

1 Public Utilities Commission

2

3 Adopted Permanent Rules Relating to Certificates of Need for
4 Power Plants and Transmission Lines

5

6 Rules as Adopted

7 4220.0100 DEFINITIONS.

8 Subpart 1. to 3. [Unchanged.]

9 Subp. 4. [See Repealer.]

10 Subp. 5. and 6. [Unchanged.]

11 Subp. 7. Annual system demand. "Annual system demand"
12 means the highest system demand of a utility occurring during
13 the 12-month period ending with a given month.

14 Subp. 8. [See Repealer.]

15 Subp. 8a. Capacity factor. "Capacity factor" means the
16 ratio of the actual amount of electrical energy generated during
17 a designated period by a particular generating facility to the
18 maximum amount of electrical energy that could have been
19 generated during the period by the facility had it been operated
20 continuously at its rated capacity.

21 Subp. 8b. Commission. "Commission" means the Minnesota
22 Public Utilities Commission.

23 Subp. 8c. Construction. "Construction" means significant
24 physical alteration of a site to install or enlarge a large
25 energy facility, but not including an activity incident to
26 preliminary engineering or environmental studies.

27 Subp. 9. to 11. [Unchanged.]

28 Subp. 12. LEGF; large electric generating facility.

29 "Large electric generating facility" or "LEGF" means an electric
30 power generating unit or combination of units as defined by
31 Minnesota Statutes, section 216B.2421, subdivision 2, clause (a).

32 Subp. 13. LHVTL; large high voltage transmission line.

33 "Large high voltage transmission line" or "LHVTL" means a
34 conductor of electrical energy as defined by Minnesota Statutes,
35 section 216B.2421, subdivision 2, clause (b), and associated

1 facilities necessary for normal operation of the conductor, such
2 as insulators, towers, substations, and terminals.

3 Subp. 14. to 18. [Unchanged.]

4 Subp. 18a. Nominal generating capability. "Nominal
5 generating capability" means the average output power level, net
6 of in-plant use, that a proposed LEGF is expected to be capable
7 of maintaining over a period of four continuous hours of
8 operation.

9 Subp. 19. to 31. [Unchanged.]

10 4220.0200 PURPOSE OF RULES.

11 The purpose of this chapter is to specify the content of
12 applications for certificates of need and to specify criteria
13 for the assessment of need for large electric generating
14 facilities and large high voltage transmission lines.

15 4220.0300 SCOPE.

16 Subpart 1. Facilities covered. A person applying for a
17 certificate of need for an LEGF or an LHVTL shall provide the
18 information required by this chapter. A certificate of need is
19 required for a new LEGF, a new LHVTL, and for expansion of
20 either facility when the expansion is itself of sufficient size
21 to come within the definition of "large electric generating
22 facility" or "large high voltage transmission line" in part
23 4220.0100. The nominal generating capability of an LEGF is
24 considered its size. If the nominal generating capability of an
25 LEGF varies by season, the higher of the two seasonal figures is
26 considered its size.

27 Subp. 2. Exemption. Notwithstanding subpart 1, a
28 certificate of need is not required for a facility exempted by
29 Minnesota Statutes, section 216B.243, subdivision 8.

30 4220.1100 PURPOSE OF CRITERIA.

31 The criteria for assessment of need must be used by the
32 commission to determine the need for a proposed large energy
33 facility under Minnesota Statutes, sections 216B.2421,
34 subdivision 2, and 216B.243. The factors listed under each of

1 the criteria set forth in part 4220.1300 must be evaluated to
2 the extent that the commission considers them applicable and
3 pertinent to a facility proposed under this chapter. The
4 commission shall make a specific written finding with respect to
5 each of the criteria.

6 4220.1200 CONSIDERATION OF ALTERNATIVES.

7 The commission shall consider only those alternatives
8 proposed before the close of the public hearing and for which
9 there exists substantial evidence on the record with respect to
10 each of the criteria listed in part 4220.1300.

11 4220.1300 CRITERIA.

12 A certificate of need must be granted to the applicant on
13 determining that:

14 A. [Unchanged.]

15 B. a more reasonable and prudent alternative to the
16 proposed facility has not been demonstrated by a preponderance
17 of the evidence on the record, considering:

18 (1) to (4) [Unchanged.]

19 C. by a preponderance of the evidence on the record,
20 the proposed facility, or a suitable modification of the
21 facility, will provide benefits to society in a manner
22 compatible with protecting the natural and socioeconomic
23 environments, including human health, considering:

24 (1) to (4) [Unchanged.]

25 D. the record does not demonstrate that the design,
26 construction, or operation of the proposed facility, or a
27 suitable modification of it, will fail to comply with relevant
28 policies, rules, and regulations of other state and federal
29 agencies and local governments.

30 4220.2100 APPLICATION PROCEDURES AND TIMING.

31 Subpart 1. Form and manner. An applicant for a
32 certificate of need shall apply in a form and manner prescribed
33 by this chapter.

34 Subp. 2. Copies, title, table of contents. The original

1 and 13 copies of the application must be filed with the
2 commission. The applicant shall provide copies of the
3 application to other state agencies with regulatory
4 responsibilities in connection with the proposed facility and to
5 other interested persons who request copies. The applicant
6 shall maintain a distribution list of the copies. Documents,
7 forms, and schedules filed with the application must be typed on
8 8-1/2 inch by 11 inch paper except for drawings, maps, and
9 similar materials. An application must contain a title page and
10 a complete table of contents that includes the applicable rule
11 by the titles and numbers given in this chapter. The date of
12 preparation and the applicant's name must appear on the title
13 page, as well as on each document filed with the application.

14 Subp. 3. Changes to application. After an application is
15 filed, changes or corrections to the application must comply
16 with subpart 2 as to the number of copies and size of
17 documents. In addition, each page of a change or correction to
18 a previously filed page must be marked with the word "REVISED"
19 and with the date the revision was made. The original copy of
20 the changes or corrections must be filed with the administrative
21 law judge, and the remaining copies must be submitted to the
22 commission. The applicant shall send to persons receiving
23 copies of the application a like number of copies of changed or
24 corrected pages.

25 Subp. 4. Cover letter. An application for a certificate
26 of need must be accompanied by a cover letter signed by an
27 authorized officer or agent of the applicant. The cover letter
28 must specify the type of facility for which a certificate of
29 need is requested.

30 Subp. 5. and 6. [See Repealer.]

31 Subp. 7. Complete applications. The commission must
32 notify the applicant within 30 days of the receipt of an
33 application if the application is not substantially complete.
34 On notification, the applicant may correct any deficiency and
35 may resubmit the application. If the revised application is
36 substantially complete, the date of its submission is considered

1 the application date.

2 Subp. 8. Exemptions. Before submitting an application, a
3 person is exempted from any data requirement of this chapter if
4 the person (1) requests an exemption from specified rules, in
5 writing to the commission, and (2) shows that the data
6 requirement is unnecessary to determine the need for the
7 proposed facility or may be satisfied by submitting another
8 document. A request for exemption must be filed at least 45
9 days before submitting an application. The commission shall
10 respond in writing to a request for exemption within 30 days of
11 receipt and include the reasons for the decision. The
12 commission shall file a statement of exemptions granted and
13 reasons for granting them before beginning the hearing.

14 4220.2200 FILING FEES AND PAYMENT SCHEDULE.

15 Subpart 1. [Unchanged.]

16 Subp. 2. Payment schedule. Twenty-five percent of the fee
17 set according to subpart 1 must accompany the application, and
18 the balance must be paid in three equal installments within 45,
19 90, and 135 days after submission of the application. The
20 applicant must be notified of and billed for costs not covered
21 by the fee described in subpart 1. The additional fees must be
22 paid within 30 days of notification. The billing of additional
23 fees must be accompanied by an itemized document showing the
24 necessity for the additional assessment.

25 Subp. 3. Payment required. The commission shall not issue
26 its decision on the application until the outstanding set fee
27 payments and additional billings under subparts 1 and 2 are paid
28 by the applicant.

29 4220.2300 CONTENTS OF APPLICATION.

30 Subpart 1. and 2. [Unchanged.]

31 Subp. 3. Joint ownership and multiparty use. If the
32 proposed LEGF or LHVTL is to be owned jointly by two or more
33 utilities or by a pool, the information required by this chapter
34 must be provided by each joint owner for its system. If the
35 facility is designed to meet the long-term needs, in excess of

1 80 megawatts, of a particular utility that is not to be an
2 owner, that utility must also provide the information required
3 by this chapter. Joint applicants may use a common submission
4 to satisfy the requirements of any part for which the
5 appropriate response does not vary by utility.

6 4220.2350 ENVIRONMENTAL REPORT.

7 Subpart 1. Draft report. If the application is for an
8 LHVTL, the information submitted under parts 4220.2400,
9 4220.2600, and 4220.2900 to 4220.3400 must be designated by the
10 applicant as its "draft environmental report" and distributed in
11 accordance with part 4410.7100, subpart 5.

12 Subp. 2. Written responses. The applicant shall submit
13 written responses to the substantive comments entered into the
14 record of the proceeding before the close of the public hearing
15 on the application. The written responses must be entered into
16 the record and be available to the administrative law judge in
17 preparing the recommendation on the application.

18 Subp. 3. Final report. The draft environmental report,
19 written comments, and the applicant's written responses to
20 comments comprise the "final environmental report," which must
21 be distributed in accordance with part 4410.7100, subpart 5.

22 Subp. 4. Notice of final report. On completing the final
23 environmental report, the commission shall have published in the
24 EQB Monitor, published by the Minnesota Environmental Quality
25 Board, a notice indicating completion.

26 Subp. 5. Supplements. The applicant must prepare a
27 supplement to the final environmental report if the tests
28 described in part 4410.3000, subparts 1 and 2, are met and a
29 certificate of need proceeding on the proposed facility is
30 pending.

31 4220.2400 NEED SUMMARY AND ADDITIONAL CONSIDERATIONS.

32 Subpart 1. Need summary. An application must contain a
33 summary of the major factors that justify the need for the
34 proposed facility. This summary must not exceed, without the
35 approval of the commission, 15 pages in length, including text,

1 tables, graphs, and figures.

2 Subp. 2. [Unchanged.]

3 4220.2500 DESCRIPTION OF PROPOSED LEGF AND ALTERNATIVES.

4 An application for a proposed LEGF must include:

5 A. a description of the facility, including:

6 (1) the nominal generating capability of the
7 facility, as well as a discussion of the effect of the economies
8 of scale on the facility size and timing;

9 (2) to (5) [Unchanged.]

10 B. [Unchanged.]

11 C. for the proposed facility and for each of the
12 alternatives provided in response to item B that could provide
13 electric power at the asserted level of need, a discussion of:

14 (1) to (3) [Unchanged.]

15 (4) its fuel costs in current dollars per
16 kilowatt-hour;

17 (5) its variable operating and maintenance costs
18 in current dollars per kilowatt-hour;

19 (6) the total cost in current dollars of a
20 kilowatt-hour provided by it;

21 (7) an estimate of its effect on rates
22 system-wide and in Minnesota, assuming a test year beginning
23 with the proposed in-service date;

24 (8) its efficiency, expressed for a generating
25 facility as the estimated heat rate, or expressed for a
26 transmission facility as the estimated losses under projected
27 maximum loading and under projected average loading in the
28 length of the transmission line and at the terminals or
29 substations; and

30 (9) the major assumptions made in providing the
31 information in subitems (1) to (8), including projected
32 escalation rates for fuel costs and operating and maintenance
33 costs, as well as projected capacity factors;

34 D. and E. [Unchanged.]

35 4220.2600 DESCRIPTION OF PROPOSED LHVTL AND ALTERNATIVES.

Each application for a proposed LHVTL must include:

A. [Unchanged.]

B. a discussion of the availability of alternatives to the facility, including but not limited to:

(1) new generation of various technologies, sizes, and fuel types;

(2) to (8) [Unchanged.]

C. for the proposed facility and for each of the alternatives provided in response to item B that could provide electric power at the asserted level of need, a discussion of:

(1) to (4) [Unchanged.]

(5) an estimate of its effect on rates system-wide and in Minnesota, assuming a test year beginning with the proposed in-service date;

(6) its efficiency, expressed for a transmission facility as the estimated losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations, or expressed for a generating facility as the estimated heat rate; and

(7) the major assumptions made in providing the information in subitems (1) to (6);

D. and E. [Unchanged.]

4220.2700 PEAK DEMAND AND ANNUAL ELECTRICAL CONSUMPTION FORECAST.

Subpart 1. [Unchanged.]

Subp. 2. Content of forecast. For each forecast year, the following data must be provided:

A. to D. [Unchanged.]

E. the estimated annual revenue requirement per kilowatt-hour for the system in current dollars; and

F. the applicant's estimated average system weekday load factor by month; in other words, for each month, the estimated average of the individual load factors for each weekday in the month.

Subp. 3. Forecast methodology. An applicant may use a

1 forecast methodology of its own choosing, with due consideration
2 given to cost, manpower requirements, and data availability.

3 However, forecast data provided by the applicant is subject to
4 tests of accuracy, reasonableness, and consistency. The
5 applicant shall detail the forecast methodology employed to
6 obtain the forecasts provided under subpart 2, including:

7 A. to F. [Unchanged.]

8 G. an explanation of discrepancies that appear
9 between the forecasts presented in the application and the
10 forecasts submitted under chapter 4100 or in the applicant's
11 previous certificate of need proceedings.

12 Subp. 4. Data base for forecasts. The applicant shall
13 discuss the data base used in arriving at the forecast presented
14 in its application, including:

15 A. and B. [Unchanged.]

16 The applicant shall provide to the commission or the
17 administrative law judge on demand copies of the data sets used
18 in making the forecasts, including both raw and adjusted data,
19 input and output data.

20 Subp. 5. Assumptions and special information. The
21 applicant shall discuss each essential assumption made in
22 preparing the forecast, including the need for the assumption,
23 the nature of the assumption, and the sensitivity of forecast
24 results to variations in the essential assumptions.

25 The applicant shall discuss the assumptions made regarding:

26 A. to C. [Unchanged.]

27 D. the data requested in subpart 2 that is not
28 available historically or not generated by the applicant in
29 preparing its own internal forecast;

30 E. the effect of ~~existing-and-future~~ energy
31 conservation programs ~~under-federal-or-state-legislation~~ on
32 long-term electrical demand; and

33 F. [Unchanged.]

34 Subp. 6. [Unchanged.]

35 4220.2800 SYSTEM CAPACITY.

1 The applicant shall describe the ability of its existing
2 system to meet the demand for electrical energy forecast in
3 response to part 4220.2700 and the extent to which the proposed
4 facility will increase this capability. In preparing this
5 description, the applicant shall present the following
6 information:

7 A. to C. [Unchanged.]

8 D. for the summer season and for the winter season
9 corresponding to each forecast year, the load and generation
10 capacity data requested in subitems (1) to (13), including the
11 anticipated purchases, sales, capacity retirements, and capacity
12 additions, except those that depend on certificates of need not
13 yet issued by the commission:

14 (1) to (13) [Unchanged.]

15 E. to I. [Unchanged.]

16 4220.2900 CONSERVATION PROGRAMS.

17 An application must include:

18 A. the name of the committee, department, or
19 individual responsible for the applicant's energy conservation
20 and efficiency programs, including load management;

21 ~~A.~~ B. to E. [Unchanged.]

22 F. a quantification of the manner by which these
23 programs affect or help determine the forecast provided in
24 response to part 4220.2700, subpart 2, a list of their total
25 costs by program, and a discussion of their expected effects in
26 reducing the need for new generation and transmission facilities.

27 4220.3000 CONSEQUENCES OF DELAY.

28 The applicant shall present a discussion of anticipated
29 consequences to its system, neighboring systems, and the power
30 pool should the proposed facility be delayed one, two, and three
31 years, or postponed indefinitely. This information must be
32 provided for the following three levels of demand: the expected
33 demand provided in response to part 4220.2700, subpart 2, and
34 the upper and lower confidence levels provided in response to
35 part 4220.2700, subpart 3, item E.

1 4220.3300 TRANSMISSION FACILITIES.

2 The applicant shall provide data for each alternative that
3 would involve construction of an LHVTL. The following
4 information must be included:

5 A. [Unchanged.]

6 B. for underground transmission facilities:

7 (1) and (2) [Unchanged.]

8 (3) the amount of heat released by the cable
9 system in kilowatts per foot of cable length;

10 C. to G. [Unchanged.]

11 4220.3400 THE ALTERNATIVE OF NO FACILITY.

12 For each of the three levels of demand specified in part
13 4220.3000, the applicant shall provide the following information
14 for the alternative of no facility:

15 A. to C. [Unchanged.]

16 4220.4100 CERTIFICATE OF NEED CONDITIONS AND CHANGES.

17 Subpart 1. Authority of commission. Issuance of a
18 certificate of need may be made contingent upon modifications
19 required by the commission. When an application is denied, the
20 commission shall state the reasons for the denial.

21 Subp. 2. to 4. [See Repealer.]

22 Subp. 3a. Proposed changes in size, type, and timing.

23 Changes proposed by an applicant to the certified size, type, or
24 timing of a proposed facility before the facility is placed in
25 service must conform to the following provisions:

26 A. A delay of one year or less in the in-service date
27 of a large generation or transmission facility previously
28 certified by the commission is not subject to review by the
29 commission.

30 B. A power plant capacity addition or subtraction
31 smaller than the lesser of 80 megawatts or 20 percent of the
32 capacity approved in a certificate of need issued by the
33 commission does not require recertification.

34 C. A change in power plant ownership smaller than the

1 lesser of 80 megawatts or 20 percent of the capacity approved in
2 a certificate of need issued by the commission does not require
3 recertification.

4 D. The applicant shall notify the commission as soon
5 as it determines that a change described in item A, B, or C is
6 imminent, detailing the reasons for the change.

7 E. A large transmission line length addition or
8 subtraction made as a result of the route length approved by the
9 Minnesota Environmental Quality Board for projects previously
10 certified does not require recertification.

11 F. A design change required by another state agency
12 in its permitting process for certified facilities is not
13 subject to review by the commission, unless the change
14 contradicts the basic type determination specified by the
15 certificate of need.

16 G. If a utility applies to the Minnesota
17 Environmental Quality Board for a transmission line route that
18 is not expected to meet the definition of LHVTL in part
19 4220.0100, but at some time in the routing process it becomes
20 apparent that the board may approve a route that meets the
21 definition, the utility may apply for a certificate of need as
22 soon as possible after that time. The length of a route is
23 determined by measuring the length of its center line.

24 H. If an applicant determines that a change in size,
25 type, timing, or ownership other than specified in this subpart
26 is necessary for a large generation or transmission facility
27 previously certified by the commission, the applicant must
28 inform the commission of the desired change and detail the
29 reasons for the change. A copy of the applicant's submission to
30 the commission must be sent to each intervenor in the
31 certificate of need hearing proceeding on the facility.
32 Intervenor may comment on the proposed change within 15 days of
33 being notified of the change. The commission shall evaluate the
34 reasons for and against the proposed change and, within 45 days
35 of receipt of the request, notify the applicant whether the
36 change is acceptable without recertification. The commission

1 shall order further hearings if and only if it determines that
2 the change, if known at the time of the need decision on the
3 facility, could reasonably have resulted in a different decision
4 under the criteria specified in part 4220.1300.

5

6 REPEALER. Minnesota Rules, parts 4220.0100, subparts 4 and
7 8; 4220.2100, subparts 5 and 6; and 4220.4100, subparts 2, 3,
8 and 4, are repealed.