

January 13, 2005

TO: EQB Board Members

FROM: Alan Mitchell

SUBJECT: **Request for Comments on Possible Amendments to Pipeline Routing Rules. Minnesota Rules chapter 4415**

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### **Action**

The Board is asked to authorize the Chair to publish in the State Register a Request for Comments on Possible Amendments to Rules Governing Routing of Intrastate Pipelines. Publication of the request is essentially the first step in the rulemaking process to amend an agency's rules.

### **Background**

The EQB was authorized in 1987 to issue pipeline routing permits for certain size and type intrastate pipelines. Minn. Stat. § 116I.015. The EQB was also directed to promulgate rules governing the routing of pipelines. The EQB adopted these rules in 1989, and the rules are codified in Minn. Rules chapter 4415. The rules have not been amended since they were first adopted in 1989.

In the past fifteen years, the EQB has issued pipeline routing permits for twenty projects. Most recently, the EQB issued permits for several pipelines associated with new natural gas fired power plants, like the Faribault plant and the Calpine plant in Mankato and Xcel Energy's Blue Lake Plant in Scott County. The Board is also familiar with the permit that was issued for the 90 mile long natural gas pipeline built by Hutchinson Utilities Commission in 2003.

In the past three years or so, the EQB has undertaken significant rulemaking efforts. Wind rules were adopted for the first time in February 2002 (chapter 4401). The rules for power plants and transmission lines were amended substantially in February 2003 (chapter 4400). The rules providing for environmental review of large energy projects seeking a certificate of need from the Public Utilities Commission were revised in November 2003 (sections 4410.7000 to 4410.7070). The pipeline rules in chapter 4415 are the last set of EQB permitting rules to undergo revision.

The EQB staff prepared a working draft of possible amendments to the rules and made the draft available to interested persons and the general public (by publication on the webpage), and a meeting was held on December 9 with interested persons to discuss the possible amendments. A list of the attendees at the meeting is included in the Board packet. Also included in the packet is a second draft of possible amendments, written in response to the comments received at the meeting.

## Possible Amendments to Chapter 4415

There are two major categories of changes to the pipeline rules being considered. One category relates to the manner in which permit applications will be reviewed. The second relates to the kind of permit conditions that may be imposed in a permit and the manner in which the EQB will ensure that permit conditions are complied with. Other changes being proposed are intended to update the language and incorporate some of the general provisions from the recently adopted chapter 4400 rules. For example, language on citizen advisory task forces and permit amendment and permit transfer is taken from the respective chapter 4400 provision.

The two major categories of change – permit review and permit conditions – are discussed below.

***Permit Review.*** The pipeline rules establish certain procedures that must be followed in processing an application for a pipeline routing permit, but allow for a partial exemption from some of these procedural steps for pipelines that do not have a significant impact on humans or the environment. The rules do not identify which pipelines qualify for the partial exemption; that decision is made each time an application is submitted.

The draft rules that have been circulated for review contain a provision (part 4415.4000) that identifies which pipeline projects qualify for the shorter review process. (The term “partial exemption” would be eliminated in the amended rules.) Rather than determine each time whether a particular project qualifies for the shorter review process, eligibility for the shorter process would be set forth in the rules, which will allow the agency, the pipeline proposer, and the public to know in advance which procedural steps apply. Generally, it is the shorter and smaller pipelines located outside the metropolitan area that are proposed to be eligible for the shorter review process.

The draft rules establish the procedural steps that are required in reviewing a permit application, whether the full process for the larger projects or the shorter process for the smaller projects is applicable. The only real change in the full process that is being proposed is a requirement for the EQB to prepare an Environmental Assessment on these larger projects. No independent environmental review is required under the existing rules. The proposed process will look essentially like the alternative process established for power plants and transmission lines under the chapter 4400 rules.

The only significant change in the process for the smaller projects eligible for the shorter review is an obligation on the EQB to prepare a draft permit for the pipeline for the public to review. After a permit application is accepted, the EQB prepares a draft permit that is circulated among interested persons for review, a public meeting is held, the public is afforded an opportunity to comment on the draft permit and to request a public hearing, and the matter is brought to the Board for a decision. This shorter review is essentially the same as the process for reviewing applications for wind permits under chapter 4401.

By statute the EQB has nine months to make a final decision after a permit application is accepted. Both processes can be completed in that timeframe.

***Permit Conditions.*** The other area of change in the draft rules relates to language establishing the conditions that may be imposed in pipeline routing permits. Questions arose in the Hutchinson Utilities Commission matter regarding the authority of the EQB to impose certain conditions in its pipeline permits. It would be helpful to more fully address these issues in the rules. For example, a rule is proposed (4415.6300) providing that the EQB may require an agricultural impact mitigation plan if the pipeline will cross agricultural lands. Another provision (4415.6200) addresses the matter of inspection and monitoring of construction of the pipeline.

## **Rulemaking Process**

The first official step in rulemaking is the publication in the State Register of a Request for Comments on the possible amendment of rules. This is the step the EQB is in at the moment. A draft of the Request for Comments is included in the Board packet.

The EQB must also advise the Governor's Office of the possibility of the rulemaking and the intent to publish the Request for Comments. A memo will be sent to the Governor's Office, along with the draft rules and this staff memorandum, before the notice appears in the State Register.

The staff will also contact the Office of Administrative Hearings and advise that office of the manner in which the EQB will attempt to notify interested persons of the proposed rulemaking. The staff has already begun to contact interested persons about the rulemaking. In addition to publishing the Request in the State Register, the staff will mail the document to interested persons and post the document on the EQB webpage.

Once the period established in the Request for Comments has expired, the staff will bring the matter back to the Board for authorization to proceed with publication of a notice of proposed adoption of amendments. A Statement of Need and Reasonableness will be provided at the same time. The staff anticipates that it can bring this matter to the Board in April or May 2005.

There are a number of persons interested in this hearing and the staff believes that it would be appropriate to hold a public hearing on the proposed amendments. The hearing will likely occur in June or July. After the hearing is finished and the Administrative Law Judge has prepared a report and recommendation, the record will be brought to the Board for final adoption of the amendments. So it is likely to be late summer before the Board can make a final decision on the amendments.

## **Significant Issues**

There is nothing controversial about publishing a notice that the EQB is considering the amendment of existing rules and is soliciting public comment on draft amendments. It is the first step in any rulemaking endeavor.

The staff is hopeful that the language for the revisions to chapter 4415 can be worked out with the various interested parties. However, regardless of the positions of the parties on the proposed rule amendments, the staff anticipates scheduling a public hearing on the rules so the public has

an opportunity to comment on the rules and an administrative law judge can review the record and make a recommendation.

**Staff Recommendation**

The staff recommends that the Board pass a Resolution authorizing the Chair to publish a Request for Comments in the State Register and to continue to develop proposed amendments to the pipeline rules in chapter 4415. A proposed Resolution is included in the Board packet.