

# MINNESOTA RULES PARTS 4410.7010 – 7070

## EXPLANATION OF CHANGES SUPPORTED BY EQB STAFF

AUGUST 25, 2003

### I. INTRODUCTION

On May 19, 2003, the Environmental Quality Board published notice in the State Register of the proposed adoption of amendments to Minnesota Rules parts 4410.7000 to 4410.7500. The public was invited to submit comments on the proposed amendments by June 23, 2003. A number of comments were filed with the EQB. Those comments were submitted by:

1. John and Laura Reinhardt (June 17, 2003)
2. Minnesota Public Utilities Commission (July 19, 2003)
3. Sierra Club (June 20, 2003)
4. Minnesota Department of Commerce (June 23, 2003)
5. Minnesota Pollution Control Agency (June 23, 2003)
6. Minnesota Transmission Owners (June 23, 2003)
7. Minnesota Center for Environmental Advocacy (June 23, 2003)
8. Dakota County Citizens for a Healthy Environment (June 23, 2003) (29 letters)
9. Communities United for Responsible Energy (June 24, 2003)

In response to the comments that were filed in June, the EQB staff developed some possible changes to the proposed rules and sent this draft language to a number of interested persons on July 11, 2003. The staff received written responses to these draft suggestions from the Public Utilities Commission on July 17, 2003, and the Minnesota Center for Environmental Advocacy on August 25, 2003.

The staff has continued to consider the comments that have been filed with the EQB and has developed some changes in the proposed amendments that the staff will recommend to the Administrative Law Judge at the hearing on September 4, 2003. This document explains the rationale behind those changes.

### II. EXPLANATION

#### 4410.7010. APPLICABILITY AND SCOPE

Subp. 1. Applicability. At the request of the Public Utilities Commission and the Department of Commerce, language has been added to clarify that these rules apply to certificate of need applications filed with the PUC under Minn. Stat. § 216B.243 and to transmission projects reports under Minn. Stat. § 216B.2425 and the applicable rules.

Subp. 2. Scope. The same language added in subpart 1 is included here for the same reason.

The Minnesota Transmission Owners, in their comments of June 23, stated that they would like to see language added to the rules stating that preparation of an environmental review document under these rules is the only environmental review that is required at the certificate of need stage. EQB staff agrees that preparation of an environmental report (or an environmental assessment or EIS if the processes are combined under part 4410.7060) is the only environmental review document that the EQB is going to prepare at the certificate of need stage, and that point is clear without additional language in the rule. Any attempt to draft language to address MTO's concern only raises other arguments that certain questioning and discovery would also be prohibited.

#### **4410.7025. COMMENCEMENT OF ENVIRONMENTAL REVIEW**

**Subp. 1. Certificate of need application.** EQB staff suggests that language be added to require an applicant to submit an electronic version of the certificate of need application. This material will be posted on the EQB web page, where the public can have quick access to the information.

**Subp. 2. Transmission projects report.** The reference to “transmission planning report” should be changed to “transmission projects report” in this part and in other references because this is what the PUC call's the document in its new chapter 7848 rules. In addition, the staff supports adding language to this subpart requiring an applicant seeking certification of a particular high voltage transmission line as part of the transmission planning process to submit an electronic version of the report.

#### **4410.7030. PROCESS FOR PREPARATION OF ENVIRONMENTAL REPORT**

##### **Subp. 1. Notice to interested persons.**

Item D. New language in item D has been drafted to rely on PUC rules to identify the people who are to get notice of the EQB proceeding. It is reasonable to rely on the same mailing list the utility developed to give the initial notice of the certificate of need application or transmission projects report. Also, the new rules developed for giving notice during the transmission planning process, Minn. Rules part 7848.1900, subp. 3, establish a broad list of persons and organizations that must be given notice. Reliance on this list should ensure that persons who are most likely to be affected by the project will get notice not only of the initial application to the PUC but also notice of the EQB proceeding. The PUC is in the process of amending its certificate of need rules, chapter 7849, to require the same kind of notice.

**Subp. 2. Content of notice.**

Item B. Several commenters suggested that the public be made aware that the certificate of need stage is the only place where issues of size, type, and timing, and system configuration and voltage, and the no-build alternative will be considered, so language has been added in Item B to require a statement to that effect in the notice.

Item D. EQB staff suggests that a phrase be added to this Item requiring that the notice contain a statement explaining the purpose of the public meeting. It is reasonable to contain in the notice an explanation of what the EQB hopes to accomplish at the public meeting. The public should be made aware that this public meeting is not the appropriate time for the public to comment on the actual need for the new project and that those comments will have to be made as part of the official PUC proceedings and introduced into the PUC administrative record.

Item E. A new Item E has been drafted to require that the notice advise the public where copies of the pertinent documents can be obtained. Hopefully, these documents will be available on the web, but the EQB will also provide access to hard copies upon request as well.

**Subp. 3. Public meeting.** Staff recommends that the time frame for giving notice of the meeting be changed from 20 days to 15 days. The reason for doing this is because the public would like to see the comment period after the public meeting be lengthened from the proposed 10 day period. Staff recommends that the comment period in subpart 4 be lengthened from 10 to 20 days. Several commenters want more time on both ends, but given the time constraints of completing the environmental review within the statutory deadlines, it isn't possible to allow longer periods for notice and commenting. Given the fact that the public will likely have had opportunities to learn about a proposed large energy project long before the actual application is filed, it seems preferable to shorten the period for notice of the public meeting and allow more time for commenting after the meeting.

The staff also suggests that language be added to this subpart to require a newspaper ad announcing the public meeting. This notice will appear in a local newspaper at least 10 days before the meeting. This requirement is also consistent with the requirements of the PUC rules for transmission planning. Minn. Rules part 7848.1900, subp. 3, item D.

**Subp. 4. Conduct of public meeting.** This is where the time for commenting after the public meeting has been changed from 10 to 20 days.

**Subp. 6. Alternatives and impacts.** The Department of Commerce and the Minnesota Center for Environmental Advocacy suggested that the EQB rely on the provisions in 4410.2300, items G and H, to determine whether to include a particular alternative in the environmental report. The new language is intended to do that.

The Minnesota Transmission Owners commented that a utility should not have to provide information about different energy sources when a transmission line is being proposed, that this provision should only apply to new power plants. The Department of Commerce and the Sierra Club disagree. Since the language tracks the PUC rule language, EQB staff is not proposing to change it.

**Subp. 7. Chair decision.** In Item A a phrase is proposed to be added to emphasize that the EQB will at a minimum address the alternatives identified under part 4410.7035, subpart 1(B).

**Subp. 8. Notice of decision.** Several commenters asked how a person aggrieved by a decision by the Chair regarding the alternatives and impacts to include in the environmental report could bring that decision to the full Board. Staff proposes that language be added referencing the EQB's procedural rules (4405.0600, subp. 5), which already provide for asking the Chair to bring a matter to the Board for consideration. Also, staff recommends that language be included to require that a person who wants the Board to review a Chair decision must make such request within ten days after the Chair's decision. The reason for this deadline is to ensure that any disagreements over the scope of the environmental assessment can be resolved early in the process. To ensure that the EQB can complete the environmental report as promptly as possible, language is also included to clarify that once the Chair determines the matters to evaluate in the environmental report, the EQB will begin to prepare the document even if a request is made to bring the matter to the Board.

**Subp. 9. Time frame for completion of environmental report.** A small change is proposed here to include other state agencies in the list of persons whose interests will be taken into account when establishing the schedule for completion of the environmental report. Since the EQB may require other state agencies to assist in preparation of the report by providing certain data, the interests of those contributing agencies must also be taken into account.

#### **4410.7035. CONTENT OF ENVIRONMENTAL REPORT**

A number of suggestions were made by commenters regarding the choice of words in various parts of subpart 1 of this rule. Some commenters want to delete the word "general" in items A and B, and others want to clarify that the phrase "human and environmental impacts" in Item C includes certain economic and employment impacts. Others are concerned that amendment of these terms will lead to confusion over just what is intended. The staff is of the view that the various categories described in subpart 1 are broad enough to ensure that the appropriate impacts are analyzed in the report to the extent necessary to provide the PUC with relevant and helpful information. Use of a more deliberative process involving the public to determine the appropriate scope of the environmental report will ensure that the document addresses the matters that should be addressed.

The Reinhardts questioned why “availability” was removed from Item F, when it appears in the existing rules. Staff thought that the use of the word “feasibility” captured the concept of “availability.” However, staff has no objection to adding the word “availability” to Item F.

The Sierra Club and the Minnesota Center for Environmental Advocacy would like to see language in the rules requiring the EQB to determine whether certain alternatives are feasible and prudent. The purpose of the environmental review is to provide information, not reach conclusions, so staff does not support including any language requiring the EQB to make any conclusions or recommendations in the environmental report.

**Subp. 2. Impacts of power plants.** The changes proposed here come from the Pollution Control Agency. The changes add clarity to what is required to be addressed in the environmental report.

#### **4410.7050. ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT**

**Subp. 1. PUC decision.** EQB staff recommends that language be added to recognize that in those instances where the certificate of need review will be combined with EQB review under chapter 4400, the EQB will prepare an environmental assessment or an EIS instead of an environmental report.

Staff also recommends adding language to clarify that while the actual contested case hearing cannot begin until the environmental review document is available, there are preliminary steps that could be undertaken. There is no reason why the Administrative Law Judge cannot be conducting prehearing matters while preparation of the environmental report is ongoing, for example.

The PUC commented that when the EQB completes the environmental document, the PUC will require at least 15 copies of the document. The EQB will certainly provide as many copies as the PUC requests. It is not necessary to specify the precise number in the rules.

**Subp. 2. Completeness of environmental report.** Similar to the new language in subpart 1, the new language here recognizes those situations where the PUC need proceeding and the EQB permitting proceeding are combined, and it is a document other than an environmental report that is prepared by the EQB. In such instances the PUC could direct the EQB to supplement the document.

#### **4410.7060. JOINT PROCEEDING**

**Subp. 1. Environmental assessment.** The Minnesota Transmission Owners pointed out in their June 23 comments that the timing of a decision to combine environmental review was unclear. Language has been added to clarify that the processes

can be combined at any time prior to completion of the environmental report. It makes sense that if the PUC proceeding has not been completed at the time an applicant submits a permit application to the EQB for a specific route or site, there is still time to combine the processes. However, if the submission of the permit application to the EQB occurs several weeks or even months after the certificate of need application is submitted, there will be a delay in completing the PUC process and making a decision on the need for the facility. For that reason, language is included recognizing that if a delay would result, the EQB can decide to combine the processes only with the approval of the applicant and the Public Utilities Commission. Of course, the EQB could also elect not to combine the processes in such a situation without seeking applicant and PUC approval.

The Sierra Club and the Minnesota Center for Environmental Advocacy pointed out that if the processes are combined, the EQB will have to include in the environmental assessment or EIS an analysis of those issues that are to be addressed by the PUC – size, type, timing, system configuration, voltage, and the no-build alternative. The new language is intended to make that clear.

**Subp. 2. Environmental impact statement.** These are the same changes made in subpart 1.

**Subp. 3. Procedures.** It seems advisable to include in the rules a provision that states that if environmental review under these rules and environmental review under chapter 4400 are combined, that the procedures of chapter 4400 will be followed. Because there will be a specific site or route proposed if a permit from the EQB has been applied for and environmental review is combined, it makes sense to follow the procedures in chapter 4400. Also, for the larger projects, since it will be an EIS that is prepared, it is necessary to rely on the procedures in 4400 for completing that document.

### **III. CONCLUSION**

The public will have an opportunity to comment on these proposed changes, along with the original proposed amendments, at the September 4 hearing. The EQB staff will take all those comments into account when formulating its final recommendations to the ALJ and ultimately to the EQB Board.