

Mr. Alan Mitchell, Manager
Power Plant Siting
Minnesota Environmental Quality Board
300 Centennial Building
658 Cedar St.
St. Paul, MN 55155-0001

6-23-03

Dear Mr. Mitchell,

Please find, here, the written comments of Communities United for Responsible Energy (CURE) on the adoption of Rules 4410 governing Environmental Review of Electric Power Generating Plants and High Voltage Transmission Lines in Proceedings before the Public Utilities Commission for your consideration. The focus of CURE's comment is upon aspects of the review process and timeline that are most likely to affect the dual goals of:

1. providing timely review at the certificate of need stage and
2. providing adequate environmental review consistent with the stated purposes of Minnesota environmental law and with certificate of need requirements establishing the public purpose foundation for exercise of right of eminent domain in siting and routing .

CURE has followed the law and rule change from the 2001 legislative session and participated in the advisory committee for the new State Transmission Planning report rulemaking. We have consistently advocated for an approach to streamlining review by providing:

- Adequate and timely notice to the public and affected parties
- Upfront access to information and
- Upfront and timely opportunities for the public to contribute to the review and raise issues of concern.

Elimination of no-build option heightens importance of 4410's procedural elements:

These importance of utilizing these elements to provide timely, adequate review and due public process is heightened by the change in law in 2001 that *eliminates the no build option* at the siting and routing stage of permitting, if the project has received a certificate of need. The 4410's will govern the certificate of need level review. This will be the only time that the public can participate in or consider the scope of environmental review on the critical issues of size, type and timing of the proposed project and project alternatives. The effect of this timeline on public opportunities to contribute to the scope and development of environmental and socio-economic effects relative to their rights and responsibilities under MERA and MEPA, has been discussed in comments and the two public meetings held by EQB for discussion of the 4410's.

Meetings on rule-making: These meetings were very helpful and modeled many of the advantages of creating opportunities for up-front information dissemination, clarification, discussion and review. We focus our comments here on 3 specific items that, from our

experience, have the most potential to undermine the goals of adequate and timely review. Fortunately these are also the most avoidable problems. Public opposition is generated, predictably, by inadequate or ill-timed a) notice, b) access to information and c) comment opportunities.

Comments and recommendations on proposed rule:

- **Notice.** We concur with the comments of John and Laurel Reinhart on notice. To accomplish the above goals, it is imperative that notice include:
 - a) clear information about how to get a copy, including e-copy and hard-copy, of the application
 - b) potential impacts, as outlined in ER
 - c) and a visual representation of the proposed project - corridor or location.There was a broad discussion & agreement as to the critical nature of notice for adequate and informed public participation in the environmental review committee process last year. Notice that contains no visuals creates disadvantage.
- **Public meeting and comment timeline:** The point has been raised by a number of parties, including CURE, that the timeline between the public meeting and comment deadline for the ER content decision is too short. 10 days is inadequate and assumes that everyone who needs to know about the application and ER has had notice and is on task. This is unrealistic. 30 days is best, 20 acceptable.
- **Scoping decision:** The final item that CURE raises once again, is the critical nature of the scoping decision. The ability to meet goals of adequate and timely review, to alleviate obstruction and legal challenge, is largely dependent upon the adequacy of the ER scope. This is left in the hands of the chair, on a 10 day timeline. Public contributions to the scope are to be made within a 10 day comment period. The utility has the right to respond to each public recommendation on scope, but there is no means in the rule for the public to reply, provide supplemental comment or information or to testify when the decision is made. This creates a situation ripe for challenges that could undermine the goal of timely review and increase the likelihood of changes in the scope later. CURE has two recommendations to alleviate this danger:
 - 1) Follow MCEA's recommendation that the internal procedure for appealing to the chair be made explicit in the rules
 - 2) Consider, for more controversial or complex application reviews, holding a joint PUC, EQB (and party) scoping meeting to get the agencies on the same page, and provide a hearing for scope controversies when the scope can still be adjusted without significantly delay in the Environmental Report timeline. I realize that this is not a likely candidate for language, but it could be a major time saving procedural tool – where appropriate or needed.

Additional items for your consideration:

Unresolved issue on change to definition for the Environmental Report, not addressed by SONAR: I am embarrassed to say that we did not notice the change in definition raised by Reinhart's, cited below. We echo their concern that this was not a point of discussion by the parties, nor disclosed in the SONAR as a change. We agree that failure to include economic impacts in these proposed environmental Rules could create a problematic disjunction and public confusion regarding the fundamental scoping issues in the territory between the ER, certificate of need rules and MEPA.

CUE is particularly concerned about the effect of this change on the state transmission planning and public review of inadequacies and alternatives. Reinhart's note:

“Economic impact is an important consideration in environmental review and, in fact, is a required statutory element for inclusion in environmental impact statements (Minn. Stat. § 116D.04, subd. 2a). The word “economic” is not found anywhere in the EQB's SONAR for these proposed Rules, despite the fact that economic impacts are a content requirement in the current rules for environmental review at certificate of need, which have been recommended for repeal in their entirety in this rulemaking...” In addition, Reinhart's continue: “it is imperative for economic considerations to be taken into account at the certificate of need stage to enable a sound decision to be made concerning whether to construct new generation rather than new transmission lines to satisfy an identified electrical need.”

This change should not be made without fully addressing the Reinhart's objection and comment.

The public as a resource: The Power Plant Siting Act is Minnesota's third environmental law (ref: PEER decision). In addition to the expectations of Minnesota environmental law for public involvement in environmental review and siting and routing, the public has a great deal to contribute. The public has intimate knowledge of local conditions and considerations that bear upon the environmental effects of a proposed project, and is highly invested in issues of need, project design and consideration of alternatives. This is amply demonstrated in nearly 30 years of public record, hearing and comment under the Power Plant Siting Act.

Recommendation to reinstate PPSAC: The reports of the standing Power Plant Siting Advisory Committee, which last met in the early 80's, have been invaluable. While their insights have endured to inform both the recent PUC and EQB rulemakings, there are a number of factors that would benefit from the perspective of a new advisory committee. This has been discussed at the last 3 annual hearings, as well as the state transmission planning rulemaking . We urge the Board to consider reassigning a PPSAC to assist the Board, staff, and public in negotiating and informing the challenges of a new era of energy infrastructure development. This committee could be particularly helpful in creating a bridge between the certificate of need and routing and siting stages.

Recommendation on exemptions:

For purposes of informing rules implementation, I wish to highlight the discussion at the last meeting regarding exemptions. CURE affirms the direction that the discussion took, in moving forward the possibility that utilizing explanations, as an alternative to exemption requests, within the application process as to why a particular requirement does not apply or cannot be fulfilled could:

1. Avoid triggering public suspicion and confusion and
2. Act to inform and act as a bridge to understanding present and future challenges in a rapidly changing regulatory environment.

This also has the potential to reduce the number of formal exemption proceedings and enhance public understanding, trust, and cooperation.

General recommendation on timeline: There is a shift in attitude and practice regarding streamlining of permitting procedures. The intent of streamlining is to ensure timely infrastructure development. In the past it was assumed that shortcuts in the process could effectuate this. Since that has not worked, regulators, utilities and public are turning increasingly to models aligned with *established public participation practice* highlighting the advantages of early public involvement, upfront disclosure of information, and well timed public notice, meeting and comment periods. The stringent timeline imposed by statute and the timeline undertaken by EQB to meet this, is likely to prove to be a false economy if the result is the practical compromise of procedural integrity. If the timeline does not allow public, utility and agencies to align their understandings, contributions and concerns – then it will be difficult to sustain and build the public trust, understanding and cooperation needed for significant infrastructure development.

EQB should consider at least two additional avenues to resolving timeline concerns:

- Legislative change
- Review of the timeline at the “Preliminary OAH Matters” stage of the PUC proceeding, allowing for adjustments of the ER timeline for specific applications, by mutual agreement of the agencies and parties.

This review of timeline was an option offered by PUC staff during the State Transmission Planning advisory committee meetings. EQB chose to standardize and work within a very tight timeframe proposed in the 4410 rule. We hope that EQB will consider options in the future, as experience and situation warrant.

The public depends upon EQB staff, chair and board to ensure that the dual goals of adequate and timely environmental review of proposals and alternatives - including size, type and timing – are met, and that due process and public involvement goals of MERA, MEPA and the PPSA are met. CURE greatly appreciates the follow through of parties to this, and the state transmission planning docket, including John and Laurel Reinhart, MCEA, Sierra Club, the MTO’s and others. And, as noted, Mr. Mitchell we found the meeting formats, presentation of material and discussion particularly effective in moving the rulemaking, and mutual understanding of the parties forward. An excellent model.

Most respectfully yours, Kristen Eide-Tollefson, for CURE 612-331-1430