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9-2901-4777-1

1990

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of Proposed
Amendments to Rules Governing
High Voltage Transmission Lines
and Power Plants, Minn. Rules,
Parts 4400.0200 to 4400.4900.

REPORT OF THE
ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Phyllis A. Reha on July 26, 1990, at 9:30 a.m. in Room 301, Centennial Building, 658 Cedar Street, St. Paul, Minnesota and on October 4, 1990 at 7:00 p.m. in the Little Theater of the Willmar Senior High School, 824 Southwest Seventh Street, Willmar, Minnesota.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20, to hear public comment, to determine whether the Minnesota Environmental Quality Board (MEQB) has fulfilled all relevant substantive and procedural requirements of law applicable to the adoption of the rules, whether the proposed rules are needed and reasonable and whether or not modifications to the rules proposed by the MEQB after initial publication are impermissible, substantial changes.

Eldon Kaul, Assistant Attorney General, Suite 200, 520 Lafayette Road, St. Paul, Minnesota 55155, appeared on behalf of the MEQB at both hearings. The MEQB's hearing panel included: Bob Cupit, lead staff person; George Durfee, Supervisor of Power Plant Siting; Greg Downing, Staff Coordinator and Mike Sullivan, Executive Director of the MEQB.

Twenty-two persons attended the St. Paul hearing. Seventeen persons signed the hearing register. At the St. Paul hearing, the Administrative Law Judge received the MEQB Exhibits 1-20 and Public Exhibits 1-14. As a result of receiving requests from the Minnesota Catholic Conference, the Countryside Council, and several individuals to conduct an additional hearing more readily available to persons in Greater Minnesota, and owing to the Agency staff's desire to place matters raised at the St. Paul hearing before the MEQB at its next meeting, the Administrative Law Judge recessed the hearing. The hearing was reconvened at Willmar on October 4, 1990. Eight persons attended the Willmar hearing. Seven persons signed that hearing register. At the Willmar hearing, the Administrative Law Judge received MEQB Exhibits 21 and 22. No public exhibits were received at that hearing. Both hearings continued until all interested persons, groups or associations had an opportunity to be heard concerning the adoption of these rules.

The record remained open for the submission of written comments for five business days following the date of the Willmar hearing, to October 11, 1990. Pursuant to Minn. Stat. § 14.15, subd. 1 (1988), three business days were allowed for the filing of responsive comments. At the close of business on October 16, 1990, the rulemaking record closed for all purposes. The Administrative Law Judge received one written comment from an interested person during the comment period. One interested person submitted a videotape containing comments and portions of television news broadcasts. The MEQB submitted a written comment responding to matters discussed at the hearing in the time between the St. Paul and Willmar hearings.

This Report must be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rule(s). The agency may then adopt a final rule or modify or withdraw its proposed rule. If the Board makes changes in the rule other than those recommended in this report, it must submit the rule with the complete hearing record to the Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of a final rule, the agency must submit it to the Revisor of Statutes for a review of the form of the rule. The agency must also give notice to all persons who requested to be informed when the rule is adopted and filed with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On June 5, 1990, the Minnesota Environmental Quality Board (MEQB) contacted the Office of Administrative Hearings (OAH) to inform the Administrative Law Judge assigned to this matter that the MEQB would not be able to meet the filing deadline for documents required by Minn. Rule 1400.0300, because of the absence of the individual authorized to execute the Order for Hearing. The MEQB did transmit an unsigned copy of the proposed Notice of Intent to Adopt Rules to OAH for review pursuant to Minn. Rule 1400.0300.
2. On June 29, 1990, the MEQB filed the following documents with the Chief Administrative Law Judge:
 - (a) A copy of the proposed rules certified by the Revisor of Statutes;
 - (b) The Order for Hearing;
 - (c) The Certificate of Agency's Authorizing Resolution;
 - (d) The Notice of Hearing proposed to be issued;
 - (e) The Statement of Need and Reasonableness (SONAR);
 - (f) A letter stating the expected length of the hearing, that additional notice would be given, and the anticipated attendance.
3. On June 15, 1990, the MEQB mailed the Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving such notice.

4. On June 18, 1990, a Notice of Hearing and a copy of the proposed rules were published at 14 State Register 2914.

5. On July 3, 1990, the MEQB filed the following documents with the Administrative Law Judge:

- (a) The Notice of Hearing as mailed;
- (b) A photocopy of the pages of the State Register containing the Notice of Hearing and the proposed rules.
- (c) The Agency's certification that its mailing list was accurate and complete;
- (d) The Affidavit of Mailing the Notice to all persons on the MEQB's mailing list; and
- (e) The Affidavit of Mailing the Notice of Hearing to the Discretionary Mailing List; and
- (e) The names of Board personnel who would represent it at the hearing.

6. Minnesota Rules part 1400.0300 requires that the documents listed in Finding 2 be filed with the Administrative Law Judge prior to publishing the Notice of Hearing in the State Register. In this proceeding, the publication came before the filing of the required documents. Minnesota Rules part 1400.0600 requires that the documents listed in Finding 5 be filed with the Administrative Law Judge at least 25 days prior to the hearing. In this case, the filing was only 2 days less than the required 25 days prior to the hearing. Failure to comply with these rules constitute procedural error. No one raised this procedural error at any time during the proceeding, and no prejudice or harm has been shown as a result of the agency's error. Under these circumstances, the Administrative Law Judge finds the error to be harmless, not affecting the ability of the Board to adopt the proposed rules. See, City of Minneapolis v. Wurtele, 291 N.W.2d 386, 391 (Minn. 1980); See also, Handle With Care v. Department of Human Services, 406 N.W.2d 518 (Minn. 1987).

7. In determining whether a procedural error is harmless, one must examine the extent to which the Agency deviated from the requirements, whether the deviation was inadvertent, and the potential impact the procedural irregularity could have on public participation in the rulemaking process. Auerbach, Administrative Rulemaking in Minnesota, 63 Minn. L. Rev. 151, 215 (1979); but see, Johnson Bros. Wholesale Liquor Co. v. Novak, 295 N.W.2d 238, 241-42 (Minn. 1980). Here the documents pre-existed both the late filings and were maintained in the Agency rule file for public inspection. The documents were available for inspection and copying at the Office of Administrative Hearings from the date of filing to October 16, 1990, the date the record closed. The failure to file the documents prior to publication of the notice was due to the unavailability of the acting chair of the MEQB. Through its telephone contact with OAH, the MEQB acted to ensure that the preliminary review of the agency's notice of hearing was conducted, albeit in an unusual fashion. At the hearing, no member of the public complained of prejudice resulting from the Board's failure to comply strictly with Minnesota Rules parts 1400.0300 or 1400.0600. The procedural error in this rulemaking proceeding is harmless.

8. On September 17, 1990, the MEQB mailed additional discretionary notice of the Willmar hearing to all persons and associations who had registered their names with the Board for the purpose of receiving such notice and to all persons or associations known to have an interest in these rules. The additional discretionary notice contained a brief description of the proposed rules; the purpose of the rulemaking proceeding; the time, date, and place of the hearing; and a map directing interested persons to the hearing location.

9. On September 19, 1990, the MEQB filed the additional discretionary notice of the Willmar hearing with the Administrative Law Judge. On October 4, 1990, the MEQB filed the Affidavit of Mailing the additional discretionary notice of the Willmar hearing with the Administrative Law Judge.

Nature of the Proposed Rules.

10. The proposed rules modify the existing procedural requirements for conducting the public hearings concerning siting of power plants and transmission lines. Certain large electric power generating plants are exempted from the process, pursuant to statutory requirements. Other changes are made in the existing rules to promote clarity and eliminate outmoded terminology. A major goal of the MEQB is to merge the present requirement of an Environmental Impact Statement (EIS) found in the Environmental Review Rules, Minn. Rule Chapter 4410 (ER rules). Modifications are being made to the ER rules in a companion case to this rulemaking. A report on those rules is being issued contemporaneously with this report and reference to the ER rules or the contents of that report will be made where appropriate.

Statutory Authority.

11. In its Statement of Need and Reasonableness (SONAR), the MEQB cites Minn. Stat. § 116C.66 (1988) as authorizing the amendment or adoption of the proposed rules. The statute referred to in the SONAR grants general rulemaking authority to the MEQB, subject to the proviso that the rules be consistent with the statutory provisions governing the MEQB's responsibilities. Minn. Stat. § 116C.66. The MEQB has statutory authority to adopt these rules.

Small Business Considerations in Rulemaking.

12. Minn. Stat. § 14.115, subd. 2 (1989), provides that state agencies proposing rules affecting small businesses must consider methods for reducing adverse impact on those businesses. The proposed rules in this proceeding are either procedural in nature, for clarification, or are intended to comply with a specific statutory exemption. None of the utilities potentially affected by these rules are small businesses. No other entity claimed an adverse impact by operation of these rules. The MEQB noted that complying with the statute regarding small businesses affected by the proposed rules would be "contrary to the statutory objectives of Minnesota Statutes, sections 116C.51 to 116C.705, therefore the requirements of Minnesota Statutes, section 14.115 (1986) do not apply." MEQB Notice of Hearing. Since no small businesses were identified as affected by the proposed rules, the MEQB's claim need not be examined. The proposed rules do not adversely affect small businesses and, therefore, Minn. Stat. § 14.115, subd. 2 does not apply.

Fiscal Note.

13. Minn. Stat. § 14.11, subd. 1 (1988), requires the preparation of a fiscal note when the adoption of a rule will result in the expenditure of public funds in excess of \$100,000 per year by local public bodies. The note must include an estimate of the total cost to local public bodies for a two-year period. The proposed rules will not require any expenditures by local governmental units or school districts, and thus no note is needed.

Impact on Agricultural Land.

14. Minn. Stat. § 14.11, subd. 2 (1988), imposes additional statutory requirements when rules are proposed that have a "direct and substantial adverse impact on agricultural land in this state". The statutory requirements referred to are found in Minn. Stat. §§ 17.80 to 17.84. However, Minn. Stat. 17.82 expressly exempts actions "reviewed as required by Chapter 116D and the environmental review rules adopted under that chapter. . . ." MEQB indicated that the proposed rules fall under the exemption and, therefore, no statement is required. The Administrative Law Judge agrees with the agency's view on this issue. In addition, since the proposed rules are procedural in nature and have no substantive effect, the proposed rules will have no substantial adverse impact on agricultural land within the meaning of Minn. Stat. § 14.11, subd. 2 (1988).

Proposed Rule 4400.0200 - Definitions.

15. This proposed rule part amends 9 subparts, each defining a term used in the proposed rules. In addition, one subpart, composed of entirely new material is added to the rule. That subpart, subpart 6a, introduces the definition of "Environmental Impact Assessment" (EIA) to the rules. The seven amended definitions are for the terms "scope," "act," "construction," "file," "high voltage transmission line; HVTL," "right-of-way," "route," and "site." Of these terms, only "construction" and "right-of-way" attracted critical comments.

16. The amendment to Subpart 5 ("construction") places the existing definition under the designation of item A, and adds item B, which brings within the definition of "construction" necessary modifications to increase the nominal voltage of an existing HVTL or of any other existing transmission line to over 200 kilovolts. Katherine E. Sasseville, General Counsel of the Ottertail Power Company (Ottertail), objected to adding upgrades of transmission lines to the definition of "construction," because doing so would require the utility to go through the entire routing process which includes consideration of alternative routes. Such a requirement suggests the possibility of re-routing and all new construction which, Ottertail asserts, would be more environmentally harmful, disruptive, and costly than using the original site for an upgrade. It could also be considered a barrier to meeting the electrical needs of the utility's customers in an orderly and timely fashion. Ottertail suggests that upgrades should be subject to a separate process whereby an upgrade should be approved on an existing route unless some substantial reason should appear to require a change; and in that event the burden should be on the MEQB to show after notice and hearing that the public interest requires a change from the original route.

The agency staff responded to Ottetail's comments by citing Minn. Stat. § 116C.57, subd. 5 and Minn. Rule 4400.3900, which provide an exemption for projects which do not create significant human or environmental impact, thus removing those projects from the routing process. No alternative routes are required of exempt projects. Minn. Stat. § 116C.57, subd. 5. Following Ottetail's suggestion would create a "presumption" in favor of increasing the voltage carried by existing transmission lines. The existing line may have been previously approved for a lower voltage when a higher voltage would have been unacceptable for that route. Using Ottetail's approach, the utility could obtain approval of a route at a lesser voltage and then obtain approval for a higher voltage on the same route, merely through the presumption that the route meets the requirements of statute and rule at the higher voltage. Ottetail has cited no law or rule which requires the MEQB to propose such a presumption. The subpart follows the normal, statutorily authorized, process for HVTL routing. Subpart 5 is needed and reasonable as proposed.

17. Proposed subpart 6a adds a definition of "environmental impact assessment; EIA" to the rules. This addition is needed to clarify the requirements of the alternative review process being incorporated into the proposed rules. The EIA was selected as a more timely and efficient alternative to the more detailed environmental impact statement (EIS). The new subpart differentiates between the two types of documents and is needed and reasonable.

18. "Right-of-way" is amended in subpart 15 to clarify the definition of land over which an easement may be granted for the placement of an HVTL. George Crocker, on behalf of the General Assembly to Stop the Powerline (GASP), suggested that the definition include the width of the easement for various sizes of power line; provide restrictions on utility access to the easement for construction and maintenance; and provide penalties for violation of limits set in the access provisions. Agency staff expressed the opinion that the MEQB does not have the statutory authority to resolve disputes between the landowner and the utility. These matters are more appropriately resolved in eminent domain proceedings pursuant to Minn. Stat. Ch. 117. However, the agency staff responded to Mr. Crocker's concerns by modifying proposed rule 4400.1400, which will be discussed at Finding 25, below. The amendment to subpart 15 is needed and reasonable as proposed.

Proposed Rule 4400.0300 - Purpose and Authority.

19. Another of Mr. Crocker's comments related to the desirability of MEQB-sponsored public education relating to identifying and reducing exposure to electromagnetic phenomena, for the purpose of reducing adverse human and agricultural impact. Agency staff concurred with this suggestion, and proposes to alter proposed rule part 4400.0300 by adding a final sentence which reads:

To insure effective public participation, the board shall maintain a public education program on, but not limited to, the considerations identified in Minnesota Statutes, section 116C.75, subdivision 4.

The MEQB maintains that establishing a public education program is within its statutory obligation to encourage the widest possible citizen participation.

The proposed rules are procedural in nature. They are not performance standards which can be objectively met or objectively defined. Although the term "electrical environment" is not specifically defined in the proposed rules, it has an accepted meaning within the regulated industry and is not unreasonably vague. Proposed subpart 1(D) is needed and reasonable to include information regarding all potential risks in the routing application.

Proposed subpart 1(F) requires that applications contain a description of the "right-of-way restoration" proposed to mitigate known adverse impacts after HVTL construction. Ottertail objected to this requirement, asserting that the proposed language implied that the MEQB has a standard for restoration in mind; and if the agency does, in fact, have such a standard in mind, it must be specified in the rules. The MEQB staff responded that it has no particular standard in mind, but the utilities must consider methods to mitigate the impact of HVTLs in each case. To clarify the agency's intent, the MEQB replaced "restoration" with "impact mitigation measures." This change in language clarifies the agency's intent that impact mitigation measures must be examined in each case but the applicant is not necessarily required to "restore" the right-of-way to its original condition. Subpart 1, as amended, is needed and reasonable. Neither the DNR proposal nor the change suggested by the Administrative Law Judge constitutes a substantial change.

Ottertail asserts that the language of subpart 1(G) which requires a description "of the potential human and natural environmental effects of each route and measure proposed by the applicant to mitigate adverse effects" will lead to unending dispute and argumentation. Ottertail's objection stems from the lack of any requirement in the rule for scientific certainty with respect to any potential effect. Ottertail maintains that the utilities will not be able to resolve disputes over potential adverse effects no matter how well the issue is addressed in the application process. Agency staff responded that its statutory obligation is to evaluate the effects of large energy facilities on the public health and welfare and that the proposed rule part offers utilities the opportunity to state their positions on public welfare and environmental issues in the application.

The MEQB must be guided in its designation of sites and routes by:

Evaluation of research and investigations relating to the effects on land, water and air resources of large electric power generating plants and high voltage transmission line routes and the effects of water and air discharges and electric fields resulting from such facilities on public health and welfare. . . .

Minn. Stat. § 116C.57, subd. 4 (emphasis added). The statute sets no requirement that the "research and investigations" must be scientifically certain. The statutory scheme takes into account the possibility that studies may differ. Thus the MEQB is mandated to conduct evaluation of various effects, including into electric field effects, to make its final determination. Proposed subpart 1(G) is needed and reasonable as written.

Proposed rule part 4400.0600 is needed and reasonable. None of the proposed changes constitute a substantial change.

Proposed Rule 4400.0710 - Acceptance of Application for Route Designation and Construction Permit.

21. Proposed rule part 4400.0710 provides for the process by which an application shall be either be accepted or rejected. Mr. Crocker suggested that another criterion for approval be added. This criterion would mandate rejection of any application if the utility does not have a "performance-based financial incentive (or revenue generation) structure that rewards (or is based on) efficient, rather than maximum consumption of electricity." Public Exhibit 1. Agency staff asserted, in response to this comment, that the MEQB lacks the authority to condition acceptance of an application on that type of requirement. The MEQB is authorized to consider efficient energy use under Minn. Stat. § 116D.02, subd. 2(i). However, that consideration is to be conducted in the selection of a site, not by the acceptance or rejection of an application. Further, the comment would require a particular type of rate structure for utilities prior to any expansion of facilities. The Public Utilities Commission is given the express authority to approve the rates for public utilities. Minn. Stat. § 216B.08 and § 216B.09. The MEQB does not have the statutory authority to require a particular rate structure as a prerequisite to accepting or approving an application for construction. The rule part is needed and reasonable as proposed.

Proposed Rule 4400.0720 - Board Action upon Acceptance.

22. Proposed rule 4400.0720 is a new rule part requiring the MEQB to designate a project leader to coordinate staff action on each accepted application. No adverse comments were received regarding this proposed rule part. The MEQB has shown that this rule part is needed and reasonable.

Proposed Rule 4400.1210 - Environmental Impact Assessment for HVTL.

23. Proposed rule 4400.1210 is a new rule part requiring an EIA for the public hearing required under Minn. Stat. § 116C.58. The rule part also establishes the required contents of an EIA and its distribution, as well as notices, comment period, costs and other matters affecting the process. No adverse comments were received specifically regarding this proposed rule part. Ottertail's objection to the inclusion of "potential human and environmental effects" has been discussed previously. (See Finding 20, above). That language does not constitute a defect in the proposed rule part. The DNR has suggested two changes relating to distributing the EIA and determining the adequacy of the EIA. (See, Public Exhibit 2). Both changes have been adopted by the MEQB and neither change is a substantial change. The MEQB has shown that proposed rule part 4400.1210, as amended, is needed and reasonable.

Proposed Rule 4400.1310 - Routing Considerations.

24. Proposed rule 4400.1310 is a new rule part setting standards for consideration of proposed HVTL routes and lists those areas through which routes are either prohibited or a higher burden is imposed on the proposer to show that the route would not materially damage or impair the purpose for which the area was designated. Mr. Crocker commented on this provision by proposing that no construction permit be granted to any proposer until there

However, the language "but not limited to" provides no standards under which the discretion of the MEQB is limited as to the content of the education program. The Administrative Law Judge suggests that the phrase "but not limited to" be replaced with the phrase "or related to." This change does not leave the education program open to matters not connected with the MEQB's responsibilities; but it clearly leaves the content of the education program open to more than the specific list of considerations in Minn. Stat. § 116C.75, subd. 4. The Administrative Law Judge does not find the language proposed by the MEQB to be a defect in the proposed rules. The discretion allowed by the language is not in excess of the MEQB's statutory authority. Nevertheless, the change suggested in this Finding would make clear that the education program would be related to the issues addressed in that statute. The proposed rule is needed and reasonable and neither of the changes constitute a substantial change.

Proposed Rule 4400.0600 - Application for Route Designation and Construction Permit.

20. Proposed rule part 4400.0600 amends the existing application rule to further detail the contents of the application and explicitly apply the application process to route designation issues. The Minnesota Department of Natural Resources (DNR) suggested that the proposed rule be divided into two subparts, the first labelled "contents" and the second "distribution." The second subpart would require the application to be provided to each member of the MEQB. The MEQB staff accepted those two suggested changes. The Administrative Law Judge suggests that the wording of proposed subpart 2 be changed to designate whether the MEQB staff or the applicant shall provide a copy of the application to each member of the Board. This change will insure that no confusion arises over who is responsible for that distribution. The new language does not impose an excessive burden on any person or utility.

Ottertail objected to the term "electrical environment" in proposed subpart 1(D). The objection is based on Ottertail's assertion that the term does not have a defined meaning, either in the scientific community or in general usage. Ottertail suggested that the requirement to "characterize the electrical environment" be changed to a "demonstration of compliance with the requirements of the National Electric Safety Code." The agency staff responded to Ottertail's objection by citing an Electric Power Research Institute (EPRI) publication, Health Effects of High Voltage Direct Current Transmission Lines, An Environmental Briefing, March 1990, which uses the term "electrical environment." The term, as used in that publication, includes air ions, electric fields, and magnetic fields which surround the HVTL. The agency staff points out that the National Electric Safety Code does not include any consideration of electric or magnetic fields and, therefore, does not provide an adequate standard by which to assess potential risks from such fields. The MEQB has an obligation to investigate potential human and environmental effects. To restrict inquiry into a narrowly defined scope would be contrary to the statutory obligation placed upon the MEQB. The record contains numerous references to scientific studies which suggest a link between electric and magnetic fields and adverse health effects for persons within those fields. Requiring information on the electrical environment around a proposed HVTL is needed to carry out the MEQB's statutory obligations.

are significant advances in scientific knowledge about the health and environmental effects of HVTLs. The MEQB responded to this comment by asserting that such a moratorium would be beyond the statutory authority of the agency. At the second hearing on this matter, Mr. Crocker stated that he supports the MEQB's efforts to address his concerns expressed at the earlier hearing. Mr. Crocker is no longer pursuing the moratorium suggestion within the context of this rulemaking proceeding. In any event, the MEQB is correct that such an action is beyond its existing statutory authority. The MEQB has shown that proposed rule part 4400.1310 is needed and reasonable as proposed.

Proposed Rule 4400.1400 - Route Designation and Issuance of Construction Permit.

Proposed Rule 4400.1500 - Construction Permit Compliance.

Proposed Rule 4400.2600 - Applications for Site Designation and Certification of Site Compatibility.

25. Proposed rule parts 4400.1400, 4400.1500, and 4400.2600 are amended in the proposed rules to make stylistic changes and conform the rules with newly adopted language. No adverse comments were received regarding these provisions and they have been shown to be needed and reasonable. The DNR suggested that a new subpart be added to provide for the distribution of the application to each member of the MEQB. The MEQB concurred with that suggestion and made that change. The Administrative Law Judge suggests that the change in wording recommended at Finding 20, above, be applied to the proposed language. Additionally, the MEQB responded to GASP's comment on setting right-of-way widths by altering the language of proposed rule part 4400.1400. The change requires the Board to specify the HVTL design, route, and right-of-way width in the permit for construction. The specification of the width at this stage is both needed and reasonable. None of changes discussed in this finding would constitute a substantial change.

Proposed Rule 4400.2710 - Acceptance of Application for Site Designation and Certificate of Site Compatibility.

Proposed Rule 4400.2720 - Board Action Upon Acceptance.

26. These proposed rules are composed of entirely new language. Proposed rule 4400.2710 requires either acceptance or rejection of applications within specified time periods, and establishes procedures to be followed in the case of acceptance or rejection. Proposed rule 4400.2720 requires the MEQB to designate a project leader who is to be responsible for coordinating staff obligations during the siting process and in preparing the EIA. The project leader may also intervene as a party in the public hearing but any representations made by the project leader cannot bind the MEQB. No commentators objected to the proposed rules and they are found to be needed and reasonable.

Proposed Rule 4400.2800 - Site Advisory Task Force.

Proposed Rule 4400.2900 - Public Advisor.

Proposed Rule 4400.3000 - Informational Meetings.

Proposed Rule 4400.3100 - Site Proposals.

Proposed Rule 4400.3200 - Public Hearings.

27. Proposed rules 4400.2800, 4400.2900, 4400.3000, 4400.3100, and 4400.3200 are amended in the proposed rules to conform the style of language

and specific references in the rules to other adopted language. The only new provision is subpart 2 of proposed rule 4400.3100 which permits board member agencies, power plant siting staff, and the site advisory task force to propose sites within 105 days after the application is accepted. No adverse comments were received regarding these provisions and they have been shown to be needed and reasonable.

Proposed Rule 4400.3210 - Environmental Impact Assessment for LEPGP.

28. Proposed rule 4400.3210 is composed of entirely new language which sets the requirements for large electric power generating plant (LEPGP) EIAs. This proposed rule part is the LEPGP counterpart to proposed rule 4400.1210 (relating to HVTLs), discussed at Finding 23, above. No adverse comments were received regarding this proposed rule part. Ottertail's objection to the inclusion of "potential human and environmental effects" as criteria for site selection has been discussed at Finding 20, above. The DNR has suggested adding an item to subpart 6 to require the MEQB to address issues on the scope of the EIA to ensure that all issues are raised. This change has been adopted by the MEQB. The change conforms the decision-making process to that used in large energy facility environmental review (Minn. Rule 4410.3600, subp. 1). The change does not constitute a substantial change. The MEQB has shown that proposed rule part 4400.3210, as amended, is needed and reasonable.

Proposed Rule 4400.3310 - Siting Considerations.

29. This proposed rule part lists the considerations which must guide the MEQB in designating LEPGP sites. This proposed rule part is virtually identical to proposed rule 4400.1310 (relating to routing HVTLs), discussed at Finding 24, above. Any differences are related to the specific differences between HVTLs and LEPGPs in subparts 1 and 2. Additionally, proposed rule 4400.3310 has subparts 3, 4, and 5, which have no counterpart in the HVTL routing rule. The DNR objected to subpart 3 on the ground that the language of the subpart creates confusion as to whether certain state resources can never be designated for LEPGP sites; or whether those resources can be designated so long as no feasible and prudent alternative with a lesser adverse human and environmental impact exists. The DNR recommended replacing the word "when" with "unless" to make the proposed rule part clear. The MEQB agreed with this suggestion and made that change. The change clarifies the intent of the proposed rule 4400.3310, subp. 3 and does not constitute a substantial change. Subpart 4 requires that the protection in subpart 3 be extended to prime farmland (without the confusing use of the word "when"). Subpart 5 requires that a sufficient water supply be reasonably accessible, and that groundwater be protected, where doing so is feasible and prudent. Neither subparts 4 or 5 received adverse comment. The MEQB has shown that proposed rule part 4400.3310, as amended, is needed and reasonable.

Proposed Rule 4400.3400 - Site Designation and Issuance of Certificate of Site Compatibility.

Proposed Rule 4400.3500 - Certificate Compliance.

Proposed Rule 4400.3600 - Program Advisory Task Force.

30. Proposed rules 4400.3400, 4400.3500, and 4400.3600 are amended in the proposed rules so that the style of language and specific references in

these rules is consistent with other adopted language. No adverse comments were received regarding these provisions and they have been shown to be needed and reasonable.

Proposed Rule 4400.3710 - Notices.

31. The language of proposed rule part 4400.3710 is entirely new. It specifies the timing of, content of, and actions requiring notices under the regulating scheme. No adverse comments were received regarding these provisions and they have been shown to be needed and reasonable.

Proposed Rule 4400.3800 - Emergency Certifications and Permits.

32. Only subparts 2 and 3 of proposed rule part 4400.3800 are being amended by this rulemaking proceeding. The amendment in subpart 1 specifies that emergency hearings are to be held under Minn. Rules Chapter 1405, deletes item A (regarding evidence from the Department of Trade and Economic Development), and makes several stylistic changes. The only changes in Subpart 3 are the citations required as a result of this rulemaking. No adverse comments were received regarding these provisions and they have been shown to be needed and reasonable.

Proposed Rule 4400.3900 - Exemption of Certain Transmission Routes.
Proposed Rule 4400.3910 - Exemption of Certain LEPGP Sites.

33. Proposed rule part 4400.3900 is a combination of amended existing language and new material. The MEQB intended to update and clarify the existing rules with these changes. Proposed rule part 4400.3910 is composed of all new language. The MEQB asserts that the new language is needed to conform with Minn. Stat. § 116C, which permits the MEQB to exempt from the full requirements of Minn. Stat. § 116C any LEPGP sites which do not have a significant environmental impact. The proposed rule on LEPGP sites (proposed rule 4400.3910) parallels the amended language on exemptions of HVTL routes (proposed rule 4400.3900). Virginia Homme objected to the "streamlining" of the rules overseeing siting and route designation. In response to Ms. Homme's objection, it is found that the exemptions offered by these two subparts are required by the MEQB's authorizing statute. If an agency were to significantly restrict a statutorily authorized process, it would constitute a defect in the proposed rules. The MEQB has shown the exemption provisions to be needed and reasonable. The MEQB has addressed an earlier DNR suggestion by adding a new subpart to this rule which provides for the distribution of the application to each member of the MEQB. The MEQB has added a subpart in each proposed rule provision which requires distribution of copies of the application to each member of the MEQB. The Administrative Law Judge suggests that the change in wording recommended at Finding 20, above, be applied to all appropriate subparts. These changes would not constitute a substantial change. The proposed rule parts are needed and reasonable.

Proposed Rule 4400.4000 - Delay in Route or Site Construction.

Proposed Rule 4400.4100 - Minor Alterations in Construction Permit or Certificate of Site Compatibility.

Proposed Rule 4400.4200 - Revocation or Suspension of Certificate or Permit.

Proposed Rule 4400.4500 - Identification of Large Electric Power Generating Plant Study Areas.

Proposed Rule 4400.4900 - Application Fees.

34. Proposed rules 4400.4000, 4400.4100, 4400.4200, 4400.4500, and 4400.4900 are amended in the proposed rules so that the language style, references in the rules to other adopted language, and citations are consistent. Proposed rule 4400.4900 added a requirement that payment for filed applications is due within 14 days of the receipt of the application. No adverse comments were received regarding these provisions and they have been shown to be needed and reasonable.

Other Issues.

35. Several of the commentators expressed their views that HVTLs cause adverse health and other physical effects to themselves, their families, and their animals in the immediate vicinity of HVTL facilities. Voluminous data, journalistic reports of scientific studies, and a videotape were offered into the record to substantiate these viewpoints. The Administrative Law Judge understands the importance of this information. However, the scope of this rulemaking proceeding does not include the substantive impacts of HVTLs or LEPGs. Evidence of adverse impacts on humans, the environment, domestic livestock, or other animals may be appropriate during route proceedings, or during rulemaking proceedings which may determine issues related to operating standards; however, such evidence is beyond the scope of this rulemaking proceeding which is procedural in nature.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Environmental Quality Board (MEQB) gave proper notice of this rulemaking hearing.
2. The MEQB has substantially fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule so as to allow it to adopt the proposed rules.
3. The MEQB has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii).

4. The MEQB has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (111).

5. The additions and amendments to the proposed rules which were suggested by the MEQB after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, and Minn. Rule 1400.1000, subp. 1 and 1400.1100.

6. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

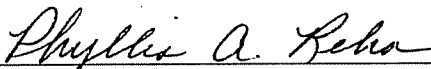
7. A finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the MEQB from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated this 7th day of November, 1990.



PHYLLIS A. REHA
Administrative Law Judge

Reported: Tape Recorded; No Transcript Prepared.