

1 **Environmental Quality Board**2 **Adopted Permanent Rules Relating to Power Plant Siting**3 **4400.0200 DEFINITIONS.**

4 Subpart 1. **Scope.** As used in this chapter, the following terms have the meanings
5 given them.

6 Subp. 2. **Act.** "Act" means the Power Plant Siting Act of 1973, as amended, Minnesota
7 Statutes, sections 116C.51 to 116C.69.

8 Subp. 2a. **Associated facilities.** "Associated facilities" means buildings, equipment,
9 and other physical structures that are necessary to the operation of a large electric
10 power generating plant or a high voltage transmission line.

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

12 Subp. 3a. **Chair.** "Chair" means the person who is the chair of the Environmental
13 Quality Board.

14 Subp. 4. [See repealer.]

15 Subp. 4a. **Certified HVTL list.** "Certified HVTL list" means the transmission projects
16 certified by the Public Utilities Commission as priority projects under Minnesota
17 Statutes, section 216B.2425.

18 Subp. 5. [See repealer.]

19 Subp. 6. {See repealer.} **Developed portion of the plant site.** "Developed portion of
20 the plant site" means the portion of the LEPGP site, ~~exclusive of makeup water storage~~
21 ~~reservoirs or cooling ponds, where structures or other facilities or land uses necessary~~
22 ~~for plant operation preclude crop production that is required for the physical plant and~~
23 associated facilities.

24 Subp. 6a. **Environmental assessment.** "Environmental assessment" means a written
25 document that describes the human and environmental impacts of a proposed large

1 electric power generating plant or high voltage transmission line and alternative routes
2 or sites and methods to mitigate such impacts.

3 **Subp. 6b. Environmental impact statement or EIS.** "Environmental impact
4 statement" or "EIS" means a detailed written statement that describes proposed high
5 voltage transmission lines and large electric power generating plants and satisfies the
6 requirements of Minnesota Statutes, section 116D.04.

7 **Subp. 7. [See repealer.]**

8 **Subp. 7a. EQB.** "EQB" means the entire environmental quality board, including the
9 board and staff.

10 **Subp. 8. High voltage transmission line or HVTL.** "High voltage transmission line"
11 or "HVTL" means a conductor of electric energy and associated facilities designed for
12 and capable of operating at a nominal voltage of 100 kilovolts or more either
13 immediately or without significant modification. Associated facilities shall include, but
14 not be limited to, insulators, towers, substations, and terminals.

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

17 **Subp. 10. Large electric power generating plant or LEPGP.** "Large electric power
18 generating plant" or "LEPGP" means electric power generating equipment and
19 associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts
20 or more. Associated facilities include, but are not limited to, coal piles, cooling towers,
21 ash containment, fuel tanks, water and wastewater treatment systems, and roads.

22 **Subp. 11. [See repealer.]**

23 **Subp. 11a. Mail.** "Mail" means either the United States mail or electronic mail by
24 e-mail, unless another law shall requires a specific form of mailing.

25 **Subp. 12. Person.** "Person" means any individual, partnership, joint venture, private
26 or public corporation, association, firm, public service company, cooperative, political

1 subdivision, municipal corporation, government agency, public utility district, or any
2 other entity, public or private, however organized.

3 Subp. 13. [See repealer.]

4 Subp. 14. [See repealer.]

5 Subp. 15. **Right-of-way.** "Right-of-way" means the land interest required within a
6 route for the construction, maintenance, and operation of a high voltage transmission
7 line.

8 Subp. 16. **Route.** "Route" means the location of a high voltage transmission line
9 between two end points. A route may have a variable width of up to 1.25 miles within
10 which a right-of-way for a high voltage transmission line can be located.

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

12 Subp. 18. **Site.** "Site" means an area of land required for the construction,
13 maintenance, and operation of a large electric power generating plant.

14 Subp. 19. [See repealer.]

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

19 **4400.0300 PURPOSE AND AUTHORITY.**

20 Parts 4400.0200 to 4400.8000 are prescribed by the Minnesota Environmental Quality
21 Board pursuant to the authority granted to the board in the Power Plant Siting Act, as
22 amended, Minnesota Statutes, sections 116C.51 to 116C.69, to give effect to the purposes
23 of the act.

24 It is the purpose of the act and the policy of the state to locate large electric power
25 generating plants and high voltage transmission lines in an orderly manner compatible
26 with environmental preservation and the efficient use of resources. In accordance with

1 this policy, the board shall choose locations that minimize adverse human and
2 environmental impact while ensuring continuing electric power system reliability and
3 integrity and ensuring that electric energy needs are met and fulfilled in an orderly and
4 timely fashion. The board shall provide for broad spectrum citizen participation as a
5 principle of operation. To ensure effective citizen participation, the board shall maintain
6 a public education program on, but not limited to, the considerations identified in
7 Minnesota Statutes, section 116C.57, subdivision 4.

8 **4400.0350 APPLICABILITY.**

9 This chapter establishes the requirements for the processing of permit applications by
10 the Environmental Quality Board for large electric power generating plants and high
11 voltage transmission lines. Requirements for environmental review of such projects
12 before the Public Utilities Commission are established in the applicable requirements of
13 chapter 4410.

14 **4400.0400 PERMIT REQUIREMENT.**

15 **Subpart 1. Site permit.** No person may construct a large electric power generating
16 plant without a site permit from the board. A large electric power generating plant may
17 be constructed only on a site approved by the board.

18 **Subp. 2. Route permit.** No person may construct a high voltage transmission line
19 without a route permit from the board. A high voltage transmission line may be
20 constructed only within a route approved by the board.

21 **Subp. 3. Expansion of existing facility.**

22 A. No person shall increase the voltage of a high voltage transmission line without
23 a route permit or other approval from the EQB.

24 B. No person shall increase the voltage of a transmission line under 100 kilovolts to
25 over 100 kilovolts without a route permit from the EQB.

26 C. Except as provided in part 4400.0650 or 4400.3820, no person shall increase the

1 generating capacity or output of an existing large electric power generating plant
2 without a permit from the board.

3 D. No person shall increase the generating capacity or output of an electric power
4 plant from under 50 megawatts to more than 50 megawatts without a site permit from
5 the EQB.

6 Subp. 4. **Local authority.** A site permit from the board is not required for a large
7 electric power generating plant that is permitted by local units of government under
8 Minnesota Statutes, section 116C.576. A route permit from the board is not required for
9 a high voltage transmission line that is permitted by local governmental authorities
10 under Minnesota Statutes, section 116C.576.

11 Subp. 5. **Commence construction.** No person may commence construction of a large
12 electric power generating plant or a high voltage transmission line until a permit has
13 been issued by the board or by the appropriate local units of government if local review
14 is sought. "Commence construction" means to begin or cause to begin as part of a
15 continuous program the placement, assembly, or installation of facilities or equipment,
16 or to conduct significant physical site preparation or right-of-way preparation work for
17 installation of facilities or equipment. Conducting survey work or collecting geological
18 data or contacting landowners to discuss possible construction of a power plant or
19 transmission line is not commencement of construction.

20 **4400.0500 SMALL PROJECTS.**

21 Subpart 1. **No EQB permit required.** A permit from the EQB is not required to
22 construct a power plant of less than 50 megawatts or a transmission line of less than 100
23 kilovolts. Proposers of such projects must obtain whatever approvals may be required
24 by local, state, or federal units of government with jurisdiction over the project.

25 Subp. 2. **Environmental review.** Proposers of power plants of less than 50 megawatts
26 or transmission lines of less than 100 kilovolts must comply with the environmental
27 review requirements of chapter 4410 and Minnesota Statutes, chapter 116D.

4400.0500

1 **4400.0650 EXCEPTIONS TO PERMITTING REQUIREMENT FOR CERTAIN**
2 **EXISTING FACILITIES.**

3 Subpart 1. No permit required. The following projects are not considered
4 construction of a large electric power generating plant or high voltage transmission line
5 and may be constructed without a permit from the board:

6 A. equipment additions at an existing substation that do not require expansion of
7 the land needed for the substation and do not involve an increase in the voltage or
8 changes in the location of existing transmission lines, except that up to the first five
9 transmission line structures outside the substation may be moved to accommodate the
10 equipment additions provided the structures are not moved more than 500 feet from the
11 existing right-of-way;

12 B. high voltage transmission lines:

13 (1) maintenance or repair of a high voltage transmission line within an existing
14 right-of-way;

15 (2) reconductoring or reconstruction of a high voltage transmission line with no
16 change in voltage and no change in right-of-way, provided that any new structures that
17 are installed are not designed for and capable of operation at higher voltage; or

18 (3) relocation of a high voltage transmission line that is required by a local or
19 state agency as part of road, street, or highway construction; or

20 C. large electric power generating plants:

21 (1) maintenance or repair of a large electric power generating plant;

22 (2) modification of a large electric power generating plant to increase efficiency
23 as long as the capacity of the plant is not increased more than ten percent or more than
24 100 megawatts, whichever is greater, and the modification does not require expansion
25 of the plant beyond the developed portion of the plant site. If a subsequent modification
26 results in a total of more than 100 megawatts of additional capacity, this provision does

4400.0650

1 not apply. An increase in efficiency is a reduction in the amount of BTUs (British
2 Thermal Units) required to produce a kilowatt hour of electricity at the facility;

3 (3) refurbishment of a large electric power generating plant that does not
4 expand the capacity of the plant or expand the plant beyond the developed portion of
5 the plant site and the refurbishment does not require a certificate of need from the
6 public utilities commission;

7 (4) conversion of the fuel source of a large electric power generating plant to
8 natural gas, as long as the plant is not expanded beyond the developed portion of the
9 plant site; or

10 (5) start-up of an existing large electric power generating plant that has been
11 closed for any period of time at no more than its previous capacity rating and in a
12 manner that does not involve a change in the fuel or an expansion of the developed
13 portion of the plant site.

14 **Subp. 2. Minor alteration.** In the event a modification or other change in an existing
15 substation, high voltage transmission line, or large electric power generating plant does
16 not qualify for an exception under this part, the modification or change may qualify for
17 a minor alteration under part 4400.3820.

18 **Subp. 3. Notice.** Any person proposing to move transmission line structures under
19 subpart 1, item A, or to reconductor or reconstruct a high voltage transmission line
20 under subpart 1, item B, subitem (2), or to implement changes to a large electric power
21 generating plant under subpart 1, item C, subitem (2), (3), (4), or (5), must notify the
22 chair in writing at least 30 days before commencing construction on the modification or
23 change.

24 **Subp. 4. Local review.** Any project that does not require a permit from the EQB under
25 this part is also exempt from any requirement to obtain site or route approval from local
26 units of government with jurisdiction over the project pursuant to Minnesota Statutes,
27 section 116C.576.

4400.0710 JOINT PROCEEDING.

The proposer of a large electric power generating plant that will also require a high voltage transmission line may elect to apply for both a site permit for the large electric power generating plant and a route permit for the high voltage transmission line in one application and in one process. The EQB on its own volition may elect to combine two pending applications if it is appropriate to consider both projects as part of one proceeding. An applicant may also combine an application for a pipeline routing permit if a natural gas or petroleum pipeline to a new large electric power generating facility will be required.

FULL PERMITTING PROCESS FOR LARGE ELECTRIC POWER GENERATING FACILITIES

4400.1025 PERMIT APPLICATION UNDER FULL PERMITTING PROCESS.

Subpart 1. Filing of application for permit. A person seeking a site permit or route permit for a large electric power generating facility must file three copies of the application for the permit with the EQB. Upon acceptance of the application, the chair will advise the applicant of how many copies of the application must be submitted to the EQB.

Subp. 2. Electronic copy. A person filing an application for a site permit or route permit shall provide the EQB with an electronic version of the application suitable for posting on the EQB's Web page.

4400.1050 PERMIT FEES.

Subpart 1. Requirement. An applicant for a site permit or route permit shall pay a fee in accordance with Minnesota Statutes, section 116C.69. The estimated fee for processing the permit application must be determined in accordance with Minnesota Statutes, section 116C.69.

Subp. 2. **Initial payment.** The applicant shall submit with the application 50 25

1 percent of the total estimated fee, or another lesser portion that the chair deems
2 satisfactory up to 50 percent of the total estimated fee if the board determines that the
3 additional percentage is reasonably necessary to complete the site evaluation and design
4 process. The chair shall not process a permit application until the first portion of the fee
5 is submitted. The EQB shall deposit all money received from the applicant for permit
6 fees in a special account.

7 **Subp. 3. Additional payments.** The applicant shall pay an additional 25 percent of
8 the fee within 90 days after the application has been accepted by the chair. Additional
9 payments must be made within 30 days of notification by the chair that additional fees
10 are necessary for completion of the permitting process. The board shall not make a final
11 decision on a permit application if any assessed fees have not been paid.

12 **Subp. 4. Final accounting.** At the end of the permitting process, including any
13 judicial review of the board's final decision, the EQB shall provide a final accounting to
14 the applicant of the total cost of processing the permit application. The applicant may
15 review all actual costs associated with processing an application and present objections
16 to the board. The application fees paid by the applicant shall include the necessary and
17 reasonable expenses incurred in processing the application, including, but not limited
18 to, staff time, expenses for public notice and meetings and hearings, environmental
19 review, administrative overhead, and legal expenses. The applicant shall make the final
20 payment within 30 days of notification or the EQB shall refund any excess payments
21 within 30 days of the final accounting.

22 **4400.1150 CONTENTS OF APPLICATION.**

23 **Subpart 1. Site permit for LEPGP.** An application for a site permit for a large electric
24 power generating plant must contain the following information:

25 A. a statement of proposed ownership of the facility as of the day of filing and after
26 commercial operation;

1 B. the precise name of any person or organization to be initially named as
2 permittee or permittees and the name of any other person to whom the permit may be
3 transferred if transfer of the permit is contemplated;

4 C. at least two proposed sites for the proposed large electric power generating
5 plant and identification of the applicant's preferred site and the reasons for preferring
6 the site;

7 D. a description of the proposed large electric power generating plant and all
8 associated facilities, including the size and type of the facility;

9 E. the environmental information required under subpart 3;

10 F. the names of the owners of the property for each proposed site;

11 G. the engineering and operational design for the large electric power generating
12 plant at each of the proposed sites;

13 H. a cost analysis of the large electric power generating plant at each proposed site,
14 including the costs of constructing and operating the facility that are dependent on
15 design and site;

16 I. an engineering analysis of each of the proposed sites, including how each site
17 could accommodate expansion of generating capacity in the future;

18 J. identification of transportation, pipeline, and electrical transmission systems that
19 will be required to construct, maintain, and operate the facility;

20 K. a listing and brief description of federal, state, and local permits that may be
21 required for the project at each proposed site; and

22 L. a copy of the Certificate of Need for the project from the Public Utilities
23 Commission or documentation that an application for a Certificate of Need has been
24 submitted or is not required.

25 **Subp. 2. Route permit for HVTL.** An application for a route permit for a high voltage
26 transmission line shall contain the following information:

1 A. a statement of proposed ownership of the facility at the time of filing the
2 application and after commercial operation;

3 B. the precise name of any person or organization to be initially named as
4 permittee or permittees and the name of any other person to whom the permit may be
5 transferred if transfer of the permit is contemplated;

6 C. at least two proposed routes for the proposed high voltage transmission line
7 and identification of the applicant's preferred route and the reasons for the preference;

8 D. a description of the proposed high voltage transmission line and all associated
9 facilities including the size and type of the high voltage transmission line;

10 E. the environmental information required under subpart 3;

11 F. identification of land uses and environmental conditions along the proposed
12 routes;

13 G. the names of the owners of the each owner whose property of the land to be
14 crossed by is within any of the proposed routes for the high voltage transmission line
15 within the two routes proposed;

16 H. United States Geological Survey topographical maps or other maps acceptable
17 to the chair showing the entire length of the high voltage transmission line on all
18 proposed routes;

19 I. identification of existing utility and public rights-of-way along or parallel to the
20 proposed routes that have the potential to share the right-of-way with the proposed
21 line;

22 J. the engineering and operational design concepts for the proposed high voltage
23 transmission line, including information on the electric and magnetic fields of the
24 transmission line;

25 K. cost analysis of each route, including the costs of constructing, operating, and
26 maintaining the high voltage transmission line that are dependent on design and route;

1 L. a description of possible design options to accommodate expansion of the high
2 voltage transmission line in the future;

3 M. the procedures and practices proposed for the acquisition and restoration of the
4 right-of-way, construction, and maintenance of the high voltage transmission line;

5 N. a listing and brief description of federal, state, and local permits that may be
6 required for the proposed high voltage transmission line; and

7 O. a copy of the Certificate of Need or the certified HVTL list containing the
8 proposed high voltage transmission line or documentation that an application for a
9 Certificate of Need has been submitted or is not required.

10 **Subp. 3. Environmental information.** An applicant for a site permit or a route permit
11 shall include in the application the following environmental information for each
12 proposed site or route to aid in the preparation of an environmental impact statement:

13 A. a description of the environmental setting for each site or route;

14 B. a description of the effects of construction and operation of the facility on
15 human settlement, including, but not limited to, public health and safety, displacement,
16 noise, aesthetics, socioeconomic impacts, cultural values, recreation, and public services;

17 C. a description of the effects of the facility on land-based economies, including,
18 but not limited to, agriculture, forestry, tourism, and mining;

19 D. a description of the effects of the facility on archaeological and historic
20 resources;

21 E. a description of the effects of the facility on the natural environment, including
22 effects on air and water quality resources and flora and fauna;

23 F. a description of the effects of the facility on rare and unique natural resources;

24 G. identification of human and natural environmental effects that cannot be
25 avoided if the facility is approved at a specific site or route; and

1 H. a description of measures that might be implemented to mitigate the potential
2 human and environmental impacts identified in items A to G and the estimated costs of
3 such mitigative measures.

4 **4400.1250 REVIEW OF APPLICATION.**

5 Subpart 1. **Review by chair.** Within ten working days of receipt of an application for
6 a site permit or a route permit, the chair shall determine whether the application is
7 complete and notify the applicant in writing of the acceptance or rejection of the
8 application. If the chair rejects an application, the chair shall advise the applicant of the
9 deficiencies in the application.

10 Subp. 2. **Resubmission of rejected application.** If the chair should reject an
11 application, an applicant may decide to address the deficiencies identified by the chair
12 and resubmit the application with additional information. In this event, the chair shall
13 again review the application within ten days and determine whether the application is
14 complete and advise the applicant of the chair's determination.

15 Subp. 3. **Reasons for rejection.** The chair shall not reject an application if the
16 information that is missing can be obtained from the applicant within 60 days from the
17 date of the application and the lack of the information will not interfere with the
18 public's ability to review the proposed project.

19 Subp. 4. **Schedule.** The date of the chair's determination that an application is
20 complete marks the start of the schedule for the board to make a final decision on a
21 permit application.

22 **4400.1350 NOTICE OF PROJECT.**

23 Subpart 1. **Notification lists.** The EQB shall maintain the notification lists described
24 in items A and B.

25 A. The EQB shall maintain a list of persons who want to be notified of the
26 acceptance of applications for site permits or route permits. Any person may request to

1 have that person's name or an organization's name included on the list. The EQB may
2 from time to time request that persons whose names are on the list advise the EQB
3 whether they want to remain on the list, and the EQB may delete any names for which
4 an affirmative response is not received within a reasonable time. A person whose name
5 has been removed may request to have the name added back on the list. The EQB shall
6 provide an applicant with the general list upon acceptance of an application.

7 B. The EQB shall maintain a project contact list for each project for which an
8 application for a permit has been accepted. The project contact list must contain the
9 names of persons who want to receive notices regarding the project. Any person may
10 request to have that person's name or an organization's name included on a project
11 contact list. The EQB may add a person's name to the list if the EQB believes the person
12 would like to receive notices about the particular project. The EQB shall provide an
13 applicant with the project contact list upon request.

14 **Subp. 2. Notification to persons on general list, to local officials, and to property**
15 **owners.** Within 15 days after submission of an application, the applicant shall ~~send mail~~
16 written notice of the submission and a description of the proposed project to the
17 following people:

18 A. those persons whose names are on the general list maintained by the EQB for
19 this purpose. The notice must also advise those persons where a copy of the application
20 may be reviewed and how a copy may be obtained, and that persons who want to
21 continue to receive future notices regarding the matter must notify the EQB of such
22 intent and request that their names be placed on the project contact list;

23 B. each regional development commission, county, incorporated municipality, and
24 township in which any part of the site or route or any alternative is proposed to be
25 located; and

26 C. each owner whose property is adjacent to any of the proposed sites for a large

1 electric power generating plant or within any of the proposed routes for a high voltage
2 transmission line. For purposes of giving notice under this item, owners are those
3 persons shown on the records of the county auditor or, in any county where tax
4 statements are mailed by the county treasurer, on the records of the county treasurer, or
5 any other list of owners approved by the chair.

6 Subp. 3. Content of notice. The notice mailed under subpart 2 shall contain the
7 following information:

8 A. a description of the proposed project, including a map showing the general area
9 of the proposed site or proposed route and each alternative;

10 B. a statement that a permit application has been submitted to the EQB, the name
11 of the permit applicant, and information regarding how a copy of the application may
12 be obtained;

13 C. a statement that the permit application will be considered by the EQB under the
14 provisions of this chapter and the Power Plant Siting Act and describing the time
15 periods for the EQB to act;

16 D. a statement that the EQB will hold a public meeting within 60 days and the date
17 of the meeting if it is known at the time of the mailing;

18 E. the manner in which the EQB will conduct environmental review of the
19 proposed project, including the holding of a scoping meeting at which additional
20 alternatives to the project may be proposed;

21 F. the name of the EQB staff member who has been appointed by the chair to serve
22 as the public advisor, if known, or otherwise, a general contact at the EQB;

23 G. the manner in which persons may register their names with the EQB on the
24 project contact list;

25 H. a statement that a public hearing will be conducted after the EIS is prepared;

1 I. a statement indicating whether a certificate of need or other authorization from
2 the Public Utilities Commission is required for the project and the status of the matter if
3 such authorization is required;

4 J. a statement indicating whether the applicant may exercise the power of eminent
5 domain to acquire the land necessary for the project and the basis for such authority;
6 and

7 K. any other information requested by the chair to be included in the notice.

8 **Subp. 3 4. Publication of notice.** Within 15 days after submission of an application,
9 the applicant shall publish notice in a legal newspaper of general circulation in each
10 county in which a site, route, or any alternative is proposed to be located that an
11 application has been submitted and a description of the proposed project. The notice
12 must also state where a copy of the application may be reviewed.

13 **Subp. 4. Notification of local officials.** Within 15 days after submission of an
14 application, the applicant shall send a copy of the application by certified mail to each
15 regional development commission, county, incorporated municipality, and township in
16 which any part of the site or route or any alternative is proposed to be located.

17 **Subp. 5. Notification of property owners.** Within 15 days after submission of an
18 application, the applicant shall send written notice of the submission and a description
19 of the proposed project to each owner whose property is adjacent to any of the proposed
20 sites for a large electric power generating plant or within any of the proposed routes for
21 a high voltage transmission line. The notice must also advise the owners where a copy
22 of the application may be reviewed and how a copy may be obtained. For purposes of
23 giving notice under this subpart, owners are those persons shown on the records of the
24 county auditor or, in any county where tax statements are mailed by the county
25 treasurer, on the records of the county treasurer, or any other list of owners approved
26 by the chair.

1 Subp. 6 5. Confirmation of notice. Within 30 days after providing the requisite
2 notice, the applicant shall submit to the EQB documentation that all notices required
3 under this part have been given. The applicant shall document the giving of the notice
4 by providing the EQB with affidavits of publication or mailing and copies of the notice
5 provided.

6 Subp. 7 6. Failure to give notice. The failure of the applicant to give the requisite
7 notice does not invalidate any ongoing permit proceedings provided the applicant has
8 made a bona fide attempt to comply, although the chair may extend the time for the
9 public to participate if the failure has interfered with the public's right to be informed
10 about the project.

11 **4400.1450 PUBLIC ADVISOR.**

12 Upon acceptance of an application for a site or route permit, the chair shall designate
13 a staff person to act as the public advisor on the project. The public advisor must be
14 available to answer questions from the public about the permitting process. The public
15 advisor shall not give legal advice or other advice that may affect the legal rights of the
16 person being advised, and the public advisor shall not act as an advocate on behalf of
17 any person.

18 **4400.1550 PUBLIC MEETING.**

19 Subpart 1. **Scheduling public meeting.** Upon acceptance of an application for a site
20 or route permit, the chair shall schedule a public meeting to provide information to the
21 public about the proposed project and to answer questions and to scope the
22 environmental impact statement. The public meeting must be held no later than 60 days
23 after acceptance of the application. The public meeting must be held in a location that is
24 convenient for persons who live near the proposed project.

25 Subp. 2. **Notice of public meeting.** The EQB shall give at least ten days' notice of the
26 public meeting by mailing notice to persons whose names are on the project contact list

1 maintained pursuant to part 4400.1350, subpart 1. The EQB shall also publish notice of
2 the public meeting in a legal newspaper of general circulation in the area where the
3 project is proposed to be located. If appropriate, the EQB may request the applicant to
4 include notice of the public meeting in the notice to be provided by the applicant
5 pursuant to part 4400.1350.

6 **Subp. 3. Conduct of public meeting.** The chair shall appoint a person, who may be
7 an EQB staff person, to conduct the public meeting. The public meeting must be
8 conducted in an informal manner designed to encourage public participation. The
9 public must be afforded an opportunity to present comments and ask questions. The
10 EQB shall make available at the public meeting a copy of the application and other
11 pertinent documents in the EQB files regarding the application. The staff shall explain
12 the permitting process to the persons in attendance. A transcript of the meeting need not
13 be maintained, although the EQB may elect to keep an audio recording of the meeting.

14 **Subp. 4. Applicant role.** The applicant shall provide representatives at the public
15 meeting who are capable of answering general questions about the proposed project.

16 **Subp. 5. EIS scoping.** At the public meeting, the public must be provided an
17 opportunity to comment on the scope of the environmental impact statement in
18 accordance with part 4400.1700.

19 **4400.1600 CITIZEN ADVISORY TASK FORCE.**

20 **Subpart 1. Chair authority.** The board delegates to the chair the authority to appoint
21 a citizen advisory task force. The chair shall determine whether to appoint such a task
22 force as early in the process as possible. The chair shall establish the size of the task force
23 and appoint its members in accordance with Minnesota Statutes, section 116C.59. The
24 chair shall advise the board of the appointment of the task force at the next monthly
25 board meeting.

26 **Subp. 2. Board decision.** If the chair decides not to appoint a citizen advisory task

1 force and a person would like such a task force appointed, the person may request that
2 the board create a citizen advisory task force and appoint its members. Upon receipt of
3 such a request, the chair shall place the matter on the agenda for the next regular
4 monthly board meeting.

5 **Subp. 3. Task force responsibilities.** Upon appointment of a citizen advisory task
6 force, the chair or the board, whichever creates the task force, shall specify in writing the
7 charge to the task force. The charge shall include the identification of additional sites or
8 routes or particular impacts to be evaluated in the environmental impact statement. The
9 chair or the board may establish additional charges, including a request that the task
10 force express a preference for a specific site or route if it has one.

11 **Subp. 4. Termination of task force.** The task force expires upon completion of its
12 charge, designation by the chair of alternative sites or routes to be included in the
13 environmental impact statement, or the specific date identified by the chair or board in
14 the charge, whichever occurs first.

15 **4400.1700 PREPARATION OF EIS.**

16 **Subpart 1. EIS required.** The EQB shall prepare an environmental impact statement
17 on each proposed large electric generating plant and high voltage transmission line for
18 which a permit application has been accepted by the chair.

19 **Subp. 2. Scoping process.** The EQB shall provide the public with an opportunity to
20 participate in the development of the scope of the environmental impact statement by
21 holding a public meeting and by soliciting public comments. The public meeting
22 required under part 4400.1550 satisfies the requirement to hold a scoping meeting. The
23 EQB shall provide a period of at least seven days from the day of the public meeting for
24 the public to submit comments on the scope of the EIS. The chair shall determine the
25 scope of the environmental impact statement as soon after holding the public meeting as
26 possible. Within five days after the decision, the EQB shall mail notice of the scoping

1 decision to those persons whose names are on either the general list or the project
2 contact list. Once the chair has determined the scope of the environmental impact
3 statement, the scope must not be changed except upon decision by the chair or the
4 board that substantial changes have been made in the project or substantial new
5 information has arisen significantly affecting the potential environmental effects of the
6 project or the availability of reasonable alternatives.

7 **Subp. 3. Alternative sites or routes.** During the scoping process, a person may
8 suggest alternative sites or routes to evaluate in the environmental impact statement. A
9 person desiring that a particular site or route be evaluated shall submit to the EQB,
10 during the scoping process, an explanation of why the site or route should be included
11 in the environmental impact statement and any other supporting information the
12 person wants the chair to consider. The chair shall provide the applicant with an
13 opportunity to respond to each request that an alternative be included in the
14 environmental impact statement. The chair shall include the suggested site or route in
15 the scope of the environmental assessment only if the chair determines that evaluation
16 of the proposed site or route will assist in the board's decision on the permit application.

17 **Subp. 4. Scope of EIS.** The scoping process must be used to reduce the scope and
18 bulk of an environmental impact statement by identifying the potentially significant
19 issues and alternatives requiring analysis and establishing the detail into which the
20 issues will be analyzed. The scoping decision by the chair shall at least address the
21 following:

- 22 A. the issues to be addressed in the environmental impact statement;
- 23 B. the alternative sites and routes to be addressed in the environmental impact
24 statement; and
- 25 C. the schedule for completion of the environmental impact statement.

26 **Subp. 5. Matters excluded.** When the Public Utilities Commission has issued a

1 Certificate of Need for a large electric power generating plant or high voltage
2 transmission line or placed a high voltage transmission line on the certified HVTL list
3 maintained by the commission, the environmental impact statement shall not address
4 questions of need, including size, type, and timing; questions of alternative system
5 configurations; or questions of voltage.

6 **Subp. 6. Draft EIS.** The draft environmental impact statement must be written in
7 plain and objective language. The draft environmental impact statement shall follow the
8 standard format for an environmental impact statement prescribed in part 4410.2300 to
9 the extent the requirements of that rule are appropriate.

10 **Subp. 7. Public review.** Upon completion of the draft environmental impact
11 statement, the EQB shall make the document available for public review by placing a
12 copy of the document in a public library or other governmental office in each county
13 where the proposed project may be located. The EQB shall send notice of the availability
14 of the draft environmental impact statement to each person on the project contact list
15 maintained by the board under part 4400.1350, subpart 1. The EQB shall also place a
16 notice in the EQB Monitor of the availability of the draft environmental impact
17 statement. The EQB shall post the environmental impact statement on the agency's Web
18 page if possible.

19 **Subp. 8. Informational meeting.** The EQB shall schedule an informational meeting to
20 provide an opportunity for the public to comment on the draft environmental impact
21 statement. The meeting must not be held sooner than 20 days after the draft
22 environmental impact statement becomes available. The meeting must be held in a
23 location convenient to persons who live near the proposed project. The EQB shall send
24 notice of the informational meeting to each person on the project contact list maintained
25 by the EQB under part 4400.1350, subpart 1. The EQB shall also place notice in the EQB
26 Monitor. The informational meeting may be held just prior to the holding of a contested
27 case hearing on the permit application. The EQB shall hold the record on the
4400.1700

1 environmental impact statement open for receipt of written comments for not less than
2 ten days after the close of the informational meeting.

3 Subp. 9. **Final EIS.** The EQB shall respond to the timely substantive comments
4 received on the draft environmental impact statement consistent with the scoping
5 decision and prepare the final environmental impact statement. The EQB may attach to
6 the draft environmental impact statement the comments received and its response to
7 comments without preparing a separate document. The EQB shall publish notice of the
8 availability of the final environmental impact statement in the EQB Monitor and shall
9 supply a press release to at least one newspaper of general circulation in the areas where
10 the proposed sites or routes are located.

11 Subp. 10. **Adequacy determination.** The board shall determine the adequacy of the
12 final environmental impact statement. The board shall not decide the adequacy for at
13 least ten days after the availability of the final environmental impact statement is
14 announced in the EQB Monitor. The final environmental impact statement is adequate if
15 it:

16 A. addresses the issues and alternatives raised in scoping to a reasonable extent
17 considering the availability of information and the time limitations for considering the
18 permit application;

19 B. provides responses to the timely substantive comments received during the
20 draft environmental impact statement review process; and

21 C. was prepared in compliance with the procedures in this chapter.

22 If the board finds that the environmental impact statement is not adequate, the board
23 shall direct the staff to respond to the deficiencies and resubmit the revised
24 environmental impact statement to the board as soon as possible.

25 Subp. 11. **Cost.** The applicant for a site permit or route permit shall pay the
26 reasonable costs of preparing and distributing an environmental impact statement. The

1 costs must not be assessed separately from the assessment under part 4400.1050 unless
2 that assessment is inadequate to cover the board's reasonable costs of considering the
3 permit application.

4 **Subp. 12. Environmental review requirements.** The requirements of chapter 4410 do
5 not apply to the preparation or consideration of an environmental impact statement for
6 a large electric power generating power plant or high voltage transmission line except
7 as provided in this chapter.

8 **4400.1800 CONTESTED CASE HEARING.**

9 **Subpart 1. Hearing.** The EQB shall hold a contested case hearing after the draft
10 environmental impact statement is prepared on all applications for a site permit or a
11 route permit. The hearing must be conducted by an administrative law judge from the
12 Office of Administrative Hearings pursuant to the contested case procedures of
13 Minnesota Statutes, chapter 14. Notice of the hearing must be given in accordance with
14 Minnesota Statutes, section 116C.57, subdivision 2d. At least a portion of the hearing
15 must be held in a county where the proposed large electric power generating plant or
16 high voltage transmission line would be located.

17 **Subp. 2. Issues.** Once the Public Utilities Commission has determined questions of
18 need, including size, type, and timing; questions of system configuration; and questions
19 of voltage, those issues must not be addressed in the contested case hearing.

20 **Subp. 3. Joint hearing.** If the board determines that a joint hearing with the Public
21 Utilities Commission to consider both permitting and need issues is feasible, more
22 efficient, and may further the public interest, the board may decide to hold a joint
23 hearing with the approval of the commission. The board may also elect to hold a joint
24 hearing with other states pursuant to Minnesota Statutes, section 116C.53, subdivision 3.

25 **4400.1900 FINAL DECISION.**

26 **Subpart 1. Timing.** The board shall make a final decision on a site permit or a route

1 permit application within 60 days after receipt of the report of the administrative law
2 judge. A final decision must be made within one year after the chair's determination
3 that an application is complete. The board may extend this time limit for up to three
4 months for just cause or upon agreement of the applicant.

5 **Subp. 2. EIS adequacy.** The board shall not make a final decision on a permit until
6 the board has found the environmental impact statement to be adequate.

7 **Subp. 3. Certificate of need decision.** The EQB shall not make a final decision on a
8 permit for a project that requires a Certificate of Need from the Public Utilities
9 Commission until the applicant has obtained the necessary approval from the Public
10 Utilities Commission.

11 **Subp. 4. Notice.** The EQB shall publish notice of its final permit decision in the State
12 Register within 30 days of the date the board makes the decision. The EQB shall also
13 publish notice in the EQB Monitor. The EQB shall mail notice of its final permit decision
14 to those persons whose names are on the project contact list. The EQB shall post notice
15 of the final decision on the agency's Web page, if possible.

16 ALTERNATIVE PERMITTING PROCESS FOR CERTAIN FACILITIES

17 **4400.2000 QUALIFYING ELIGIBLE PROJECTS.**

18 **Subpart 1. Qualifying Eligible projects.** An applicant for a site permit or a route
19 permit for one of the following projects may elect to follow the procedures of parts
20 4400.2000 to 4400.2950 instead of the full permitting procedures in parts 4400.1025 to
21 4400.1900:

- 22 A. large electric power generating plants with a capacity of less than 80 megawatts;
- 23 B. large electric power generating plants that are fueled by natural gas;
- 24 C. high voltage transmission lines of between 100 and 200 kilovolts;
- 25 D. high voltage transmission lines in excess of 200 kilovolts and less than five miles
26 in length in Minnesota;

4400.2000

1 E. high voltage transmission lines in excess of 200 kilovolts if at least 80 percent of
2 the distance of the line in Minnesota will be located along existing high voltage
3 transmission line rights-of-way;

4 F. a high voltage transmission line service extension to a single customer between
5 200 and 300 kilovolts and less than ten miles in length; and

6 G. a high voltage transmission line rerouting to serve the demand of a single
7 customer when the rerouted line will be located at least 80 percent on property owned
8 or controlled by the customer or the owner of the transmission line.

9 Subp. 2. **Notice to EQB.** An applicant for a permit for one of the qualifying projects in
10 subpart 1, who intends to follow the procedures of parts 4400.2000 to 4400.2750, shall
11 notify the EQB of such intent, in writing, at least ten days before submitting an
12 application for the project.

13 **4400.2010 PERMIT APPLICATION FOR ALTERNATIVE PERMITTING PROCESS.**

14 Part 4400.1025, regarding submission of a permit application, applies to projects
15 being considered under the alternative permitting process.

16 **4400.2050 PERMIT FEES.**

17 Part 4400.1050, regarding permit fees, applies to projects being considered under the
18 alternative permitting process.

19 **4400.2100 CONTENTS OF APPLICATION.**

20 The applicant shall include in the application the same information required in part
21 4400.1150, except the applicant need not propose any alternative sites or routes to the
22 preferred site or route. If the applicant has rejected alternative sites or routes, the
23 applicant shall include in the application the identity of the rejected sites or routes and
24 an explanation of the reasons for rejecting them.

25 **4400.2200 REVIEW OF APPLICATION.**

1 Part 4400.1250 regarding the chair's review of the application, applies to projects
2 being considered under the alternative permitting process.

3 **4400.2300 NOTICE OF PROJECT.**

4 Part 4400.1350, regarding obligations to give notice of the project, applies to projects
5 being considered under the alternative permitting process.

6 **4400.2400 PUBLIC ADVISOR.**

7 Part 4400.1450, regarding appointment of a public advisor, applies to projects being
8 considered under the alternative permitting process.

9 **4400.2500 PUBLIC MEETING.**

10 Subpart 1. **Public meeting.** Part 4400.1550, subparts 1 to 4, apply to projects being
11 considered under the alternative permitting process.

12 Subp. 2. **Environmental assessment.** At the public meeting, the public shall be
13 provided an opportunity to comment on the scope of the environmental assessment in
14 accordance with part 4400.2750.

15 **4400.2650 CITIZEN ADVISORY TASK FORCE.**

16 Part 4400.1600, regarding the appointment of a citizen advisory task force, applies to
17 projects being considered under the alternative permitting process.

18 **4400.2750 PREPARATION OF ENVIRONMENTAL ASSESSMENT.**

19 Subpart 1. **Environmental assessment required.** The EQB shall prepare an
20 environmental assessment on each proposed large electric power generating plant and
21 each proposed high voltage transmission line being reviewed under the alternative
22 permitting process in parts 4400.2000 to 4400.2950. The environmental assessment must
23 contain information on the human and environmental impacts of the proposed project
24 and of alternative sites or routes identified by the chair and shall address mitigating
25 measures for all sites or routes considered.

1 Subp. 2. Scoping Process.

2 A. The EQB shall provide the public with an opportunity to participate in the
3 development of the scope of the environmental assessment by holding a public meeting
4 and by soliciting public comments. The public meeting required under part 4400.2500
5 satisfies the requirement to hold a scoping meeting. The EQB shall mail notice of the
6 meeting to those persons on either the general list or the project contact list at least ten
7 days before the meeting. The EQB shall provide at least seven days from the day of the
8 public meeting for the public to submit comments regarding the scope of the
9 environmental assessment.

10 B. The chair shall include in the scope of the environmental assessment any
11 alternative sites or routes proposed by the citizen advisory task force or by any member
12 agency of the EQB prior to the close of the scoping period. During the scoping process,
13 any person may suggest an alternative site or route to evaluate in the environmental
14 assessment. A person desiring that a particular site or route be evaluated shall submit to
15 the chair, during the scoping process, an explanation of why the site or route should be
16 included in the environmental assessment and all supporting information the person
17 wants the chair to consider. The chair shall provide the applicant with an opportunity to
18 respond to each request that an alternative be included in the environmental
19 assessment. The chair shall include the suggested site or route in the scope of the
20 environmental assessment only if the person has established chair determines that
21 evaluation of the proposed site or route will assist in the board's ultimate decision on
22 the permit application. Any person may also suggest specific human or environmental
23 impacts that should be included in the environmental assessment.

24 Subp. 3. Scoping decision. The chair shall determine the scope of the environmental
25 assessment within ten days after close of the public comment period and shall mail
26 notice of the scoping decision to those persons on the project contact list within five
27 days after the decision. Once the chair has determined the scope of the environmental
4400.2750

1 assessment, the scope shall not be changed except upon a decision by the chair or the
2 board that substantial changes have been made in the project or substantial new
3 information has arisen significantly affecting the potential environmental effects of the
4 project or the availability of reasonable alternatives. The chair shall also determine as
5 part of the scoping process a reasonable schedule for completion of the environmental
6 assessment. The scoping decision by the chair must identify:

- 7 A. the alternatives alternative sites or routes, if any, to be addressed in the
8 environmental assessment;
- 9 B. any specific potential impacts to be addressed;
- 10 C. the schedule for completion of the environmental assessment; and
- 11 D. other matters to be included in the environmental assessment.

12 **Subp. 4. Content of environmental assessment.** The environmental assessment must
13 include:

- 14 A. a general description of the proposed facility;
- 15 B. a list of alternatives to the proposed project to be any alternative sites or routes
16 that are addressed;
- 17 C. a discussion of the potential impacts of the proposed project and each
18 alternative site or route on the human and natural environment;
- 19 D. a discussion of mitigative measures that could reasonably be implemented to
20 eliminate or minimize any adverse impacts identified for the proposed project and each
21 alternative site or route analyzed;
- 22 E. an analysis of the feasibility of each alternative site or route considered;
- 23 F. a list of permits required for the project; and
- 24 G. a discussion of other matters identified in the scoping process.

25 **Subp. 5. Time frame for completion of environmental assessment.** The EQB shall

1 complete the environmental assessment in accordance with the schedule established
2 during the scoping process. In establishing the schedule for completion of the
3 environmental assessment, the chair shall take into account any applicable statutory
4 deadlines, the number and complexity of the alternatives and impacts to be addressed,
5 the status of other proceedings affecting the project, and the interests of the public, the
6 applicant, and the EQB.

7 **Subp. 6. Notification of availability environmental assessment.** Upon completion of
8 the environmental assessment, the EQB shall publish notice in the EQB Monitor of the
9 availability of the environmental assessment and mail notice of the availability of the
10 document to those persons on the project contact list. The EQB shall provide a copy of
11 the environmental assessment to any public agency with authority to permit or approve
12 the proposed project. The EQB shall post the environmental assessment on the agency's
13 Web page, if possible.

14 **Subp. 7. Matters excluded.** When the Public Utilities Commission has issued a
15 Certificate of Need for a large electric power generating plant or high voltage
16 transmission line or placed a high voltage transmission line on the certified HVTL list
17 maintained by the commission, the environmental assessment shall not address
18 questions of need, including size, type, and timing; questions of alternative system
19 configurations; or questions of voltage.

20 **Subp. 8. No additional environmental review.** An environmental assessment must
21 be the only state environmental review document required to be prepared by the EQB
22 on a project qualifying for review under the alternative review process. No
23 environmental assessment worksheet or environmental impact statement shall be
24 required. Environmental review at the certificate of need stage before the Public Utilities
25 Commission must be performed in accordance with parts 4410.7000 to 4410.7700.

26 **Subp. 9. Cost.** The cost of the preparation of an environmental assessment must be
27 assessed to the applicant as part of the application fee pursuant to part 4400.1050.

1 **4400.2850 PUBLIC HEARING.**

2 Subpart 1. **Public hearing.** The EQB shall hold a public hearing once the
3 environmental assessment has been completed. Notice of the hearing shall be given in
4 accordance with Minnesota Statutes, section 116C.57, subdivision 2d. At least a portion
5 of the hearing shall be held in a county where the proposed large electric power
6 generating plant or high voltage transmission line would be located.

7 **Subp. 2. Hearing examiner.** The chair shall appoint a person to act as the hearing
8 examiner at the public hearing. The hearing examiner may be an employee of the EQB.
9 The hearing examiner shall set the date and place for the hearing and provide notice to
10 the public. The hearing examiner may make such rulings as are required to conduct the
11 hearing in a fair, impartial, and expeditious manner, including the authority to maintain
12 decorum at the hearing, to exclude repetitious or irrelevant testimony, to limit the
13 amount of time for oral testimony, and to continue the hearing from time to time as
14 needed. Persons may testify at the hearing without being first sworn under oath. The
15 hearing examiner shall ensure that the record created at the hearing is preserved and
16 transmitted to the board. An audio recording of the hearing must be made, unless the
17 chair determines that a court reporter is appropriate. The hearing examiner shall not
18 prepare a report or make any recommendation to the board unless the chair or the
19 board requests the hearing examiner to do so.

20 **Subp. 3. Hearing procedure.** The hearing must be conducted in the following
21 manner, although the hearing examiner may vary the order in which the hearing
22 proceeds:

23 A. the staff shall make a brief presentation to describe the project, explain the
24 process to be followed, and introduce documents to be included in the record, including
25 the application, the environmental assessment, and various procedural documents;

26 B. the applicant shall introduce its evidence by way of testimony and exhibits;

1 C. the public must be afforded an opportunity to make an oral presentation,
2 present documentary evidence, and ask questions of the applicant and staff;

3 D. the hearing examiner shall provide a period of not less than ten days for the
4 submission of written comments into the record after the close of the hearing; and

5 E. the hearing examiner shall transmit the complete record created at the hearing,
6 including all written comments, to the chair within five days of the close of the record,
7 unless the hearing examiner has been requested by the chair or the board to prepare a
8 report.

9 **Subp. 4. Issues.** Once the Public Utilities Commission has determined questions of
10 need, including size, type, and timing; questions of system configurations; and
11 questions of voltage, those issues must not be addressed in the public hearing.

12 **Subp. 5. Environmental assessment.** Interested persons may comment upon the
13 environmental assessment at the public hearing. Comments on the environmental
14 assessment shall become part of the record in the proceeding but the board shall not be
15 required to revise or supplement the environmental assessment document.

16 **4400.2950 FINAL DECISION.**

17 **Subpart 1. Timing.** The board shall make a final decision on a site permit or a route
18 permit application within 60 days after receipt of the record from the hearing examiner.
19 A final decision must be made within six months after the chair's determination that an
20 application is complete. The board may extend this time limit for up to three months for
21 just cause or upon agreement of the applicant.

22 **Subp. 2. Completeness of environmental assessment.** At the time the board makes a
23 final decision on the permit application, the board shall determine whether the
24 environmental assessment and the record created at the public hearing address the
25 issues identified in the scoping decision.

26 **Subp. 3. Certificate of need decision.** The EQB shall not make a final decision on a

1 permit for a project that requires a certificate of need from the Public Utilities
2 Commission until the applicant has obtained the necessary approval from the Public
3 Utilities Commission.

4 Subp. 3 4. **Notice.** The EQB shall publish notice of its final permit decision in the State
5 Register within 30 days of the day the board makes the decision. The EQB shall also
6 publish notice in the EQB Monitor. The EQB shall mail notice of it its final permit
7 decision to those persons whose names are on the project contact list. The EQB shall
8 post notice of the final decision on the agency's Web page, if possible.

9 **GENERAL PERMIT REQUIREMENTS**

10 **4400.3050 STANDARDS AND CRITERIA.**

11 No site permit or route permit shall be issued in violation of the site selection
12 standards and criteria established in Minnesota Statutes, sections 116C.57 and 116C.575,
13 and in rules adopted by the board. The board shall issue a permit for a proposed facility
14 when the board finds, in keeping with the requirements of the Minnesota
15 Environmental Policy Act, Minnesota Statutes, chapter 116D, and the Minnesota
16 Environmental Rights Act, Minnesota Statutes, chapter 116B, that the facility is
17 consistent with state goals to conserve resources, minimize environmental impacts, and
18 minimize human settlement and other land use conflicts and ensures the state's electric
19 energy security through efficient, cost-effective power supply and electric transmission
20 infrastructure.

21 **4400.3150 FACTORS CONSIDERED.**

22 In determining whether to issue a permit for a large electric power generating plant
23 or a high voltage transmission line, the board shall consider the following:

24 A. effects on human settlement, including, but not limited to, displacement, noise,
25 aesthetics, cultural values, recreation, and public services;

26 B. effects on public health and safety;

- 1 C. effects on land-based economies, including, but not limited to, agriculture,
2 forestry, tourism, and mining;
- 3 D. effects on archaeological and historic resources;
- 4 E. effects on the natural environment, including effects on air and water quality
5 resources and flora and fauna;
- 6 F. effects on rare and unique natural resources;
- 7 G. application of design options that maximize energy efficiencies, mitigate
8 adverse environmental effects, and could accommodate expansion of transmission or
9 generating capacity;
- 10 H. use or paralleling of existing rights-of-way, survey lines, natural division lines,
11 and agricultural field boundaries;
- 12 I. use of existing large electric power generating plant sites;
- 13 J. use of existing transportation, pipeline, and electrical transmission systems or
14 rights-of-way;
- 15 K. electrical system reliability;
- 16 L. costs of constructing, operating, and maintaining the facility which are
17 dependent on design and route;
- 18 M. adverse human and natural environmental effects which cannot be avoided;
19 and
- 20 N. irreversible and irretrievable commitments of resources.

21 **4400.3250 FACTORS EXCLUDED.**

22 When the Public Utilities Commission has issued a Certificate of Need for a large
23 electric power generating plant or a high voltage transmission line or placed a high
24 voltage transmission line on the certified HVTL list maintained by the commission,
25 questions of need, including size, type, and timing, questions of alternative system

1 configurations, and questions of voltage shall not be factors considered by the board in
2 deciding whether to issue a permit for a proposed facility.

3 **4400.3350 PROHIBITED ROUTES.**

4 Subpart 1. **Wilderness areas.** No high voltage transmission line may be routed
5 through state or national wilderness areas.

6 Subp. 2. **Parks and natural areas.** No high voltage transmission line may be routed
7 through state or national parks or state scientific and natural areas unless the
8 transmission line would not materially damage or impair the purpose for which the
9 area was designated and no feasible and prudent alternative exists. Economic
10 considerations alone do not justify use of these areas for a high voltage transmission
11 line.

12 **4400.3450 PROHIBITED SITES.**

13 Subpart 1. **Prohibited sites.** No large electric power generating plant may be located
14 in any of the following areas:

- 15 A. national parks;
- 16 B. national historic sites and landmarks;
- 17 C. national historic districts;
- 18 D. national wildlife refuges;
- 19 E. national monuments;
- 20 F. national wild, scenic, and recreational riverways;
- 21 G. state wild, scenic, and recreational rivers and their land use districts;
- 22 H. state parks;
- 23 I. nature conservancy preserves;
- 24 J. state scientific and natural areas; and

1 K. state and national wilderness areas.

2 Subp. 2. **Water use.** The areas identified in subpart 1 must not be permitted as a site
3 for a large electric power generating plant except for use for water intake or discharge
4 facilities. If the board includes any of these areas within a site for use for water intake or
5 discharge facilities, it may impose appropriate conditions in the site permit to protect
6 these areas for the purposes for which they were designated. The board shall also
7 consider the adverse effects of proposed sites on these areas which are located wholly
8 outside of the boundaries of these areas.

9 Subp. 3. **Site exclusions when alternative sites exist.** No large electric power
10 generating plant may be located in any of the following areas unless there is no feasible
11 and prudent alternative. Economic considerations alone do not justify approval of these
12 areas. These areas are:

13 A. state registered historic sites;

14 B. state historic districts;

15 C. state wildlife management areas, except in cases where the plant cooling water
16 is to be used for wildlife management purposes;

17 D. county parks;

18 E. metropolitan parks;

19 F. designated state and federal recreational trails;

20 G. designated trout streams; and

21 H. the rivers identified in Minnesota Statutes, section 85.32, subdivision 1.

22 Subp. 4. **Prime farmland exclusion.** No large electric power generating plant site may
23 be permitted where the developed portion of the plant site, excluding water storage
24 reservoirs and cooling ponds, includes more than 0.5 acres of prime farmland per
25 megawatt of net generating capacity, or where makeup water storage reservoir or

1 cooling pond facilities include more than 0.5 acres of prime farmland per megawatt of
2 net generating capacity, unless there is no feasible and prudent alternative. Economic
3 considerations alone do not justify the use of more prime farmland. "Prime farmland"
4 means those soils that meet the specifications of Code of Federal Regulations 1980, title
5 7, section 657.5(a). These provisions do not apply to areas located within home rule
6 charter or statutory cities; areas located within two miles of home rule charter or
7 statutory cities of the first, second, and third class; or areas designated for orderly
8 annexation under Minnesota Statutes, section 414.0325.

9 **Subp. 5. Sufficient water supply required.** No site may be designated that does not
10 have reasonable access to a proven water supply sufficient for plant operation. No use
11 of groundwater may be permitted where removal of groundwater results in material
12 adverse effects on groundwater, groundwater dependent natural resources, or higher
13 priority users in and adjacent to the area, as determined in each case.

14 The use of groundwater for high consumption purposes, such as cooling, must be
15 avoided if a feasible and prudent alternative exists.

16 **4400.3550 PERMIT APPLICATION REJECTION.**

17 The chair shall reject a permit application at the time it is submitted if the application
18 is for a facility to be located on a prohibited site or within a prohibited route or if the
19 applicant fails to address in the application why no feasible and prudent alternative
20 exists for sites or routes that may be authorized in such a situation.

21 **4400.3650 PERMIT CONDITIONS.**

22 **Subpart 1. Generally.** The board shall impose in any site permit for a large electric
23 power generating plant or route permit for a high voltage transmission line such
24 conditions as the board deems appropriate and are supported by the record.

25 **Subp. 2. HVTL permits.** When the board issues a permit for a route for a high voltage
26 transmission line, the board shall specify the design, route, right-of-way preparation,

1 and facility construction and operation it deems necessary. The board may impose a
2 condition in the permit requiring the permittee to construct a high voltage transmission
3 line that is capable of expansion in transmission capacity through multiple circuiting or
4 design modifications.

5 **4400.3750 DELAY IN ROUTE OR SITE CONSTRUCTION.**

6 If construction and improvement of a route or site have not commenced four years
7 after the permit has been issued by the board, the board shall suspend the permit. If at
8 that time, or at a time subsequent, the permittee decides to construct the proposed large
9 electric power generating facility or high voltage transmission line, the permittee shall
10 certify to the board that there have been no significant changes in any material aspects
11 of the conditions or circumstances existing when the permit was issued. The chair shall
12 mail notice of receipt of the certification request to those persons on the general list at
13 least seven days before the board's consideration of the matter, and the same notice to
14 those persons on the project contact list if such a list exists. If the board determines that
15 there are no significant changes, it shall reinstate the permit. If the board determines
16 that there is a significant change, it may order a new hearing and consider the matter
17 further, or it may require the permittee to file a new application.

18 **4400.3820 MINOR ALTERATION IN LARGE ELECTRIC POWER GENERATING**
19 **PLANT OR HIGH VOLTAGE TRANSMISSION LINE.**

20 **Subpart 1. Applicability.** No person may make a minor alteration in a large electric
21 power generating plant or high voltage transmission line without approval from the
22 chair, unless the action is exempt from review under part 4400.0650. A minor alteration
23 is a change in a large electric power generating plant or high voltage transmission line
24 that does not result in significant changes in the human or environmental impact of the
25 facility. The requirements of this part apply to those facilities that have been permitted
26 by the EQB and to those facilities that were not permitted by the EQB but meet the
27 definition of a large electric power generating plant or high voltage transmission line

4400.3820

1 under applicable law. For those large electric power generating plants or high voltage
2 transmission lines for which no permit has been issued by the EQB, this part applies to
3 minor alterations in the facility as it exists on the effective date of parts 4400.0200 to
4 4400.8000.

5 **Subp. 2. Application.** A person seeking authorization to make a minor alteration in a
6 large electric power generating plant or high voltage transmission line shall apply to the
7 chair. The application shall be in writing and shall describe the alteration in the large
8 electric power generating plant or high voltage transmission line to be made and the
9 explanation why the alteration is minor. The chair shall mail notice of receipt of the
10 application to those persons on the general list and to those persons on the project
11 contact list if such a list exists. The chair shall provide at least a ten-day period for
12 interested persons to submit comments on the application or to request that the matter
13 be brought to the board for consideration.

14 **Subp. 3. Chair decision.** The chair shall decide within ten days after close of the
15 public comment period whether to authorize the minor alteration, bring the matter to
16 the board for consideration, or determine that the alteration is not minor and requires a
17 full permitting decision. The chair may authorize the minor alteration but impose
18 reasonable conditions on the approval. The chair shall notify the applicant in writing of
19 the chair's decision and send a copy of the decision to any person who requested
20 notification or filed comments on the application.

21 **Subp. 4. Local review.** For those large electric power generating plants or high
22 voltage transmission lines for which no permit has been issued by the EQB, the owner
23 or operator of such unpermitted facilities may elect to seek approval of a minor
24 alteration from the local unit of government if the facility qualifies for local review
25 under Minnesota Statutes, section 116C.476.

26 **4400.3840 AMENDMENT OF PERMIT CONDITIONS.**

1 **Subpart 1. Authority.** The chair may amend any of the conditions in a site permit for
2 a large electric power generating plant or in a route permit for a high voltage
3 transmission line issued by the EQB upon request of any person.

4 **Subp 2. Process.** The person requesting an amendment of a condition in a site permit
5 or a route permit shall submit an application to the chair in writing describing the
6 amendment sought and the reasons for the amendment. The chair shall mail notice of
7 receipt of the application to those persons on the general list and to those persons on the
8 project list if such a list exists. The chair shall provide at least a ten-day period for
9 interested persons to submit comments on the application or to request that the matter
10 be brought to the board for consideration.

11 **Subp. 3. Decision.** The chair shall decide within ten days after close of the public
12 comment period whether to approve the amendment request or to bring the matter to
13 the board for consideration. The chair shall notify the applicant in writing of the chair's
14 decision and send a copy of the decision to any person who requested notification or
15 filed comments on the application.

16 **4400.3850 TRANSFER OF PERMIT.**

17 **Subpart 1. Application.** A permittee holding a large electric power generating plant
18 site permit or a high voltage transmission line route permit may request the EQB to
19 transfer its permit. The permittee shall provide the name of the existing permittee, the
20 name and description of the entity to which the permit is to be transferred, the reasons
21 for the transfer, a description of the facilities affected, and the proposed effective date of
22 the transfer. The person to whom the permit is to be transferred shall provide the EQB
23 with such information as the EQB shall require to determine whether the new permittee
24 can comply with the conditions of the permit. The chair shall mail notice of receipt of
25 the application to those persons on the general list at least seven days in advance of the
26 board's consideration of the matter. The chair shall provide the same notice to persons
27 on the project contact list if such a list exists.

4400.3850

1 **Subp. 2. Approval of transfer.** The board shall approve the transfer if the board
2 determines that the new permittee will comply with the conditions of the permit. The
3 board, in approving the transfer of a permit, may impose reasonable additional
4 conditions in the permit as part of the approval. The board may decide to hold a public
5 meeting to provide the public with an opportunity to comment on the request for the
6 transfer prior to making a decision.

7 **4400.3950 REVOCATION OR SUSPENSION OF PERMIT.**

8 **Subpart 1. Initiation of action to revoke or suspend.** The board may initiate action to
9 consider revocation or suspension of a permit on its own motion or upon the request of
10 any person who has made a *prima facie* showing by affidavit and documentation that a
11 violation of the act, this chapter, or the permit has occurred.

12 **Subp. 2. Hearing.** If the board initiates action to consider revocation or suspension of
13 a permit, the board shall provide the permittee with an opportunity for a contested case
14 hearing conducted by an administrative law judge from the Office of Administrative
15 Hearings.

16 **Subp. 3. Finding of violation.** If the board finds that a violation of the act, this
17 chapter, or the permit has occurred, it may revoke or suspend the permit, require the
18 utility to undertake corrective or ameliorative measures as a condition to avoid
19 revocation or suspension, or require corrective measures and suspend the permit. In
20 determining the appropriate sanction, the board shall consider the following:

21 A. whether the violation will result in any significant additional adverse
22 environmental effects;

23 B. whether the results of the violation can be corrected or ameliorated; and

24 C. whether a suspension or revocation of a permit or certificate will impair the
25 utility's electrical power system reliability.

26 **EMERGENCY PERMIT**

1 **4400.4050 EMERGENCY PERMIT.**

2 Subpart 1. **Application for emergency permit.** Any utility whose electric power
3 system requires the immediate construction of a large electric power generating plant or
4 high voltage transmission line due to a major unforeseen event may apply to the board
5 for an emergency permit. The application must contain the following information:

6 A. a description of the proposed large electric power generating plant or high
7 voltage transmission line;

8 B. an explanation of the major unforeseen event causing the emergency situation;

9 C. a discussion of the anticipated impacts on the electric system if the proposed
10 facility is not approved within 195 days;

11 D. a copy of the written notification to the Public Utilities Commission of the major
12 unforeseen event and the need for immediate construction; and

13 E. as much of the information required under part 4400.1150 as the utility has
14 available.

15 Subp. 2. **Public hearing.** The EQB shall hold a public hearing on the application for
16 an emergency permit. The hearing must be held within 90 days after the application is
17 submitted. The hearing must be held in accordance with part 4400.2850.

18 Subp. 3. **Final decision.** The board shall make a final decision on an emergency
19 permit within 195 days after the board's acceptance of the application. The board shall
20 grant the emergency permit if it finds the following:

21 A. a demonstrable emergency exists;

22 B. the emergency requires immediate construction;

23 C. adherence to the procedures and time schedules specified in Minnesota Statutes,
24 section 116C.57, would jeopardize the utility's electric power system or the utility's
25 ability to meet the electric needs of its customers in an orderly and timely manner;

D. the utility will implement mitigating measures to minimize the human and environmental impacts of the facility; and

E. the utility will carry out the project in an expeditious manner consistent with the emergency.

Subp. 4. Permit conditions. The board may impose reasonable conditions in an emergency permit.

Subp. 5. Permit fee. The applicant for an emergency permit shall pay the same fee as would be required for a regular permit for the same project.

LOCAL REVIEW

4400.5000 LOCAL REVIEW OF PROPOSED FACILITIES.

Subpart 1. Local review. An applicant who seeks a site or route permit for one of the projects identified in subpart 2 has the option of applying to those local units of government that have jurisdiction over the site or route for approval to build the project. If local approval is granted, a site or route permit is not required from the board. If the applicant files an application with the EQB, the applicant shall be deemed to have waived its right to seek local approval of the project.

Subp. 2. Qualifying facilities Eligible projects. An applicant may seek approval from a local unit of government to construct the following projects:

A. a large electric power generating plant with a capacity of less than 80 megawatts;

B. a large electric power generating plant of any size that ~~burn~~ burns natural gas and ~~are~~ is intended to be a peaking plant;

C. a high voltage transmission line of between 100 and 200 kilovolts;

D. a substation with a voltage designed for and capable of operation at a nominal voltage of 100 kilovolts or more;

1 E. a high voltage transmission line service extension to a single customer between
2 200 and 300 kilovolts and less than ten miles in length; and

3 F. a high voltage transmission line rerouting to serve the demand of a single
4 customer when at least 80 percent of the rerouted line will be located on property
5 owned or controlled by the customer or the owner of the transmission line.

6 **Subp. 3. Notice to EQB.** Within ten days of submission of an application to a local
7 unit of government for approval of an eligible project, the applicant shall notify the
8 chair in writing that the applicant has elected to seek local approval of the proposed
9 project. Within the same ten-day period, the applicant shall mail notice to those persons
10 on the general notification list that a permit has been applied for from the local unit of
11 government for the project and shall provide a description of the project and the name
12 of a person with the local unit of government to contact for more information.

13 **Subp. 4. Referral to EQB.** A local unit of government with jurisdiction over a project
14 identified in this section to whom an applicant has applied for approval to build the
15 project may request the EQB to assume jurisdiction and make a decision on a site or
16 route permit. A local unit of government shall file the request with the board within 60
17 days after an application for the project has been filed with any one local unit of
18 government. If one of the local units of government with jurisdiction over the project
19 requests the board to assume jurisdiction, jurisdiction over the project transfers to the
20 board and the applicant shall file under the applicable provisions of this chapter for a
21 permit from the board.

22 **Subp. 5. Environmental review.** A local unit of government that maintains
23 jurisdiction over a qualifying project shall prepare an environmental assessment on the
24 project ~~in accordance with the requirements of part 4400.2750. The local unit of~~
25 ~~government shall afford the public an opportunity to participate in the development of~~
26 ~~the scope of the environmental assessment before it is prepared. Upon completion of the~~

environmental assessment, the local unit of government shall publish notice in the EQB Monitor that the environmental assessment is available for review, how a copy of the document may be reviewed, that the public may comment on the document, and the procedure for submitting comments to the local unit of government. The local unit of government shall provide a copy of the environmental assessment to the EQB upon completion of the document. The local unit of government shall not make a final decision on the permit until at least ten days after the notice appears in the EQB Monitor. If more than one local unit of government has jurisdiction over a project, and the local units of government cannot agree on which unit will prepare the environmental assessment, any local unit of government or the applicant may request the board to select the appropriate local unit of government to be the responsible governmental unit to conduct an environmental review of the project.

Subp. 6. **No local authority.** In the event a local unit of government that might otherwise have jurisdiction over a proposed large electric power generating plant or high voltage transmission line determines that it has no ordinances or other provisions for reviewing and authorizing the construction of such project or has no capability of preparing an environmental assessment on the project, the local unit of government shall refer the matter must be brought to the EQB for review.

Subp. 7. Matters Excluded. When the Public Utilities Commission has issued a Certificate of Need for a large electric power generating plant or high voltage transmission line or placed a high voltage transmission line on the certified HVTL list maintained by the commission, the local unit of government shall not address questions of need, including size, type, and timing; questions of alternative system configurations; or questions of voltage.

ANNUAL PUBLIC HEARING

4400.6050 ANNUAL PUBLIC HEARING.

4400 6050

1 Subpart 1. **Annual public hearing.** The board shall hold an annual public hearing in
2 November or December in St. Paul in order to advise the public of matters relating to
3 the siting of large electric power generating plants and routing of high voltage
4 transmission lines. The meeting must be conducted by the EQB staff. At the meeting, the
5 EQB shall advise the public of the permits issued by the EQB in the past year. The EQB
6 shall invite representatives of other state agencies to attend the meeting and be available
7 to answer questions by the public. An audio recording of the hearing must be
8 maintained.

9 Subp. 2. **Notice.** The EQB shall provide at least ten days but no more than 45 days
10 notice of the annual hearing by mailing notice to those persons who have requested
11 notice and by publication in the EQB Monitor. The notice must be accompanied by a
12 tentative agenda for the hearing.

13 Subp. 3. **Report.** The staff shall prepare a report of the annual hearing within 60 days
14 after the hearing and submit it to the board. No action on the report is required.

15 **ANNUAL ASSESSMENT ON UTILITIES**

16 **4400.7050 ANNUAL ASSESSMENT ON UTILITIES.**

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

22 **4400.8000 PROGRAM ADVISORY TASK FORCE.**

23 The board may appoint a program advisory task force to provide advice and
24 recommendations concerning development, revision, and enforcement of any rule or
25 program initiated under the act or this chapter. The board shall provide guidance to the
26 program advisory task force in the form of a charge and through specific requests. The

1 program advisory task force must be composed of as many members as may be
2 designated by the board and its membership must be solicited on a statewide basis. The
3 program advisory task force and its chair must be appointed for a one-year term.

4 **REPEALER.** Minnesota Rules, parts 4400.0200, subparts 4, 5, 6, 7, 11, 13, 14, and 19;
5 4400.0600; 4400.0700; 4400.0710; 4400.0720; 4400.0800; 4400.0900; 4400.1000; 4400.1100;
6 4400.1200; 4400.1210; 4400.1310; 4400.1400; 4400.1500; 4400.2600; 4400.2710; 4400.2720;
7 4400.2800; 4400.2900; 4400.3000; 4400.3100; 4400.3200; 4400.3210; 4400.3310; 4400.3400;
8 4400.3500; 4400.3600; 4400.3710; 4400.3800; 4400.3900; 4400.3910; 4400.4000; 4400.4100;
9 4400.4200; 4400.4300; 4400.4400; 4400.4500; and 4400.4900, are repealed.