STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE ADOPTION OF PROCEDURAL RULES FOR HEARINGS RELATING TO THE ROUTING OR SITING) AND ORDER ADOPTING RULES OF LARGE ELECTRIC TRANSMISSION FACILITIES.	FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULES

The above-entitled Matter Came On for hearing before Hearing Examiner Allan W. Klein on October 11, 12, 13, 17, 19 and 20, 1977. The record was closed on November 9, 1977.

After affording all interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having carefully considered all of the evidence adduced and the Report of the Hearing Examiner dated January 13, 1978, and upon the records, files and proceedings herein, the Chief Hearing Examiner hereby concurs with, adopts and incorporates the attached Findings of Fact, Conclusions and Recommendations of the Hearing Examiner in this matter except as specified in the following Findings and Conclusions:

1. HE 401. It is found and concluded that the Examiner's proposed addition to this rule should be adopted for the reasons stated in his Report and that, therefore, the following language should he added to the last sentence of the rule:

> ", as are the hearings conducted pursuant to Minn. Stat. § 116C.57, Subd. 3, relating to the determination of emergencies (see HE 416)."

2. HE 402 C. The Examiner has recommended amending this definition, which recommendation has been adopted. however, the Examiner has failed to discuss the concerns expressed by the Power Plant Siting Staff beginning at page 3 of their written submission relating to language alerting people that only parties can be legally assured of the opportunity to present argument to the Board prior to its decision. Such a statement, while having no substantive effect and thus merely a 'now-rule", is found to be needed to alert people reading these rules of one of their rights which may be given up should they choose not to intervene as a party. As the staff stated: "Since these rules point out that legal counsel is not necessary, the probability exists that some persons would miss this legal nuance, only to find that they cannot render a final argument to the Board." Spelling out to the public this limitation on the right to final argument helps eliminate this potential problem. Thus, it is concluded that the following language should he added to the Examiner's recommendation:

"Notice is given that, pursuant to Minn. Stat. § 15.0421, only parties who could he adversely affected by the Report of the Hearing Examiner can be legally assured of the opportunity to present argument to the Board prior to its decision."

3. HE 403. in his Report, the Examiner indicates that the proposed amendment relating to barrier-free facilities was proposed for HE 403 B. At 2 S.R. 382, the language proposed merely indicated that it was simply HE 403. It is found that the language more properly should be added to HE 403 A. However, based on the Examiner's Findings and discussion of the issues involved, it is found and concluded that the Language should more properly read as follows:

"The request shall include a statement by the Board that the facilities where the hearings are to be conducted are free of mobility barriers or that no such facilities are either adequate or available in the community where the hearing or hearings are to be conducted."

With the above exception, the rest of the Examiners recommendation is adopted.

4. HE 404. The Examiner has recommended a provision for "Subsequent Notices" which will be adopted as modified herein. However, it is hereby found that the addition of this now provision, while needed, does not adequately answer the concerns expressed by many regarding the potential for spurious appeals on the basis that the notice, for example, missed one of the rights of a party versus a person. As indicated by numerous persons in both oral and written comment, the legislature recognized this fact in its 1977 amendments to the Power Plant Siting Act. The concern was raised at several of the hearings on these rules and there was no testimony or comments adverse to the proposal. After due consideration of the provisions of Minn. Rule HE 108, it is the opinion of the Chief Fearing Examiner that adding such a provision would not be a substantial change to the rule as initially proposed. Therefore, the following language should be added to proposed rule HE 404 as a new section C:

"C. Defects in the notices shall not invalidate the proceedings, provided a bona fide attempt to comply with this rule has been made."

With respect to proposed rule 404 H, the Examiner has not commented on the proposed rule nor to comments directed to it.

It is found that the rule is needed and reasonable to alert all persons of the name of the person or persons who will be representing the Board at the hearings and where the person may be contacted. Comments presented by the Power Plant Siting Staff

relating to this proposed rule (see Public Exhibit Z-2 at page 9) are found to be facts and conclusions sufficient to adopt their proposed language. Therefore, HE 404 H should read as follows:

> "H. The name, address and telephone number of the appropriate member of the Power Plant Siting Staff who will be representing the Board and the name, address and telephone number of the member of the Attorney General's staff who may be contacted for advice on matters dealing with Board procedures."

Lastly, the Examiner has recommended the addition of a new section entitled "Subsequent Notices". However, in the proposed language the Hearing Examiner is to issue the notice. This would be contrary to the law which provides for the Board to issue all notices. Therefore, the recommendation will be adopted but amended to provide as follows:

> "B. Subsequent Notices. The Hearing Examiner may order subsequent notices to he issued by the Board as he deems appropriate containing corrections...".

5. HE 410. The Examiner, at page 26 of his Report, recommends the addition of certain language to HE 410 B. It is found that the recommendation is sound but that it more properly should be added at the end of HE 410 A.

The Examiner further recommended the addition of language to insure that prehearing conferences would be hold in the area of concern. This recommendation is accepted, and the following language is to be added to the proposed rule HE 410 B, at the end of the first sentence:

> "...which shall be held at a time, date, and place to be determined by the Hearing Examiner to test maximize the ability of all interested persons to attend. Notice of any prehearing conference shall be given in the notice of hearing, if possible. Otherwise, notice shall be given pursuant to HE 404 B."

6. HE 413 A. 1. C. Many comments were entered into the record of the hearing relating to the submission of the final Environmental Report (E.R.) or Environmental Impact Statement (E.I.S.) at some point. There is no question that, pursuant to Minn. Stat. § 15.0419, it must be in the record if the Board is to consider it. Minn. Stat. Ch. 116C requires that it be considered. Most of the concerns were directed at proposed rule HE 413 H 4 and were discussed by the Examiner at that point in his Report.

However, in view of the comments relating to timing, it is found that this rule, relating to the closing of the record, must also be modified in an insubstantial manner. A final

E.R. or E.I.S. is comprised of the draft E.R. or E.I.S., comments, responses to those comments and final acceptance by the Board. Such acceptance, due to timing, may be later than the normal date for closing of the record. Therefore, in order to comply with both the Administrative Procedure Act and the Power Plant Siting Act, it is found to be both needed and reasonable, as well as an insubstantial change, to amend this proposed rule by adding the following new sentence at the end of the rule as recommended for adoption by the Examiner:

> "However, the record shall remain open beyond that date for the sole purpose of receiving the final Environmental Report or Environmental impact Statement."

7. HE 413 E. The hearing Examiner's recommendations for this rule have been adopted. However, in reviewing the proposed rule and his recommendation, it is seen that the proposed rule would require the Chief Hearing Examiner to rule on witness exemptions while the recommendation speaks only to the Hearing Examiner. It is therefore found that the Examiner, by implication, has recommended the deletion of the word "Chief" from the rule and it is so ordered. Common sense dictates that the Examiner assigned to the proceeding is the proper person to rule on such matters.

8. HE 413 I. The Examiner would limit the requirement of prefiling direct testimony to the utility-applicant and the Board if it has intervened. The Chief Hearing Examiner will adopt all of the Examiner's recommendations with the exception of the limiting of prefiling. Instead, the Chief Hearing Examiner will adopt a rule that requires all persons proposing routes or sites to prefile their direct testimony. A review of the record indicates much support for this requirement while the only testimony relating to limiting was presented by the utilities and seemingly was based on speculation that persons would intentionally not file in order to cause delay. Rules should not be based on speculation. As the Examiner stated: "The suggested benefits to the public were amply supported and the existence of problems does not overshadow those benefits."

The Chief Hearing Examiner can envision a situation where the Citizens Advisory Committee proposes an alternate route or site in a totally different location, thus impacting different people. People living on property proposed for the route or site would be put at a big disadvantage by not being able to prepare to defend against the proposal with the same ease that those living along routes or sites proposed by the utility. Therefore, the rule should be amended as follows:

> "All direct testimony to be offered by any party proposing a route or site shall be prepared in advance in question and answer form and shall be filed 14 days prior to first hearing date in the following manner:"

Additionally, pursuant to the Examiner’s recommendation the following two new paragraphs must be added at the end of the originally proposed rule:

"At the hearing, the party presenting the testimony may, if it deems appropriate, briefly summarize the prefiled testimony prior to the start of cross-examination.

Nothing contained herein shall be deemed to foreclose any party from presenting rebuttal testimony or from presenting testimony in response to reasonably unforeseen areas, both without the necessity of prefiling."

NOW, THEREFORE, IT IS ORDERED that the rules as recommended for adoption by the Hearing Examiner, as modified herein, be adopted.

Dated this 31st day of January, 1978.

s/Duane R. Harves
DUANE R. HARVES
Chief Hearing Examiner