

To: Judge Allan Klein  
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From:  
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Comments re:

Proposed Permanent Rules Governing Environmental Review of Electric Power Generating Plant and High Voltage Transmission Lines in Proceedings before The Public Utilities Commission, Minnesota Rules parts 4410.7010 to 4400.7070.

Dear Judge Klein,

I appreciated the opportunity to testify before you at the rules hearing September 4<sup>th</sup>. I have discussed my concerns with the parties representing rules amendments. In light of these conversations, C.U.R.E. wishes to support EQB staff recommended changes and Minnesota Center for Environmental Advocacy's recommendations for amendments to those changes - MCEA's recommended changes pertaining specifically to the notice requirements and to standards for alternatives to be considered in the EQB chair decision on the scope. We continue to find the Reinhardt's comments informed and important representations of key public issues. And we appreciate and support Paula Maccabee's comment record & will appreciate its review in final deliberations.

**RULE WEAKNESSES:** There remain several weaknesses of the rule which we feel responsible to emphasize from the perspective of the interested and affected public. In Power Plant Siting Act annual hearings and throughout the Environmental Review Advisory Committee deliberations in 2001, C.U.R.E. has advocated repeatedly for *upfront* information development and participation of the public as a procedural key to the goal of streamlining. Due in part to the 6 month timeline of the PUC proceeding, this rule contains several features which are likely to interfere with this goal. The following items, from our experience, are most likely to interfere with the ability of the agencies to move projects through the need and siting/routing proceedings - with a minimum of legal and public confusion & opposition.

**SCOPING DECISION:** From a public perspective, the scoping decision is too critical a foundation and framework to be left to the chair's discretion on a 10 day timeline. We find this procedural shortcut more likely than any other feature of the rule to create delays, distrust and conflict. We appreciate and support changes recommended by EQB staff and MCEA that provide reasonable recourse to a board decision. We nevertheless find the trust of the public may still be undermined by:

- a) lack of public access to the decision making process,
- b) the fact that the utility has final 'word' in responding to comments and recommendations to the chair
- c) the historic tendency of such decisions to be influenced by political factors and
- d) the "exclusionary" wording of the chair's discretion on the alternatives to be examined.

I have discussed this concern with David Zoll & understand the advantage of having the recommended standard inserted in place of the vague “useful to PUC” designation. In our opinion, the exclusive wording “only if” may present a hurdle for constructive public engagement and understanding. It is public trust, and constructive engagement that should be a goal of procedural rule-making in these times; the best strategic avenue to ‘streamlining’ that uses all parties resources productively & minimizes recourse to law suits and procedural delays.

**CONTINUITY OF THE WRITTEN ENVIRONMENTAL REVIEW RECORD:** We are very pleased, as we mentioned at the hearing, that PUC and EQB have worked out the ER procedure, with EQB as RGU for the Environmental Report (ER). This is in keeping with agency expertise and public expectation. We remain concerned, however, with the challenge of creating continuity of the written ER record - as it is developed through the PUC proceeding. Mr. Jacobsen mentioned that PUC would be likely to admit comments on the ER in the Certificate of Need proceeding. Mr. Mitchell assumes that all such comments and responses would take place orally, in hearing and would not therefore be amenable to being appended to the written record. Our goal would be to minimize back-tracking and misunderstanding by finding a way to supplement the ER record with as it moves through the process to minimize delays on both ends.

Since there will not be a draft, review opportunity on the foreshortened ER timeline, we are concerned about access to and understanding of the record for members of the public, especially affected parties at the siting and routing stage, who have NOT been involved in the need proceeding. It is important to remember, here, the ‘trade off’ in the 2001 legislation: certainty of need review for elimination of the ‘no build’ alternative on the siting and routing end. Need review has been a matter of much public concern over the last 30 years. Once a project reaches the siting and routing stage all questions of size, type and timing *and* the no-build alternative will be ‘off the table’. This is a critical set of features which has not yet been tested.

**GOAL OF RECORD:** Therefore, the goal of the record should be to make as much of the ER information and deliberation as possible available and transferable to affected and interested members of the public in the siting and routing phase. We think that it would be wise to create a provision, either in rule or procedure, that makes this transfer of information possible. Creating a supplemental and appended written record of the comments and responses to the ER at the PUC stage would also help to alleviate the lack of opportunity for draft, comment and response at the ER stage, due to timeline constraints. I could elaborate at some length about how important the establishment of need and examination of alternatives is to affected and interested members of the public, but assume that this has been amply demonstrated over the course of ALJ hearings.

As members of the public, we do not have ‘language’ recommendations. But we hope that your deliberations, Judge Klein, might shed some light on this important issue.

Most respectfully yours,  
Kristen Eide-Tollefson