

STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Amendment  
of Rules  
Relating to Certificates of Need for Large  
Electric Generating Facilities and Large  
High Voltage Transmission Lines, Minn.  
Rules, parts 4220.0100 to 4220.4100

ISSUE DATE: April 20, 1988

DOCKET NO. E-999/R-86-329

FINDINGS OF FACT, CONCLUSIONS,  
AND ORDER ADOPTING RULE  
AMENDMENTS

The above-entitled matter came on for decision before the Minnesota Public Utilities Commission (Commission) on the thirtieth day of March, 1988. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Commission, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, and after considering all of the evidence adduced upon the records, files and proceedings herein, the Commission, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the Commission's intent to adopt the above rules without a public hearing was published in the State Register on January 11, 1988, and was sent by mail to all persons on the list maintained by the Commission pursuant to Minn. Stat. Sections 14.14, subd. 1a and 14.22 (1986) on January 5, 1988.
2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.
3. All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The 30-day comment period, as set out in the notice, expired on February 10, 1988.
4. No requests for public hearing were received during the comment period.

5. No requests for notice of submission to the Attorney General were received by the Commission.
6. Any modifications to the proposed rules as published in the State Register and mailed to persons on the Commission's rulemaking list must not constitute a "substantial change" in accordance with Minn. Rules, part 2010.1000, governing Standards of Review by the Attorney General. That rule states as follows:

A rule must be disapproved by the Attorney General if ...there is a substantial change in the rule as adopted from the proposed rule as noticed. A change, by additions or deletions or other modifications to a proposed rule, is substantial if it:

- 1) affects classes of persons who could not reasonably have been expected to comment on the proposed rules as originally noticed;
  - 2) introduces significant new subject matter which a reasonable person, on the basis of the proposed rule as originally noticed, would not have anticipated would occur during the rulemaking proceeding; or
  - 3) makes a major substantive change that was not raised by the proposed rule as originally noticed in such a way as to invite reaction.
7. During the comment period the Commission received written comments from United Power Association (UPA) on February 3, 1988, and from the Department of Public Service (DPS) on February 10, 1988. The Commission finds that modifications to the proposed rules are justified by the record in this proceeding, as discussed in items a. and b. below.
    - a. The DPS and UPA both suggested changes to proposed part 4220.2700, subp. 5, item E. The DPS recommended that the phrase "under federal or state legislation" be eliminated because all conservation programs should be considered, not just those required by such legislation. UPA indicated that it cannot understand the need to discuss future programs that may or may not be mandated by federal or state legislation; therefore, UPA recommended deletion of the words "and future." The Commission notes that the intent of this rule is to require applicants to disclose all of their conservation assumptions and not to impose any particular assumptions on applicants. The Commission believes that the comments of the DPS and UPA indicate that that intent is not being conveyed clearly by the proposed language. Therefore, the Commission will modify the item by deleting the phrases "existing and future" and "under federal or state legislation." The Commission believes this language satisfies the concerns of both commenting parties. This change is not substantial because it merely clarifies the Commission's intended meaning and does not change the classes affected by the rule. It is necessary and reasonable because it helps to eliminate misunderstanding of the rule as proposed.

b. The DPS suggested that part 4220.2900 should be expanded to include load management programs as items specifically requiring discussion in response to the rule. The DPS suggested replacement of the phrase "conservation and efficiency programs" with the phrase "conservation and efficiency programs, and programs designed to control or manage peak load." The Commission's interpretation of the existing rule is that load management programs should be considered in response to the rule. However, the Commission agrees with the DPS that the rule could be made clearer in that respect. The Commission also agrees with the DPS that load management efforts can have an important impact on the need for generation or transmission facilities. However, the suggested change would be lengthy and repetitive. The Commission will instead add the phrase "including load management" at the end of item A. This revision clarifies the meaning of the rule in a very simple way and is therefore necessary and reasonable. It is not a substantial change because it changes neither the intended meaning of the rule nor the classes affected by the rule.

8. The Commission adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Commission hereby incorporates the Statement of Need and Reasonableness into these findings except as modified in Finding No. 7 above.
9. The Commission finds that additional modifications sought by the parties in their comments should not be made for the reasons given below.

a. The DPS suggested that parts 4220.2500 and 4220.2600 be modified by adding to item B of each part the phrase "Any combination of energy conservation improvements, required by the Commission pursuant to 216B.241." The Commission understands and appreciates the concern expressed by the DPS that conservation be treated as an alternative to construction of a large generation or transmission facility. However, conservation and load management programs have traditionally been treated as reductions in forecast demand before any consideration is given to building new facilities. The proposal of the DPS would treat programs for demand reduction in two different ways, which would be confusing and unnecessary. Therefore, the Commission will not adopt the DPS's suggested change.

b. The DPS also indicated disagreement with the Commission's proposed repeal of part 4220.4100, subp. 4. At pages 21-22 in the Statement of Need and Reasonableness, the Commission explained that:

This current rule was adopted in 1975 amid concern over the use of fuel oil and natural gas for base-load generation of electricity. Demand forecasts by electric utilities pointed to the construction of many new power plants by the turn of the century. Those high demands did not materialize, and only two

large power plants have been constructed in Minnesota since 1975. The Commission doubts that the rule serves any useful function at the present time. While avoidance of generation using fuel oil and natural gas still makes sense from a public policy standpoint, the high cost of those fuels relative to other fuels likely makes regulatory restrictions on their use unnecessary. Further, the Commission could restrict use of certain fuels under subpart 1 of part 4220.4100, given adequate support in the record. Therefore, the Commission believes this subpart is unnecessary and should be repealed.

For these reasons, the Commission will adopt the repeal of that subpart and therefore will not adopt the recommendation of the DPS.

c. UPA indicated that the Commission's proposed definition of the word "construction" in part 4220.0100, subp. 8c is inconsistent with the definition in Minn. Stat. Section 116C.52, subd. 7. The Commission recognizes that the two definitions are not the same. Nevertheless, the Legislature undoubtedly knew that when it enacted the laws creating the need and siting processes. As indicated in the Statement of Need and Reasonableness at page 5, the Commission's proposed definition is nearly identical with the definition created by the Legislature when the need process was enacted in 1974. For the reasons given in the Statement of Need and Reasonableness, the Commission will adopt its proposed definition.

d. UPA also indicated that subparts 1 and 3 of part 4220.2350 refer to part 4410.7100, which has been renumbered by the Revisor as part 7850.0200. The Commission recognized this problem when the proposed amendments were adopted and asked the Revisor how to deal with it. The Revisor indicated that the renumbering was a mistake and would be corrected in the next printing of Minnesota Rules. The Commission was advised to use the old number in this rulemaking process.

10. The above-captioned rules are needed and reasonable.

### CONCLUSIONS

1. The Minnesota Public Utilities Commission duly acquired and has jurisdiction over this proceeding pursuant to Minn. Stat. Sections 216A.05, 216B.08, and 216B.243 (1986).
2. The Commission published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.
3. The Commission has complied with all relevant legal and procedural requirements of statute and rule.

4. The two modifications to the proposed rules are supported by the record and do not result in a substantial change in the proposed rule.

ORDER

1. The Commission hereby adopts amendments to Minn. Rules, parts 4220.0100 to 4220.4100, relating to certificate of need applications for large electric generating facilities and large high voltage transmission lines.

BY ORDER OF THE COMMISSION

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Mary Ellen Hennen  
Executive Secretary