over a project take environmental factors into account in reaching a final decision. This provision requires the PUC to hold off conducting the chapter 14 hearing it is required to hold on a CON until the EA is completed. One intent here is to recognize that the PUC is not responsible for any delays caused by preparation of the EA. Another is to ensure that the EA becomes part of the final record. The people who prepare the EA have to be available at the PUC hearing to answer questions about the information in the document.

Subp. 2. EA Completeness. An environmental assessment is not like an EIS where a draft and a final document are prepared. However, it is still necessary to ensure that the EA does what it was intended to do. This provision requires the PUC to determine that the EA and the other evidence in the administrative record contain information on the impacts and alternatives that the Chair determined would be included in the EA. The language here is the same language found in chapter 4400. If the PUC should determine that the information in the record is incomplete, the PUC can direct the EQB to go back and supplement the EA.

Subp. 3. Consideration of environmental assessment. The EA will accompany the project throughout the PUC process and will be considered by the PUC in making a final decision on need. Also, if there are other agencies with authority over the project, they should consider the information in the EA as well.

4410.7670. ALTERNATIVE REVIEW

This provision makes clear that the process established in these rules is an alternative review process that is acceptable to the EQB under Minn. Rules part 4410.3600 and that no additional environmental review is required at the CON stage. However, subpart 2 recognizes that more environmental review will occur when a specific site or specific route is proposed and a permit from the EQB is sought.

4410.7680. COSTS OF PREPARATION OF ENVIRONMENTAL ASSESSMENT.

Subpart 1. Applicant required to pay costs. It makes sense to require the applicant for a certificate of need to pay the costs associated with preparing the environmental review documents, and that's what this provision says. Since preparation of an environmental assessment is an alternative form of review to an EIS, the funding provisions of Minnesota Statutes section 116D.045 should apply. These costs do not include the additional fees that will be required when a permit is applied for from the EQB, but overall, perhaps the total expenses incurred by the EQB will be less by having the EQB perform the environmental review at both stages of the project.

Subp. 2. Payment schedule. This subpart simply sets forth a schedule for payment of agency costs. The draft language requires an upfront payment of \$5000. The agencies require some money upfront as costs will be incurred from the moment the application is accepted by the PUC. The \$5000 payment will allow the EQB to begin immediately with scheduling the public meeting and commencing preparation of the EA. It remains to be seen how much the preparation of an environmental assessment will cost, and it probably depends on the size and type of the project being proposed and the amount of controversy generated.

4410.7690. EMERGENCY PERMITS.

This rule addresses the situation where an emergency permit is required. Such situations will be addressed under the provisions in 4410.4050.