

March 13, 2003

TO: EQB Board Members

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

**SUBJECT: Amendment of Environmental Review Rules for Large Electric Power Plants and High-Voltage Transmission Lines in Proceedings Before the Public Utilities Commission, Minnesota Rules, Chapter 4410, and Technical Amendments to Rules Governing Power Plant Siting and High-Voltage Transmission Line Routing, Minnesota Rules, Chapter 4400**

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**Proposed Amendments to Environmental Review Rules.** The Board is being asked to begin the formal rulemaking process to adopt amendments to the Environmental Review Rules for Large Electric Power Plants and High-Voltage Transmission Lines in Proceedings Before the Public Utilities Commission. These rules are found in Minnesota Rules, Chapter 4410. Three technical amendments to the Power Plant Siting Rules, Minnesota Rules, Chapter 4400, adopted by the Board in December of 2002 are also included in this rulemaking process. The proposed amendments, a Statement of Need and Reasonableness explaining each of the proposed amendments to the rules, and a Resolution authorizing rulemaking and directing the Chair to perform the tasks necessary to complete the rulemaking process are included in the Board packet.

**Background.** The Minnesota Legislature in 2001 significantly amended the Power Plant Siting Act and other legislation relating to regulation of new large energy facilities like power plants and high voltage transmission lines. As a result it was necessary for the EQB to amend its rules for power plant siting found in Minnesota Rules chapter 4400. The EQB recently completed the rulemaking process to amend these rules. The Board adopted the final amendments at its meeting on December 19, 2002, and notice of the final rules appeared in the State Register on February 10, 2003.

Part of the regulatory program involved with a new large power plant or high voltage transmission line is consideration of the need for such a facility. The Minnesota Public Utilities Commission (PUC) is the agency with jurisdiction over the question of need, which includes the size, type, and timing of such facilities, and the voltage and configuration of a high voltage transmission line. Once the PUC decides these questions, by statute the EQB does not have authority over these issues.

The EQB has had rules in effect requiring environmental review at the certificate of need stage for nearly twenty years. These rules are codified at Minn. Rules parts 4410.7000 to 4410.7500. Generally, the rules state that the PUC is responsible for the preparation of an environmental report as part of the certificate of need process. The PUC, in turn, has required either the Department of Commerce or the applicant to prepare an environmental report.

The proposed amendments designate the Environmental Quality Board as the agency responsible for preparing the environmental report on proposed energy facilities. The rules expand on the opportunities for the public to participate in the development of the report and provide more specificity on what is to be included in the report.

Interested persons have been kept advised of the staff's efforts in drafting new language for the rules. The EQB staff first prepared draft amendments to chapter 4410 in the spring of 2002. These draft amendments were distributed to interested persons, including citizens, Minnesota utilities, environmental groups and state agencies. In July of 2002, staff circulated a revised draft of proposed amendments. A public meeting attended by approximately 40 people was held on August 28, 2002, to solicit public comment on the proposed rules. In addition to the comments at the meeting the public was invited to submit written comment on the draft amendments. On October 14, 2002, a notice appeared in the State Register indicating that the EQB was considering amending chapter 4410 and inviting comments from the public about possible amendments to the rules. Several parties did submit written comments by the close of the comment period on December 6, 2002. Since then, the staff has continued to work with the interested parties and to revise the draft amendments. The March 11, 2003, Revisor's draft of the rules in your packet reflects numerous suggestions and comments made by these interested parties.

**Rulemaking Process.** After the Board authorizes the rulemaking to proceed, a draft of the proposed amendments and the Statement of Need and Reasonableness will be sent to the Governor's office for approval. Once the governor authorizes the rulemaking to go forward, the EQB will publish a Notice of Intent to Adopt Rules in the State Register. The Notice must also be mailed to persons who have requested notification of rulemaking.

Under state administrative law, when an agency intends to adopt rule amendments, the agency must 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 minimum of a 30-day 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.

The proposed Resolution included in the Board packet authorizes the Chair to perform such tasks as are required to complete the rulemaking process, including authorizing a public hearing if the EQB receives 25 or more hearing requests. At this stage in the process, staff is not aware that any persons are planning to petition for a hearing.

If the rulemaking process proceeds without a hearing, the public will have a minimum of 30 days to submit written comments on the proposed rules. The entire package, including the draft rules, the Statement of Need and Reasonableness and all written comments received will be brought back to the Board for final action adopting the rules. The final rules must also be submitted to the Chief Administrative Law Judge for a determination that the EQB has complied with all legal requirements and has the authority to adopt the rules. Under this scenario, the rules will most likely be brought before the Board for final approval sometime this summer.

If a hearing is held, it will take two months or so before a hearing can be scheduled. Notice in the State Register must be published 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. In the case of a hearing, it is likely to be September or October of 2003 before the rules can come before the Board for adoption.

Hopefully, no rulemaking hearing will be required so the rules can go into effect sooner. A number of projects are anticipated in the upcoming months, and the next transmission planning report is due on November 1 of this year. It would be helpful if applicants and the public knew that these rules will apply to these projects.

**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.