

June 23, 2003

Alan Mitchell
Minnesota Environmental Quality Board
Centennial Office Building, 3rd Floor
658 Cedar Street
St. Paul, Minnesota 55155

RE: Amendments to MN Rules Part 4410

Dear Mr. Mitchell:

The Department of Commerce (Department) offers the following comments on the proposed permanent rules governing environmental review of electric power generating plants and high voltage transmission lines in certificate-of-need proceedings before the Minnesota Public Utilities Commission (Commission), Minnesota Rules parts 4410.7010 to 4410.7070.

Environmental review is an important and essential component of the record on which the Commission bases its decision regarding whether an entity can obtain a certificate of need to build a proposed large power plant or high voltage transmission line. The Commission considers this information along with other information in the record before the Commission.

The Department offers the following comments on some of the issues brought up during the rule development process.

1. The Department agrees that the scope of Environmental Reports for transmission projects must include all alternatives listed in proposed part 4410.7035, subp 1B. Concern has been expressed about the appropriateness of requiring the proposer of a High Voltage Transmission Line (HVTL) project to consider any alternative involving a different energy source or use of renewable energy sources. These alternatives are seen by some to be irrelevant due to federal requirements of transmission providers to provide open and non-discriminatory access to their transmission lines. That is, they argue that complying with federal open access requirements limits transmission providers' control over the source of energy using the wires.

However, Minnesota Statute Section 216B.243, subd. 3a states, in part:

The commission may not issue a certificate of need under this section for a large energy facility that . . . transmits electric power generated by means of a nonrenewable energy source, unless the applicant for the certificate has demonstrated to the commission's satisfaction that

it has explored the possibility of generating power by means of renewable energy sources and has demonstrated that the alternative selected is less expensive (including environmental costs) than power generated by a renewable energy source.

Also, Minnesota Statute Section 216B.243, subd. 3(6) states that in assessing need, the Commission shall evaluate:

. . . possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy generation and transmission facilities, load-management programs, and distributed generation.

Therefore, Minnesota Rule 7849.0260 requires that each certificate of need application for a proposed HVTL project include “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 . . .”

The ability of generation facilities to substitute for transmission facilities (and vice versa) is routinely weighed in assessing utility Integrated Resource Plans.

2. A previous version of these proposed rules contained the phrase: “No other environmental review shall be required at the need stage for high voltage transmission lines and large electric power generating plants.” (former 4410.7600 subp 2). There was discussion about whether a modified version of this sentence should be included in the rules or whether the entire sentence should be deleted.

The Department of Commerce agrees that this sentence should be left out. Leaving out this sentence does no harm since the rule requirements speak for themselves. Including the sentence in the rule, on the other hand, has the potential to hamper the Commission’s ability to gather the information it needs to make an informed decision. For instance, once the Environmental Report has been completed, it is conceivable that the Commission may discover that it needs more information of an environmental nature. Further, an intervenor, other than the Environmental Quality Board, may decide to request environmental information from the proposer. A proposer could potentially refuse to provide the information if the sentence were included in the rule. Even if the information is ultimately provided in a proceeding, the delay involved in deciding whether the information must be provided could seriously harm the ability to assess the information and provide a reasoned analysis for the Commission to consider.

3. The Department agrees that the rules as proposed preserve the purpose of the Environmental Report – to provide a description of the human and environmental impacts of a proposed project (and alternatives to the project) and methods to mitigate adverse impacts. It is not appropriate to include recommendations to the Commission in the Environmental Report.

Recommendations to the Commission regarding need for a proposed project are appropriate only if based on the entire record of the proceeding, not just the Environmental Report.

4. A concern was raised about the need for clarity in the proposed rules regarding the standard for including or excluding a project alternative in the scope of the Environmental Report. The Department agrees that clarity is needed. An acceptable solution would be to reference, in 4410.7030, subp. 6, the standards used in determining the appropriateness of including or excluding alternatives in an Environmental Impact Statement, found in 4410.2300, subparts G and H. The Department suggests the following edit:

The chair shall include the alternative or impact in the environmental report only if the chair determines that the proposed alternative or impact satisfies the criteria established under part 4410.2300, subparts G and H for including or excluding an alternative from analysis in an EIS ~~evaluation will assist the PUC in its decision on the certificate of need application or HVTL certification request.~~

It is imperative that the last sentence in part 4410.7030, subpart 6 be preserved without qualification. That sentence is: "The chair shall include in the environmental report any alternative or impact identified by the PUC for inclusion."

5. To help ensure there is a complete record at the time of the Commission's decision on the certificate of need, other intervenors must be aware of the scope of the Environmental Report as soon as possible. Therefore, the Environmental Quality Board Chair's scoping decision should be delivered to Commission's service list (4410.7030, subp. 8).

Thank you for the opportunity to comment.

Sincerely,

KATE O'CONNELL
Supervisor, Electric Planning and Advocacy

KO/SM/ja

c: Chairman Koppendrayer
Commissioner Gavin
Commissioner Johnson
Commissioner Reha
Commissioner Scott
Janet Gonzalez
Burl Haar