

**CHAPTER 4400**  
**ENVIRONMENTAL QUALITY BOARD**  
**HIGH VOLTAGE LINES, POWER PLANTS**

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**4400.0200 DEFINITIONS.**

Subpart 1. **Scope.** As used in these rules, the following terms have the meanings given them.

Subp. 2. **Act.** "Act" means the Power Plant Siting Act of 1973, as amended, Minnesota Statutes 1977, section 116C.51 et seq.

Subp. 3. **Board.** "Board" means the Minnesota Environmental Quality Board.

Subp. 4. **Community benefits.** "Community benefits" means those benefits to the local community, other than economic development, that result from power plant design or location. Examples include use of community solid waste as a supplemental fuel, joint water supply, improving the economic viability of existing rail lines, and increased tax base.

Subp. 5. **Construction.** "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of a site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary boring, to ascertain foundation conditions.

Subp. 6. **Developed portion of plant site.** "Developed portion of plant site" means the portion of the LEPGP site, exclusive of makeup water storage reservoirs or cooling ponds, where structures or other facilities or land uses necessary for plant operation preclude crop production.

Subp. 7. **File.** "File" means to deliver 40 copies to the office of the chairman of the board.

Subp. 8. **High voltage transmission line; HVTL.** "High voltage transmission line" (HVTL) means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more. Associated facilities shall include, but not be limited to, insulators, towers, switching yards, substations, and terminals.

Subp. 9. **Large electric power facilities.** "Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

Subp. 10. **Large electric power generating plant; LEPGP.** "Large electric power generating plant" and "LEPGP" mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

Subp. 11. **Large electric power generating plant study area.** "Large electric power generating plant study area" or "study area" means a geographic area that meets inventory criteria and standards for a LEPGP of a specified capacity, fuel type, and design.

Subp. 12. **Person.** "Person" means any individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Subp. 13. **Prime farmland.** "Prime farmland" means those soils that meet the specifications of Code of Federal Regulations 1980, title 7, section 657.5 (a).

Subp. 14. **Public adviser.** "Public adviser" means a staff person designated by the board for the sole purpose of assisting and advising affected or interested citizens on how to effectively participate in the site or route designation processes.

Subp. 15. **Right-of-way.** "Right-of-way" means the land interest used or proposed to be used within a route to accommodate a high voltage transmission line.

Subp. 16. **Route.** "Route" means the location of a high voltage transmission line between two end points. A route may have a variable width of up to 1.25 miles.

Subp. 17. **Route segment.** "Route segment" means a portion of a route.

Subp. 18. **Site.** "Site" means the location of a large electric power generating plant.

Subp. 19. **Technical assumptions.** "Technical assumptions" means the assumptions necessary to evaluate resource requirements of LEPGPS of a specified capacity, fuel type, and design and to evaluate the availability of resources to meet those requirements.

Subp. 20. **Utility.** "Utility" means any entity engaged in this state in the generation, transmission, or distribution of electric energy including, but not limited to, a private investor owned utility, a cooperatively owned utility, a public or municipally owned utility, or a private corporation.

**Statutory Authority:** *MS s 116C.66*

#### 4400.0300 PURPOSE AND AUTHORITY.

The rules contained herein are prescribed by the Minnesota Environmental Quality Board pursuant to the authority granted to the board in the Power Plant Siting Act, Minnesota Statutes 1977, section 116C.51 et seq., to give effect to the purposes of the act.

It is the purpose of the act and the policy of the state to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, the board shall choose locations that minimize adverse human and environmental impact while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion. The board shall provide for broad spectrum citizen participation as a principle of operation.

**Statutory Authority:** *MS s 116C.66*

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### ROUTE DESIGNATION AND CONSTRUCTION PERMIT

#### 4400.0600 APPLICATION FOR CONSTRUCTION PERMIT.

An application shall be filed with the board which includes an environmental report consistent in form with a draft environmental impact statement, environmental review program rules. The application shall contain any information necessary to make the evaluation required in part 4400.1300 and the following:

- A. the size and type of the proposed transmission line;
- B. at least two proposed routes for the proposed transmission line;
- C. an environmental analysis of each proposed route including a description of the environmental setting and the potential environmental impacts of each route;
- D. the engineering and operational design concepts for the proposed transmission line;
- E. a description of the construction, right-of-way preparation, and maintenance procedures anticipated for the proposed transmission line;
- F. the procedures and practices proposed for the ultimate abandonment and restoration of the right-of-way;
- G. a listing of federal or state permits that may be required for the proposed transmission line;
- H. a cost analysis of each route;
- I. the certificate of need if available, or an acknowledgment of the acceptance of a substantially complete certificate of need application by the Department of Trade and Economic Development, if a certificate of need is required by Minnesota Statutes, chapter 116J; and
- J. a statement of proposed ownership of the facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of those planning to participate in the project.

**Statutory Authority:** *MS s 116C.66*

**History:** *L 1983 c 289 s 115 subd 1; L 1987 c 312 art 1*

#### 4400.0700 ACCEPTANCE OF CONSTRUCTION PERMIT APPLICATION.

The board shall either accept or reject an application for a construction permit at its first regularly scheduled meeting after the application is filed with the board, provided the application is filed at least 30 days prior to that meeting. If the board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the board ten days in advance of a regularly scheduled meeting, the board shall reconsider the application at that meeting. If the board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the application, the board shall initiate the study, public participation, and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information that the board deems necessary to process the application.

**Statutory Authority:** *MS s 116C.66*

#### 4400.0800 ROUTE EVALUATION COMMITTEE.

On acceptance of an application for a construction permit the board shall appoint a route evaluation committee consistent with the act. The board shall provide guidance to the committee in the form of a charge.

**Statutory Authority:** *MS s 116C.66*

#### 4400.0900 PUBLIC ADVISER.

The public adviser shall be available to affected or interested citizens to advise them on how to effectively participate in the route designation process.

The public adviser's duties shall include providing advice on appropriate methods and techniques of public involvement in the transmission line routing process. However, the public adviser is not authorized to give legal advice or advice that may affect the legal rights of the person being advised.

**Statutory Authority:** *MS s 116C.66*

#### 4400.1000 INFORMATION MEETINGS.

The board shall hold at least two information meetings.

After acceptance of an application for a construction permit the board shall hold at least one information meeting in the area affected by the applicant's proposal to explain the route designation process and to respond to questions raised by the public.

Prior to the public hearings held to consider the routes approved for consideration by the board, the board shall hold an information meeting in each county through which a route is proposed to be located to explain the route designation process, present major issues and alternatives under consideration by the board, and respond to questions raised by the public.

**Statutory Authority:** *MS s 116C.66*

#### 4400.1100 ROUTE PROPOSALS.

**Subpart 1. Approval for consideration.** The board shall consider the routes and route segments proposed by the applicant and may consider any other route or route segment it deems necessary. No route shall be considered at the public hearing unless approved for consideration by the board prior to notice of the hearing thereon. All approved routes shall be identified by the board consistent with part 4400.3700, subpart 4. Any proposer of a route or route segment which the board has approved for consideration shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the board with a basis for making a determination on that proposal.

**Subp. 2. Adequate preparation of proposal.** Within ten days of receipt of the proposal, the chairman of the board or his designee shall determine if the proposal is adequately prepared. If the chairman of the board or his designee determines that it is adequately prepared, he shall forward the proposal to the board for its consideration. If the chairman of the board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the board or his designee. The chairman of the board or his designee shall determine within ten days whether the amended proposal is adequately prepared. If the chairman of the board or his designee then determines that the proposal is not adequately prepared, the proposer may appeal to the board at its next meeting to determine the adequacy of the proposal.

**Subp. 3. Sources of route proposals.** The board member agencies, power plant siting staff, and the route evaluation committee may propose routes or route segments to the board. Route proposals made by the route evaluation committee must be made no later than 105 days after acceptance of the application by the board.

Any other person may propose a route or a route segment in the following manner:

The route or route segment must be set out specifically on the appropriate general county highway map available from the Minnesota Department of Transportation, or on the appropriate United States Geological Survey topographical maps.

The proposal must contain the data and analysis required in parts 4400.0600 and 4400.1300, except part 4400.0600, item B; except where such information is the same as provided by the applicant.

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The proposal must be presented to the chairman of the board or his designee within 70 days of acceptance of the application by the board.

**Statutory Authority:** *MS s 116C.66*

### 4400.1200 PUBLIC HEARINGS.

Public hearings held by the board pursuant to parts 4400.0600 to 4400.1500 shall be held for the purposes of collecting and verifying data, and establishing a complete and accurate record upon which to base a decision. The hearings shall be conducted by an independent administrative law judge from the Office of Administrative Hearings. The conduct of these hearings shall be as prescribed by rules adopted by the chief administrative law judge.

**Statutory Authority:** *MS s 116C.66*

**History:** *L 1984 c 640 s 32*

### 4400.1300 CRITERIA FOR ROUTE EVALUATION.

**Subpart 1. Objectives.** In selecting a route and issuing a construction permit, the board shall seek to minimize adverse human and environmental impact, maximize the efficient use of resources, and ensure continuing electric power system reliability.

**Subp. 2. Considerations.** The board shall make an evaluation of the following considerations prior to issuance of a construction permit. In its evaluation of route alternatives, the board shall consider the characteristics of a given geographical area, identify the potential impacts, and apply methods to minimize adverse impacts so that it may select a route with the least adverse impact.

**Subp. 3. Geographical characteristics and potential impacts.** The board shall identify the geographical characteristics and potential impacts in the following categories:

- A. human settlement, including development patterns;
- B. economic operations, including agricultural, forestry, recreational, and mining operations;
- C. the natural environment and public land, including natural areas, wildlife habitat, waters, recreational lands, and lands of historical and/or cultural significance; and
- D. reliability, cost, and accessibility.

**Subp. 4. Minimizing impacts.** In selecting a route with the least adverse impact, the board shall make an evaluation of each of the following categories:

- A. existing land use or management plans, and established methods of resource management;
- B. routes along or sharing existing rights-of-way;
- C. routes along survey and natural division lines and field boundaries so as to minimize interference with agricultural operations;
- D. structures capable of expansion in transmission capacity through multiple circuiting or design modifications to accommodate future high voltage transmission lines; and
- E. alternate structure types and technologies.

**Subp. 5. Lands designated for preservation.** Certain lands within the state have been designated for preservation by action of the state or federal government for the benefit of the people and for future generations. No route shall be designated by the board through state or national wilderness areas. No route shall be designated by the board through state or national parks and state scientific and natural areas unless a route in a designated area would not materially damage or impair the purpose for which the land was designated, and circumstances exist in all alternate routes which would be more severely detrimental to humans or the environment if any alternate were selected.

In the event that such an area is approved, the board may require the applicant to take measures to minimize impacts which adversely affect the unique character of designated lands. Economic considerations alone shall not justify approval of these designated lands. No route shall be designated by the board in violation of federal or state statute, law, rule, or regulation.

**Statutory Authority:** *MS s 116C.66*

**4400.1400 ROUTE DESIGNATION AND ISSUANCE OF CONSTRUCTION PERMIT.**

Within one year after the board's acceptance of a utility's application for a construction permit, the board shall act on that application. When the board designates a route, it shall issue a permit for the construction of a high voltage transmission line specifying the type, design, routing, right-of-way preparation and maintenance, facility construction, and abandonment procedures it deems necessary with any other appropriate conditions. The board's decision shall be made in accordance with part 4400.1300. The board shall give the reasons for its decision in written findings of fact.

**Statutory Authority:** *MS s 116C.66*

**4400.1500 REVIEW OF CONSTRUCTION PLANS.**

Following issuance of a construction permit, a utility shall provide the board with a preliminary construction plan at least 60 days prior to construction that shall show that the right-of-way of the transmission line as proposed is within the route designated by the board. The board may suspend the 60-day time limitation if it can be shown that earlier construction will not preclude proper review of the plans. If the utility makes any changes in its preliminary construction plan, it shall notify the board in writing of such changes.

**Statutory Authority:** *MS s 116C.66*

**SITE DESIGNATION AND CERTIFICATE OF SITE COMPATIBILITY**

**4400.2600 APPLICATIONS FOR CERTIFICATE OF SITE COMPATIBILITY.**

**Subpart 1. Contents.** The application for a certificate of site compatibility filed with the board shall be consistent in form with an environmental report as outlined in the Minnesota Environmental Quality Board's environmental review program rules and shall contain any information necessary to make the evaluation required in part 4400.3300 and the following:

- A. the size and type of the proposed plant;
- B. at least two proposed sites for the proposed plant;
- C. the engineering and operational design concepts for the plant at each of the proposed sites;
- D. an engineering analysis of each of the proposed sites;
- E. the procedures and practices proposed for the ultimate abandonment and restoration of the site;
- F. an environmental analysis of each proposed site, including a description of the environmental setting and the potential environmental impacts of each site;
- G. a cost analysis of the plant at each proposed site;
- H. a listing of federal or state permits that may be required for each proposed site;
- I. the certificate of need if available, or an acknowledgment of the acceptance of a substantially complete certificate of need application by the Department of Trade and Economic Development, if a certificate of need is required by Minnesota Statutes, chapter 116J; and

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J. a statement of proposed ownership of the facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of those planning to participate in the project.

**Subp. 2. Site proposal from inventory.** After board adoption and publication of its inventory of large electric power generating plant study areas, the utility shall in all new applications filed with the board either apply for sites located within the inventory of study areas, or shall specify the reasons for any proposal located outside of the study areas and make an evaluation of the proposed site based upon the planning policies, criteria, and standards specified in the inventory.

**Statutory Authority:** *MS s 116C.66*

**History:** *L 1983 c 289 s 115 subd 1; L 1987 c 312 art 1*

### **4400.2700 ACCEPTANCE OF APPLICATION FOR CERTIFICATE OF SITE COMPATIBILITY.**

The board shall either accept or reject an application for a certificate of site compatibility at its first regularly scheduled meeting after the application is filed with the board, provided the application is filed at least 30 days prior to that meeting. If the board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the board ten days in advance of a regularly scheduled meeting, the board shall reconsider the application at that meeting. If the board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the application, the board shall initiate the study, public participation, and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information which the board deems necessary to process the application.

**Statutory Authority:** *MS s 116C.66*

### **4400.2800 SITE EVALUATION COMMITTEE.**

Upon acceptance of an application for a certificate of site compatibility, the board shall appoint a site evaluation committee consistent with the act. The board shall provide guidance to the committee in the form of a charge.

**Statutory Authority:** *MS s 116C.66*

### **4400.2900 PUBLIC ADVISER.**

The public adviser shall be available to affected or interested citizens to advise them on how to effectively participate in the site designation process. The public adviser's duties shall include providing advice on appropriate methods and techniques of public involvement in the site designation process. However, the public adviser is not authorized to give legal advice or advice which may affect the legal rights of the person being advised.

**Statutory Authority:** *MS s 116C.66*

### **4400.3000 INFORMATION MEETINGS.**

The board shall hold at least two information meetings as follows:

After acceptance of an application for a certificate of site compatibility, the board shall hold at least one information meeting in the area affected by the applicant's proposal to explain the site designation process and to respond to questions raised by the public.

Prior to the public hearings held to consider the sites approved for consideration by the board, the board shall hold an information meeting in each county in which a site is proposed to be located to explain the site designation process, to present major issues and alternatives under consideration by the board, and to respond to questions raised by the public.

**Statutory Authority:** *MS s 116C.66*

**4400.3100 SITE PROPOSALS.**

The board shall consider the sites proposed by the applicant and may consider any other site it deems necessary. No site shall be considered at the public hearing unless approved for consideration by the board prior to notice of the hearing thereon. All approved sites shall be identified by the board consistent with part 4400.3700, subpart 4. Any proposer of a site which has been approved for consideration at the public hearing by the board shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the board with a basis for making a determination on that proposal. Any person may propose a site in the following manner:

A. The site must be set out specifically on United States Geological Survey topographical maps.

B. The proposal must contain the data and analysis required in parts 4400.2600 and 4400.3300 with the exception of part 4400.2600, items B and G, except where such information is the same as provided by the applicant.

C. The proposal must be presented to the chairman of the board or his designee within 70 days of acceptance of the application by the board. Within ten days of receipt of the proposal, the chairman of the board or his designee shall determine if the proposal is adequately prepared. If the chairman of the board or his designee determines that it is adequately prepared, he shall forward the proposal to the board for its consideration at its next meeting. If the chairman of the board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the board or his designee. The chairman of the board or his designee shall determine within ten days whether the amended proposal is adequately prepared. If the chairman of the board or his designee then determines that the proposal is not adequately prepared, the proposer may appeal to the board at its next meeting to determine the adequacy of the proposal.

**Statutory Authority:** *MS s 116C.66*

**4400.3200 PUBLIC HEARINGS.**

Public hearings held by the board pursuant to parts 4400.2600 to 4400.3500 shall be held for the purposes of collecting and verifying data and establishing a complete and accurate record upon which to base a decision. The hearing shall be conducted by an independent administrative law judge from the Office of Administrative Hearings. The conduct of these hearings shall be as prescribed by rule adopted by the chief administrative law judge.

**Statutory Authority:** *MS s 116C.66*

**History:** *L 1984 c 640 s 32*

**4400.3300 CRITERIA FOR SITE EVALUATION.**

Subpart 1. **Site selection criteria.** The following criteria and standards shall be used to guide the site suitability evaluation and selection process. Not all site selection criteria are applicable to all plants to the same degree. The following criteria shall be applied in the selection of sites:

A. Preferred sites require the minimum population displacement.

B. Preferred sites minimize adverse impacts on local communities and institutions.

C. Preferred sites minimize adverse health effects on human population.

D. Preferred sites do not require the destruction or major alteration of land forms, vegetative types, or terrestrial or aquatic habitats which are rare, unique, or of unusual importance to the surrounding area.

E. Preferred sites minimize visual impingement on waterways, parks, or other existing public recreation areas.



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F. Preferred sites minimize audible impingement on waterways, parks, or other existing public recreation areas.

G. Preferred sites minimize the removal of valuable and productive agricultural, forestry, or mineral land from their uses.

H. Preferred sites minimize the removal of valuable and productive water from other necessary uses and minimize conflicts among water users.

I. Preferred sites minimize potential accident hazards and possible related adverse effects with respect to geology.

J. Preferred sites maximize opportunities for significant conservation of energy, utilization of by-products or biomass, cogeneration and development of waste-to-energy systems.

K. Preferred sites minimize the distance to large load centers.

L. Preferred sites maximize the use of already existing operating sites if expansion can be demonstrated to have equal or less adverse impact than feasible alternative sites.

M. Preferred sites utilize existing transportation systems unless feasible alternative systems, including new or upgraded existing substandard systems, have less adverse impact.

N. Preferred sites minimize adverse impact of transmission lines.

O. Preferred sites minimize the costs of constructing and operating the facility.

P. Preferred sites maximize the opportunities for community benefits and economic development.

**Subp. 2. Exclusion criteria.** No large electric power generating plant shall be sited in violation of any federal or state statute, law, rule, or regulation. No site shall be selected in which a large electric power generating plant is not licensable by all appropriate state and federal government agencies.

The following land areas shall not be certified as a site for a large electric power generating plant except for use for water intake structures or water pipelines: national parks; national historic sites and landmarks; national historic districts; national wildlife refuges; national monuments; national wild, scenic, and recreational riverways; state wild, scenic, and recreational rivers and their land use districts; state parks; nature conservancy preserves; state scientific and natural areas; and state and national wilderness areas. If the board includes any of these lands within a site for use for water intake structures or water pipelines, it may impose appropriate conditions in the certificate of site compatibility which protect these lands for the purpose for which they were designated. The board shall also consider the adverse effects of proposed sites on these areas which are located wholly outside of the boundaries of these areas.

No area shall be selected which does not have reasonable access to a proven water supply sufficient for plant operation. No use of ground water shall be permitted where mining of ground water resources will result. "Mining" as used herein shall mean the removal of ground water that results in material adverse effects on ground water in and adjacent to the area, as determined in each case.

**Subp. 3. Site avoidance areas.** In addition to exclusion areas, the following land use areas shall not be approved for large electric power generating plant sites when feasible and prudent alternatives with lesser adverse human and environmental effects exist. Economic considerations alone shall not justify approval of avoidance areas. Any approval of such areas shall include all possible planning to minimize harm to these areas. These avoidance areas are: state registered historic sites; state historic districts; state wildlife management areas (except in cases where the plant cooling water is to be used for wildlife management purposes); county parks; metropolitan parks; designated state and federal recreational trails; designated trout streams; and the rivers identified in Minnesota Statutes section 85.32, subdivision 1.

Avoidance areas also apply to new transportation access routes and storage facilities associated with the plant in addition to the plant itself.

The use of ground water for high consumption purposes, such as cooling, shall be avoided if feasible and prudent surface water alternatives less harmful to the environment exist. Ground water use to supplement available surface water shall be permitted if the cumulative impact minimizes environmental harm.

When there exists a feasible and prudent alternative with less adverse environmental and noncompensable human effects, no LEPP site shall be selected where the developed portion of the plant site includes more than 0.5 acres of prime farmland per megawatt of net generating capacity, and no makeup water storage reservoir or cooling pond site shall be selected that includes more than 0.5 acres of prime farmland per megawatt of net generating capacity. These provisions shall not apply to areas located within home rule charter or statutory cities; areas located within two miles of home rule charter or statutory cities of the first, second, and third class; or areas designated for orderly annexation under Minnesota Statutes, section 414.0325.

**Statutory Authority:** *MS s 116C.66*

#### **4400.3400 ISSUANCE OF CERTIFICATE OF SITE COMPATIBILITY.**

Within one year after the board's acceptance of a utility's application for a certificate of site compatibility, the board shall act on that application. When the board designates a site it shall issue a certificate of site compatibility with any appropriate conditions. The board's decision shall be made in accordance with part 4400.3300. The board shall give the reasons for its decision in written findings of fact. If the board refuses to designate a site, it shall indicate the reasons for the refusal and indicate the necessary changes in size or type of facility to allow site designation.

**Statutory Authority:** *MS s 116C.66*

#### **4400.3500 CERTIFICATE COMPLIANCE.**

Following issuance of a certificate of site compatibility, the board may require the applicant to supply such plans and information as it deems necessary to determine whether the plant, as proposed or operated, is in compliance with the conditions of the certificate of site compatibility.

**Statutory Authority:** *MS s 116C.66*

#### **4400.3600 ADVISORY COMMITTEES.**

**Subpart 1. Route and site evaluation committees.** Route and site evaluation committees appointed by the board are advisory and are to assist the board in evaluating applications for routes and sites.

**Subp. 2. Power plant site advisory committee.** The board shall appoint a power plant siting advisory committee which shall work closely with the board staff in reviewing, advising, and making recommendations to the board concerning development, revision, and enforcement of any rule, inventory, or program initiated under the act or these rules. The board shall provide guidance to the committee in the form of a charge and through specific requests. The committee shall be composed of as many members as may be designated by the board, and its membership shall be solicited on a statewide basis. The committee shall be appointed for a one-year term coincident with the fiscal year.

**Statutory Authority:** *MS s 116C.66*

#### **4400.3700 NOTICES.**

**Subpart 1. Application acceptance.** Within 20 days of acceptance of any application submitted to the board pursuant to the act, except an exemption application, the board shall give notice of acceptance of the application by paid

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advertisement in a legal newspaper of general circulation in each county in which a route or site is proposed by the applicant to be located. The notice shall include the following information:

- A. identification of the application;
- B. the date of the board's acceptance of the application;
- C. a brief description of the proposed facility;
- D. a map showing the routes or sites proposed in that county;
- E. the name and function of the public adviser and the place where that person can be reached;
- F. locations where the application is available to the public; and
- G. procedures for proposing alternate routes or sites.

**Subp. 2. Information meetings.** Notice and agenda of public information meetings of the board shall be given by the board consistent with the act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under parts 4400.1100, subparts 1, 2, and 3; 4400.3100, items B and C, or by resolution of the board pursuant to part 4400.1100 or 4400.3100, as of the time of notice.

**Subp. 3. Public hearings.** Notice and agenda of public hearings shall be given by the board consistent with the act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under part 4400.1100, subpart 3 or 4400.3100, or by resolution of the board pursuant to part 4400.1100 or 4400.3100.

**Subp. 4. Route and site proposals.** Prior to public hearings held on routes and sites which the board has approved for consideration at the public hearings consistent with these rules, the board shall identify the routes and sites with maps published in a newspaper of general circulation in each county in which a route or site is proposed to be located showing the routes or sites in that county.

**Statutory Authority:** *MS s 116C.66*

### 4400.3800 EMERGENCY CERTIFICATIONS AND PERMITS.

**Subpart 1. Application for emergency certificate.** Any utility whose electric power system requires the immediate construction of a large electric power generating plant or a high voltage transmission line may apply to the board for an emergency certificate of site compatibility or an emergency construction permit. The application for an emergency construction permit shall contain the supporting information required in parts 4400.0600 and 4400.3800, subpart 2. The application for an emergency certificate of site compatibility shall contain the supporting information required in parts 4400.2600 and 4400.3800.

**Subp. 2. Determination of an emergency.** The board shall hold a public hearing within 90 days of acceptance of an application for emergency certification to consider the following to determine whether an emergency exists:

A. any evidence offered by the Department of Trade and Economic Development, or any other person;

B. whether adherence to the procedures and time schedules specified in parts 4400.1400 and 4400.3400 would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner;

C. whether there remains any feasible or prudent alternative to the utility which can serve its immediate need;

D. whether the utility is prepared to, and will upon authorization, carry out the acquisition and construction program at the maximum rate of progress.

The board shall also establish whether the situation could have been reasonably anticipated by the utility in time to utilize the normal application procedures. If the board finds that the utility could have reasonably anticipated the

situation, the utility may be subject to the provisions of Minnesota Statutes 1977, section 116C.68.

Subp. 3. **Emergency procedures.** If the board determines that an emergency exists, then the route or site designation procedures prescribed in parts 4400.0600 to 4400.1500 and 4400.2600 to 4400.3500, with the exception of parts 4400.1100, subparts 2 and 3, and 4400.3100, shall be followed, except that the board shall designate a route and issue an emergency construction permit or designate a site and issue an emergency certificate of site compatibility within 195 days of the application.

**Statutory Authority:** *MS s 116C.66*

**History:** *L 1983 c 289 s 115 subd 1; L 1987 c 312 art 1*

#### 4400.3900 EXEMPTION OF CERTAIN TRANSMISSION LINE ROUTES.

Subpart 1. **Application for exemption.** A utility may apply to the board to exempt the construction of a high voltage transmission line from the act. A utility shall submit an application for exemption of a specific transmission line containing the following information: the engineering design concepts; the proposed location of the facility; the environmental setting and impact of the proposed action; and a description of the plans for right-of-way preparation and construction.

Subp. 2. **Notice of exemption application.** Within 15 days of filing with the board an application for exemption of a certain route, the utility shall:

A. publish a notice and description of the exemption application including, but not limited to, a map of the proposed route and the size and type of facility in a legal newspaper of general circulation in each county in which the route is proposed to be located;

B. send a copy of the exemption application by certified mail to the chief executive of any regional development commission, county, incorporated municipality, and organized town in which the route is proposed to be located; and

C. send a notice and description of the exemption application to each owner over whose property the line may run, together with an understandable description of the procedures the owner must follow should he desire to object.

Subp. 3. **Objections to exemption.** Any person who owns real property crossed by the proposed route, or any person owning property adjacent to the property crossed by the proposed route, or any affected political subdivision may file an objection with the board within 60 days after the giving of notice under part 4400.3900, subpart 2, stating reasons why the board should deny the application.

Subp. 4. **Determination of exemption.** The board may conduct a public hearing to determine if the proposed high voltage transmission line will cause any significant human or environmental impact. If any objections are filed with the board, the board shall either deny the application or conduct such a public hearing. Whether or not an objection is filed or a hearing is held, the board shall determine whether the proposed high voltage transmission line will cause any significant human or environmental impact. If the board determines that significant human or environmental impact will occur, it shall deny the application. If not, it may exempt the proposed transmission line with any appropriate conditions, but the utility shall comply with any applicable state rule and any applicable zoning, building, and land use rules, regulations, and ordinances of any regional, county, local, and special-purpose government in which the route is proposed to be located.

**Statutory Authority:** *MS s 116C.66*

#### 4400.4000 DELAY IN ROUTE OR SITE CONSTRUCTION.

Utilities that have acquired a route or site may proceed to construct or

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improve the route or site in accordance with these rules. However, when construction and improvement have not commenced four years after the construction permit or site certificate has been issued by the board, the board shall suspend the certificate or permit. If at that time, or at a time subsequent, the utility decides to construct the proposed large electric power facility, it shall certify to the board that there have been no significant changes in any material aspects of the conditions or circumstances existing when the permit or certificate was issued. If the board determines that there are no significant changes, it shall reinstate the permit or certificate. If the board determines that there is a significant change, it may order a new hearing and consider the matter further, or it may require a new application.

**Statutory Authority:** *MS s 116C.66*

### **4400.4100 MINOR ALTERATIONS IN CONSTRUCTION PERMIT FOR HIGH VOLTAGE TRANSMISSION LINE.**

Following issuance of a construction permit for a high voltage transmission line, a utility may apply to the board for minor alterations on conditions specified in the permit. The utility shall submit an application for a minor alteration which contains sufficient information for the board to determine within 45 days the following: whether the requested changes are significant enough to warrant board study and approval; whether to order public hearings near the affected area; or whether additional fees shall be assessed.

If the board decides to study the application, the board shall determine within 70 days whether granting the application would be consistent with part 4400.1300 and shall grant or deny the utility's application accordingly.

**Statutory Authority:** *MS s 116C.66*

### **4400.4200 REVOCATION OR SUSPENSION OF CERTIFICATE OR PERMIT.**

**Subpart 1. Initiation of action to revoke or suspend.** The board may initiate action to consider revocation or suspension of a construction permit or certificate of site compatibility on its own motion or upon the request of any person who has made a prima facie showing by affidavit and documentation that a violation of the act has occurred as set forth in Minnesota Statutes, section 116C.645 or these rules.

**Subp. 2. Hearing.** If the board initiates action to consider revocation or suspension of a construction permit or certificate of site compatibility, it will consider in a hearing under Minnesota Statutes, section 116C.645 the following matters:

A. whether a violation of any of the conditions in Minnesota Statutes, section 116C.645 has occurred;

B. whether the violation will result in any significant additional adverse environmental effects;

C. whether the results of the violation can be corrected or ameliorated;

and  
D. whether a suspension or revocation of a permit or certificate will impair the utility's electrical power system reliability.

**Subp. 3. Finding of violation.** If the board finds that a violation of Minnesota Statutes, section 116C.645 or these rules has occurred, it may revoke or suspend the permit or certificate, require the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension, or require corrective measures and suspend the permit or certificate.

**Statutory Authority:** *MS s 116C.66*

**4400.4300 ANNUAL PUBLIC HEARING.**

The board shall hold an annual public hearing on a Saturday in November in Saint Paul in order to afford interested persons an opportunity to be heard regarding its inventory of study areas, route and site designation processes, other aspects of the board's activities and duties performed pursuant to the act, or policies set forth in these rules.

**Statutory Authority:** *MS s 116C.66*

**4400.4400 ANNUAL ASSESSMENT ON UTILITY.**

For purposes of determining the annual assessment on a utility pursuant to the act, each utility shall, on or before July 1 of each year, submit to the board a report of its retail kilowatt-hour sales in the state and its gross revenue from kilowatt-hour sales in the state for the preceding calendar or utility reporting year. Upon receipt of these reports, the board shall bill each utility as specified in the act.

**Statutory Authority:** *MS s 116C.66*

**4400.4500 IDENTIFICATION OF LARGE ELECTRIC POWER GENERATING PLANT STUDY AREAS.**

**Subpart 1. Inventory criteria and standards.** The following criteria and standards shall be used by the board to prepare an inventory of large electric power generating plant study areas and by the utility and the board to evaluate any proposed site not located within the appropriate study area.

**Subp. 2. Exclusion areas.** Criterion: study areas shall be compatible with board rules on exclusion criteria for LEPGP site selection.

Standard: geographic areas identified in part 4400.3300, subpart 2 shall not be part of any study area.

**Subp. 3. Air quality.** Criterion: study areas for LEPGPs shall be compatible with existing federal and state air quality rules.

Standard: study areas shall not include those areas in which operation of an LEPGP would likely result in violation of primary or secondary standards or exceedence of prevention of significant deterioration increments for sulfur dioxide or particulate matter as established under United States Code 1980, title 42, sections 7401 to 7642, Minnesota Statutes, section 116.07, and parts 7005.0010 to 7005.0080.

**Subp. 4. Transportation.** Criterion: study areas for coal-fired LEPGP's shall have reasonable access to existing transportation systems which are or can be made capable of transporting the required quantities of coal.

Standard: in identifying study areas for coal-fired LEPGP's, "reasonable access" shall mean no more than 12 miles distant from the existing transportation system.

**Subp. 5. Water.** Criterion: study areas for LEPGP's using evaporative cooling systems shall have reasonable access to an adequate water source.

Standards: in identifying study areas for LEPGP's using evaporative cooling, rivers and lakes shall be considered potential water sources.

In identifying study areas for LEPGP's using evaporative cooling, "reasonable access" shall mean no more than 25 miles distant from the water source.

In identifying study areas for LEPGP's using evaporative cooling, a water source shall be considered adequate if it appears likely to allow LEPGP operation through periods of historic low flows or historic low elevations, either by direct withdrawal or by using supplemental stored water. This evaluation shall be based on historic stream flows, cooling water system technology, and the environmental, economic, and engineering constraints of reservoir design related to size.

**Subp. 6. Application of inventory criteria and standards.** The board shall

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adopt an inventory of study areas for the LEPGP capacities, fuel types, and designs reasonably anticipated to be subject to application for a certificate of site compatibility in the near future. The inventory shall consist of the maps of the study areas; discussion of specific inventory criteria and standards and technical assumptions used to develop the maps; and discussion of the LEPGP capacities, fuel types, and designs for which the maps are developed. The board shall consult with board member agencies, utilities, and other agencies or persons with applicable information as it develops the technical assumptions necessary for application of inventory criteria and standards.

**Statutory Authority:** *MS s 116C.66*

### **4400.4900 APPLICATION FEES.**

Every applicant for a route or site pursuant to Minnesota Statutes, section 116C.57 shall pay to the board a fee as prescribed by the act.

For applications filed pursuant to Minnesota Statutes, section 116C.57, subdivisions 1 and 2, 25 percent of the total estimated fee shall accompany the application and the balance is payable in three equal installments at the end of 90, 180, and 270 days from the date of the board's acceptance of the application.

For applications filed pursuant to Minnesota Statutes, section 116C.57, subdivision 3, 25 percent of the total estimated fee shall accompany the application and the balance is payable at the end of 90 days from the date of the board's acceptance of the application.

For applications filed pursuant to Minnesota Statutes, section 116C.57, subdivision 5, ten percent of the total estimated fee shall accompany the application and the balance is payable as determined by the board.

**Statutory Authority:** *MS s 116C.66*

**4400.5100** [Renumbered 4350.3000]

**4400.5200** [Renumbered 4350.3010]

**4400.5300** [Renumbered 4350.3020]

**4400.5500** [Renumbered 4350.3030]

**4400.5600** [Renumbered 4350.3040]

**4400.5700** [Renumbered 4350.3050]

**4400.5800** [Renumbered 4350.3060]

**4400.5900** [Renumbered 4350.3070]

**4400.6000** [Renumbered 4350.3080]

**4400.6100** [Renumbered 4350.3090]

**4400.6200** [Renumbered 4350.3100]

**4400.6300** [Renumbered 4350.3110]

**4400.7000** [Renumbered 4350.3120]

**4400.9910** [Renumbered 4350.3130]