

## CHAPTER 216E

### ELECTRIC POWER FACILITY PERMITS

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#### 216E.001 CITATION.

This chapter shall be known as the Minnesota Power Plant Siting Act.

**History:** 1973 c 591 s 1

#### 216E.01 DEFINITIONS.

Subdivision 1. **Applicability.** As used in this chapter, the terms defined in this section have the meanings given them, unless otherwise provided or indicated by the context.

Subd. 2. **Commission.** "Commission" means the Public Utilities Commission.

Subd. 3. **Construction.** "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

Subd. 4. **High-voltage transmission line.** "High-voltage transmission line" means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 100 kilovolts or more and is greater than 1,500 feet in length.

Subd. 5. **Large electric power generating plant.** "Large electric power generating plant" shall mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

Subd. 6. **Large electric power facilities.** "Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

Subd. 7. **Person.** "Person" shall mean an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision,

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

Subd. 8. **Route.** "Route" means the location of a high voltage transmission line between two end points. The route may have a variable width of up to 1.25 miles.

Subd. 9. **Site.** "Site" means the location of a large electric power generating plant.

Subd. 10. **Utility.** "Utility" shall mean any entity engaged or intending to engage in this state in the generation, transmission, or distribution of electric energy including, but not limited to, a private investor-owned utility, cooperatively owned utility, and a public or municipally owned utility.

**History:** 1973 c 591 s 2; 1975 c 271 s 6; 1977 c 439 s 1-5; 2001 c 212 art 7 s 1,2; 2005 c 97 art 3 s 1,2

## **216E.02 SITING AUTHORITY.**

Subdivision 1. **Policy.** The legislature hereby declares it to be the policy of the state to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy the commission shall choose locations that minimize adverse human and environmental impact while insuring continuing electric power system reliability and integrity and insuring that electric energy needs are met and fulfilled in an orderly and timely fashion.

Subd. 2. **Jurisdiction.** The commission is hereby given the authority to provide for site and route selection for large electric power facilities. The commission shall issue permits for large electric power facilities in a timely fashion and in a manner consistent with the overall determination of need for the project under section 216B.243 or 216B.2425. Questions of need, including size, type, and timing; alternative system configurations; and voltage must not be included in the scope of environmental review conducted under this chapter.

Subd. 3. **Interstate routes.** If a route is proposed in two or more states, the commission shall attempt to reach agreement with affected states on the entry and exit points prior to designating a route. The commission, in discharge of its duties pursuant to this chapter may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States. The commission may negotiate and enter into any agreements or compacts with agencies of other states, pursuant to any consent of Congress, for cooperative efforts in certifying the construction, operation, and maintenance of large electric power facilities in accord with the purposes of this chapter and for the enforcement of the respective state laws regarding such facilities.

**History:** 1973 c 591 s 3; 1975 c 271 s 6; 1977 c 439 s 6; 2001 c 212 art 7 s 3,4; 2005 c

*97 art 3 s 3,19*

### **216E.03 DESIGNATING SITES AND ROUTES.**

Subdivision 1. **Site permit.** No person may construct a large electric generating plant without a site permit from the commission. A large electric generating plant may be constructed only on a site approved by the commission. The commission must incorporate into one proceeding the route selection for a high-voltage transmission line that is directly associated with and necessary to interconnect the large electric generating plant to the transmission system and whose need is certified under section 216B.243.

Subd. 2. **Route permit.** No person may construct a high-voltage transmission line without a route permit from the commission. A high-voltage transmission line may be constructed only along a route approved by the commission.

Subd. 3. **Application.** Any person seeking to construct a large electric power generating plant or a high-voltage transmission line must apply to the commission for a site or route permit. The application shall contain such information as the commission may require. The applicant shall propose at least two sites for a large electric power generating plant and two routes for a high-voltage transmission line. The commission shall determine whether an application is complete and advise the applicant of any deficiencies within ten days of receipt. An application is not incomplete if information not in the application can be obtained from the applicant during the first phase of the process and that information is not essential for notice and initial public meetings.

Subd. 3a. **Project notice.** At least 90 days before filing an application with the commission, the applicant shall provide notice to each local unit of government within which a route may be proposed. The notice must describe the proposed project and the opportunity for a preapplication consultation meeting with local units of government as provided in subdivision 3b.

Subd. 3b. **Preapplication consultation meetings.** Within 30 days of receiving a project notice, local units of government may request the applicant to hold a consultation meeting with local units of government. Upon receiving notice from a local unit of government requesting a preapplication consultation meeting, the applicant shall arrange the meeting at a location chosen by the local units of government. A single public meeting for which each local government unit requesting a meeting is given notice satisfies the meeting requirement of this subdivision.

Subd. 4. **Application notice.** Within 15 days after submission of an application to the commission, the applicant shall publish notice of the application in a legal newspaper of general circulation in each county in which the site or route is proposed and send a copy of the application by certified mail to any regional development commission, county, incorporated municipality, and town in which any part of the site or route is proposed. Within the same 15 days, the applicant shall also send a notice of the submission of the application and description of the proposed

project to each owner whose property is on or adjacent to any of the proposed sites for the power plant or along any of the proposed routes for the transmission line. The notice must identify a location where a copy of the application can be reviewed. For the purpose of giving mailed notice under this subdivision, owners are those shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer; but other appropriate records may be used for this purpose. The failure to give mailed notice to a property owner, or defects in the notice, does not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made. Within the same 15 days, the applicant shall also send the same notice of the submission of the application and description of the proposed project to those persons who have requested to be placed on a list maintained by the commission for receiving notice of proposed large electric generating power plants and high voltage transmission lines.

Subd. 5. **Environmental review.** The commissioner of the Department of Commerce shall prepare for the commission an environmental impact statement on each proposed large electric generating plant or high-voltage transmission line for which a complete application has been submitted. The commissioner shall not consider whether or not the project is needed. No other state environmental review documents shall be required. The commissioner shall study and evaluate any site or route proposed by an applicant and any other site or route the commission deems necessary that was proposed in a manner consistent with rules concerning the form, content, and timeliness of proposals for alternate sites or routes.

Subd. 6. **Public hearing.** The commission shall hold a public hearing on an application for a site permit for a large electric power generating plant or a route permit for a high-voltage transmission line. All hearings held for designating a site or route shall be conducted by an administrative law judge from the Office of Administrative Hearings pursuant to the contested case procedures of chapter 14. Notice of the hearing shall be given by the commission at least ten days in advance but no earlier than 45 days prior to the commencement of the hearing. Notice shall be by publication in a legal newspaper of general circulation in the county in which the public hearing is to be held and by certified mail to chief executives of the regional development commissions, counties, organized towns, townships, and the incorporated municipalities in which a site or route is proposed. Any person may appear at the hearings and offer testimony and exhibits without the necessity of intervening as a formal party to the proceedings. The administrative law judge may allow any person to ask questions of other witnesses. The administrative law judge shall hold a portion of the hearing in the area where the power plant or transmission line is proposed to be located.

Subd. 7. **Considerations in designating sites and routes.** (a) The commission's site and route permit determinations must be guided by the state's goals to conserve resources, minimize

environmental impacts, minimize human settlement and other land use conflicts, and ensure the state's electric energy security through efficient, cost-effective power supply and electric transmission infrastructure.

(b) To facilitate the study, research, evaluation, and designation of sites and routes, the commission shall be guided by, but not limited to, the following considerations:

(1) 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 lines and the effects of water and air discharges and electric and magnetic fields resulting from such facilities on public health and welfare, vegetation, animals, materials and aesthetic values, including baseline studies, predictive modeling, and evaluation of new or improved methods for minimizing adverse impacts of water and air discharges and other matters pertaining to the effects of power plants on the water and air environment;

(2) environmental evaluation of sites and routes proposed for future development and expansion and their relationship to the land, water, air and human resources of the state;

(3) evaluation of the effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects;

(4) evaluation of the potential for beneficial uses of waste energy from proposed large electric power generating plants;

(5) analysis of the direct and indirect economic impact of proposed sites and routes including, but not limited to, productive agricultural land lost or impaired;

(6) evaluation of adverse direct and indirect environmental effects that cannot be avoided should the proposed site and route be accepted;

(7) evaluation of alternatives to the applicant's proposed site or route proposed pursuant to subdivisions 1 and 2;

(8) evaluation of potential routes that would use or parallel existing railroad and highway rights-of-way;

(9) evaluation of governmental survey lines and other natural division lines of agricultural land so as to minimize interference with agricultural operations;

(10) evaluation of the future needs for additional high-voltage transmission lines in the same general area as any proposed route, and the advisability of ordering the construction of structures capable of expansion in transmission capacity through multiple circuiting or design modifications;

(11) evaluation of irreversible and irretrievable commitments of resources should the proposed site or route be approved; and

(12) when appropriate, consideration of problems raised by other state and federal agencies and local entities.

(c) If the commission's rules are substantially similar to existing regulations of a federal agency to which the utility in the state is subject, the federal regulations must be applied by the commission.

(d) No site or route shall be designated which violates state agency rules.

Subd. 8. **Recording of survey points.** The permanent location of monuments or markers found or placed by a utility in a survey of right-of-way for a route shall be placed on record in the office of the county recorder or registrar of titles. No fee shall be charged to the utility for recording this information.

Subd. 9. **Timing.** The commission shall make a final decision on an application within 60 days after receipt of the report of the administrative law judge. A final decision on the request for a site permit or route permit shall be made within one year after the commission's determination that an application is complete. The commission may extend this time limit for up to three months for just cause or upon agreement of the applicant.

Subd. 10. **Final decision.** (a) No site permit shall be issued in violation of the site selection standards and criteria established in this section and in rules adopted by the commission. When the commission designates a site, it shall issue a site permit to the applicant with any appropriate conditions. The commission shall publish a notice of its decision in the State Register within 30 days of issuance of the site permit.

(b) No route permit shall be issued in violation of the route selection standards and criteria established in this section and in rules adopted by the commission. When the commission designates a route, it shall issue a permit for the construction of a high-voltage transmission line specifying the design, routing, right-of-way preparation, and facility construction it deems necessary, and with any other appropriate conditions. The commission may order the construction of high-voltage transmission line facilities that are capable of expansion in transmission capacity through multiple circuiting or design modifications. The commission shall publish a notice of its decision in the State Register within 30 days of issuance of the permit.

Subd. 11. **Department of Commerce to provide technical expertise and other assistance.** The commissioner of the Department of Commerce shall consult with other state agencies and provide technical expertise and other assistance to the commission or to individual members of the commission for activities and proceedings under this chapter and chapters 216F and 216G. This assistance shall include the sharing of power plant siting and routing staff and other resources as necessary. The commissioner shall periodically report to the commission concerning the Department of Commerce's costs of providing assistance. The report shall conform

to the schedule and include the required contents specified by the commission. The commission shall include the costs of the assistance in assessments for activities and proceedings under those sections and reimburse the special revenue fund for those costs. If either the commissioner or the commission deems it necessary, the department and the commission shall enter into an interagency agreement establishing terms and conditions for the provision of assistance and sharing of resources under this subdivision.

**History:** 1973 c 591 s 7; 1975 c 271 s 6; 1977 c 439 s 10; 1986 c 444; 1987 c 384 art 2 s 21; 1989 c 346 s 1; 1994 c 644 s 1; 2000 c 289 s 1; 2001 c 212 art 7 s 5-13; 2005 c 97 art 3 s 4-6,19; 2008 c 296 art 1 s 15-17

### **216E.04 ALTERNATIVE REVIEW OF APPLICATIONS.**

Subdivision 1. **Alternative review.** An applicant who seeks a site permit or route permit for one of the projects identified in this section shall have the option of following the procedures in this section rather than the procedures in section 216E.03. The applicant shall notify the commission at the time the application is submitted which procedure the applicant chooses to follow.

Subd. 2. **Applicable projects.** The requirements and procedures in this section apply to the following projects:

- (1) large electric power generating plants with a capacity of less than 80 megawatts;
- (2) large electric power generating plants that are fueled by natural gas;
- (3) high-voltage transmission lines of between 100 and 200 kilovolts;
- (4) high-voltage transmission lines in excess of 200 kilovolts and less than five miles in length in Minnesota;
- (5) high-voltage transmission lines in excess of 200 kilovolts if at least 80 percent of the distance of the line in Minnesota will be located along existing high-voltage transmission line right-of-way;
- (6) a high-voltage transmission line service extension to a single customer between 200 and 300 kilovolts and less than ten miles in length; and
- (7) a high-voltage transmission line rerouting to serve the demand of a single customer when the rerouted line will be located at least 80 percent on property owned or controlled by the customer or the owner of the transmission line.

Subd. 3. **Application.** The applicant for a site or route permit for any of the projects listed in subdivision 2 who chooses to follow these procedures shall submit information as the commission may require, but the applicant shall not be required to propose a second site or route for the project. The applicant shall identify in the application any other sites or routes that were rejected by the applicant and the commission may identify additional sites or routes to consider

during the processing of the application. The commission shall determine whether an application is complete and advise the applicant of any deficiencies.

Subd. 4. **Notice of application.** Upon submission of an application under this section, the applicant shall provide the same notice as required by section 216E.03, subdivision 4.

Subd. 5. **Environmental review.** For the projects identified in subdivision 2 and following these procedures, the commissioner of the Department of Commerce shall prepare for the commission an environmental assessment. The environmental assessment shall contain information on the human and environmental impacts of the proposed project and other sites or routes identified by the commission and shall address mitigating measures for all of the sites or routes considered. The environmental assessment shall be the only state environmental review document required to be prepared on the project.

Subd. 6. **Public hearing.** The commission shall hold a public hearing in the area where the facility is proposed to be located. The commission shall give notice of the public hearing in the same manner as notice under section 216E.03, subdivision 6. The commission shall conduct the public hearing under procedures established by the commission. The applicant shall be present at the hearing to present evidence and to answer questions. The commission shall provide opportunity at the public hearing for any person to present comments and to ask questions of the applicant and commission staff. The commission shall also afford interested persons an opportunity to submit written comments into the record.

Subd. 7. **Timing.** The commission shall make a final decision on an application within 60 days after completion of the public hearing. A final decision on the request for a site permit or route permit under this section shall be made within six months after the commission's determination that an application is complete. The commission may extend this time limit for up to three months for just cause or upon agreement of the applicant.

Subd. 8. **Considerations.** The considerations in section 216E.03, subdivision 7, shall apply to any projects subject to this section.

Subd. 9. **Final decision.** (a) No site permit shall be issued in violation of the site selection standards and criteria established in this section and in rules adopted by the commission. When the commission designates a site, it shall issue a site permit to the applicant with any appropriate conditions. The commission shall publish a notice of its decision in the State Register within 30 days of issuance of the site permit.

(b) No route designation shall be made in violation of the route selection standards and criteria established in this section and in rules adopted by the commission. When the commission designates a route, it shall issue a permit for the construction of a high-voltage transmission line specifying the design, routing, right-of-way preparation, and facility construction it deems



necessary and with any other appropriate conditions. The commission may order the construction of high-voltage transmission line facilities that are capable of expansion in transmission capacity through multiple circuiting or design modifications. The commission shall publish a notice of its decision in the State Register within 30 days of issuance of the permit.

**History:** 2001 c 212 art 7 s 14; 2005 c 97 art 3 s 7,19

#### **216E.05 LOCAL REVIEW OF APPLICATIONS.**

Subdivision 1. **Local review.** (a) Notwithstanding the requirements of sections 216E.03 and 216E.04, an applicant who seeks a site or route permit for one of the projects identified in this section shall have 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 commission. If the applicant files an application with the commission, the applicant shall be deemed to have waived its right to seek local approval of the project.

(b) A local unit of government with jurisdiction over a project identified in this section to whom an applicant has applied for approval to build the project may request the commission to assume jurisdiction and make a decision on a site or route permit under the applicable provisions of this chapter. A local unit of government must file the request with the commission within 60 days after an application for the project has been filed with any one local unit of government. If one of the local units of government with jurisdiction over the project requests the commission to assume jurisdiction, jurisdiction over the project transfers to the commission. If the local units of government maintain jurisdiction over the project, the commission shall select the appropriate local unit of government to be the responsible governmental unit to conduct environmental review of the project.

Subd. 2. **Applicable projects.** Applicants may seek approval from local units of government to construct the following projects:

- (1) large electric power generating plants with a capacity of less than 80 megawatts;
- (2) large electric power generating plants of any size that burn natural gas and are intended to be a peaking plant;
- (3) high-voltage transmission lines of between 100 and 200 kilovolts;
- (4) substations with a voltage designed for and capable of operation at a nominal voltage of 100 kilovolts or more;
- (5) a high-voltage transmission line service extension to a single customer between 200 and 300 kilovolts and less than ten miles in length; and

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

Subd. 3. **Notice of application.** Within ten days of submission of an application to a local unit of government for approval of an eligible project, the applicant shall notify the commission that the applicant has elected to seek local approval of the proposed project.

**History:** 2001 c 212 art 7 s 15; 2005 c 97 art 3 s 19

#### **216E.06 EMERGENCY PERMIT.**

(a) Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high-voltage transmission line due to a major unforeseen event may apply to the commission for an emergency permit. The application shall provide notice in writing of the major unforeseen event and the need for immediate construction. The permit must be issued in a timely manner, no later than 195 days after the commission's acceptance of the application and upon a finding by the commission that (1) a demonstrable emergency exists, (2) the emergency requires immediate construction, and (3) adherence to the procedures and time schedules specified in section 216E.03 would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner.

(b) A public hearing to determine if an emergency exists must be held within 90 days of the application. The commission, after notice and hearing, shall adopt rules specifying the criteria for emergency certification.

**History:** 2001 c 212 art 7 s 16; 2005 c 97 art 3 s 8

#### **216E.07 ANNUAL HEARING.**

The commission shall hold an annual public hearing at a time and place prescribed by rule in order to afford interested persons an opportunity to be heard regarding any matters relating to the siting of large electric generating power plants and routing of high-voltage transmission lines. At the meeting, the commission shall advise the public of the permits issued by the commission in the past year. The commission shall provide at least ten days but no more than 45 days' notice of the annual meeting by mailing or serving electronically, as provided in section 216.17, a notice to those persons who have requested notice and by publication in the EQB Monitor and the commission's weekly calendar.

**History:** 1973 c 591 s 8; 1975 c 271 s 6; 1977 c 439 s 11; 1980 c 615 s 60; 1982 c 424 s 130; 1984 c 640 s 32; 2001 c 212 art 7 s 17; 2005 c 97 art 3 s 9; 2007 c 10 s 12

**216E.08 PUBLIC PARTICIPATION.**

Subdivision 1. **Advisory task force.** The commission may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. No officer, agent, or employee of a utility shall serve on an advisory task force. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The task forces expire as provided in section 15.059, subdivision 6. At the time the task force is appointed, the commission shall specify the charge to the task force. The task force shall expire upon completion of its charge, upon designation by the commission of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the commission in the charge, whichever occurs first.

Subd. 2. **Other public participation.** The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section 216E.16.

Subd. 3. **Public advisor.** The commission shall designate one staff person for the sole purpose of assisting and advising those affected and interested citizens on how to effectively participate in site or route proceedings.

Subd. 4. **Scientific advisory task force.** The commission may appoint one or more advisory task forces composed of technical and scientific experts to conduct research and make recommendations concerning generic issues such as health and safety, underground routes, double circuiting and long-range route and site planning. Reimbursement for expenses incurred shall be made pursuant to the rules governing reimbursement of state employees. The task forces expire as provided in section 15.059, subdivision 6. The time allowed for completion of a specific site or route procedure may not be extended to await the outcome of these generic investigations.

**History:** 1973 c 591 s 9; 1975 c 271 s 6; 1977 c 439 s 12,13; 1985 c 248 s 70; 1988 c 629 s 19-21; 2001 c 212 art 7 s 18,19; 2005 c 97 art 3 s 19

**216E.09 PUBLIC MEETINGS; TRANSCRIPT OF PROCEEDINGS; WRITTEN RECORDS.**

Meetings of the commission, including hearings, shall be open to the public. Minutes shall be kept of commission meetings and a complete record of public hearings shall be kept. All books, records, files, and correspondence of the commission shall be available for public inspection at any reasonable time. The commission shall also be subject to chapter 13D.

**History:** 1973 c 591 s 10; 1975 c 271 s 6; 2001 c 212 art 7 s 20; 2005 c 97 art 3 s 19

## **216E.10 APPLICATION TO LOCAL REGULATION AND OTHER STATE PERMITS.**

Subdivision 1. **Site or route permit prevails over local provisions.** To assure the paramount and controlling effect of the provisions herein over other state agencies, regional, county, and local governments, and special purpose government districts, the issuance of a site permit or route permit and subsequent purchase and use of such site or route locations for large electric power generating plant and high-voltage transmission line purposes shall be the sole site or route approval required to be obtained by the utility. Such permit shall supersede and preempt all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government.

Subd. 2. **Other state permits.** Notwithstanding anything herein to the contrary, utilities shall obtain state permits that may be required to construct and operate large electric power generating plants and high-voltage transmission lines. A state agency in processing a utility's facility permit application shall be bound to the decisions of the commission, with respect to the site or route designation, and with respect to other matters for which authority has been granted to the commission by this chapter.

Subd. 3. **State agency participation.** (a) State agencies authorized to issue permits required for construction or operation of large electric power generating plants or high-voltage transmission lines shall participate during routing and siting at public hearings and all other activities of the commission on specific site or route designations and design considerations of the commission, and shall clearly state whether the site or route being considered for designation or permit and other design matters under consideration for approval will be in compliance with state agency standards, rules, or policies.

(b) An applicant for a permit under this section or under chapter 216G shall notify the commissioner of agriculture if the proposed project will impact cultivated agricultural land, as that term is defined in section 216G.01, subdivision 4. The commissioner may participate and advise the commission as to whether to grant a permit for the project and the best options for mitigating adverse impacts to agricultural lands if the permit is granted. The Department of Agriculture shall be the lead agency on the development of any agricultural mitigation plan required for the project.

**History:** 1973 c 591 s 11; 1975 c 271 s 6; 1977 c 439 s 14,15; 1985 c 248 s 70; 2001 c 212 art 7 s 21,22; 2005 c 97 art 3 s 10,19

## **216E.11 IMPROVEMENT OF SITES AND ROUTES.**

Utilities that have acquired a site or route in accordance with this chapter may proceed to construct or improve the site or route for the intended purposes at any time, subject to section 216E.10, subdivision 2, provided that if the construction and improvement has not commenced

within four years after a permit for the site or route has been issued, then the utility must certify to the commission that the site or route continues to meet the conditions upon which the site or route permit was issued.

**History:** 1973 c 591 s 12; 1975 c 271 s 6; 1977 c 439 s 16; 2001 c 212 art 7 s 23; 2005 c 97 art 3 s 19

## **216E.12 EMINENT DOMAIN POWERS; POWER OF CONDEMNATION.**

Subdivision 1. **Generally.** Nothing in this section shall invalidate the power of eminent domain vested in utilities by statute or common law existing as of May 24, 1973, except to the extent modified herein. The power of eminent domain shall continue to exist for utilities and may be used according to law to accomplish any of the purposes and objectives of this chapter, including acquisition of the right to utilize existing high-voltage transmission facilities which are capable of expansion or modification to accommodate both existing and proposed conductors. Notwithstanding any law to the contrary, all easement interests shall revert to the then fee owner if a route is not used for high-voltage transmission line purposes for a period of five years.

Subd. 2. **Conduct of proceedings.** In eminent domain proceedings by a utility for the acquisition of real property proposed for construction of a route or a site, the proceedings shall be conducted in the manner prescribed in chapter 117, except as otherwise specifically provided in this section.

Subd. 3. **Payment.** When such property is acquired by eminent domain proceedings or voluntary purchase and the amount the owner shall receive for the property is finally determined, the owner who is entitled to payment may elect to have the amount paid in not more than ten annual installments, with interest on the deferred installments, at the rate of eight percent per annum on the unpaid balance, by submitting a written request to the utility before any payment has been made. After the first installment is paid the petitioner may make its final certificate, as provided by law, in the same manner as though the entire amount had been paid.

Subd. 4. **Contiguous land.** When private real property that is an agricultural or nonagricultural homestead, nonhomestead agricultural land, rental residential property, and both commercial and noncommercial seasonal residential recreational property, as those terms are defined in section 273.13 is proposed to be acquired for the construction of a site or route for a high-voltage transmission line with a capacity of 200 kilovolts or more by eminent domain proceedings, the fee owner, or when applicable, the fee owner with the written consent of the contract for deed vendee, or the contract for deed vendee with the written consent of the fee owner, shall have the option to require the utility to condemn a fee interest in any amount of contiguous, commercially viable land which the owner or vendee wholly owns or has contracted to own in undivided fee and elects in writing to transfer to the utility within 60 days after receipt

of the notice of the objects of the petition filed pursuant to section 117.055. Commercial viability shall be determined without regard to the presence of the utility route or site. The owner or, when applicable, the contract vendee shall have only one such option and may not expand or otherwise modify an election without the consent of the utility. The required acquisition of land pursuant to this subdivision shall be considered an acquisition for a public purpose and for use in the utility's business, for purposes of chapter 117 and section 500.24, respectively; provided that a utility shall divest itself completely of all such lands used for farming or capable of being used for farming not later than the time it can receive the market value paid at the time of acquisition of lands less any diminution in value by reason of the presence of the utility route or site. Upon the owner's election made under this subdivision, the easement interest over and adjacent to the lands designated by the owner to be acquired in fee, sought in the condemnation petition for a right-of-way for a high-voltage transmission line with a capacity of 200 kilovolts or more shall automatically be converted into a fee taking.

Subd. 5. **Notification.** A utility shall notify by certified mail each person who has transferred any interest in real property to the utility after July 1, 1974, but prior to the effective date of Laws 1977, chapter 439, for the purpose of a site or route that the person may elect in writing within 90 days after receipt of notice to require the utility to acquire any remaining contiguous parcel of land pursuant to this section or to return any payment to the utility and require it to make installment payments pursuant to this section.

**History:** 1973 c 591 s 13; 1977 c 439 s 17; 1978 c 674 s 15; 1980 c 614 s 87; 1Sp1985 c 14 art 4 s 15; 1986 c 444; 1Sp1986 c 1 art 4 s 7; 1987 c 268 art 6 s 1; 2002 c 398 s 1; 2006 c 214 s 20

### **216E.13 FAILURE TO ACT.**

If the commission fails to act within the times specified in section 216E.03, the applicant or any affected person may seek an order of the district court requiring the commission to designate or refuse to designate a site or route.

**History:** 1973 c 591 s 14; 1975 c 271 s 6; 1977 c 439 s 19; 2001 c 212 art 7 s 24; 2005 c 97 art 3 s 19

### **216E.14 REVOCATION OR SUSPENSION.**

A site or route permit may be revoked or suspended by the commission after adequate notice of the alleged grounds for revocation or suspension and a full and fair hearing in which the affected utility has an opportunity to confront any witness and respond to any evidence against it and to present rebuttal or mitigating evidence upon a finding by the commission of:

(1) any false statement knowingly made in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted a change in the commission's findings;

(2) failure to comply with material conditions of the site certificate or construction permit, or failure to maintain health and safety standards; or

(3) any material violation of the provisions of this chapter, any rule promulgated pursuant thereto, or any order of the commission.

**History:** 1977 c 439 s 20; 1978 c 658 s 1; 2001 c 212 art 7 s 25; 2005 c 97 art 3 s 19

#### **216E.15 JUDICIAL REVIEW.**

Any applicant, party or person aggrieved by the issuance of a site or route permit or emergency permit from the commission or a certification of continuing suitability filed by a utility with the commission or by a final order in accordance with any rules promulgated by the commission, may appeal to the Court of Appeals in accordance with chapter 14. The appeal shall be filed within 30 days after the publication in the State Register of notice of the issuance of the permit by the commission or certification filed with the commission or the filing of any final order by the commission.

**History:** 1973 c 591 s 15; 1975 c 271 s 6; 1977 c 439 s 21; 1980 c 509 s 28; 1982 c 424 s 130; 1983 c 247 s 54; 2001 c 212 art 7 s 26; 2005 c 97 art 3 s 19

#### **216E.16 RULES.**

The commission, in order to give effect to the purposes of this chapter, may adopt rules consistent with this chapter, including promulgation of site and route designation criteria, the description of the information to be furnished by the utilities, establishment of minimum guidelines for public participation in the development, revision, and enforcement of any rule, plan, or program established by the commission, procedures for the revocation or suspension of a site or route permit, and the procedure and timeliness for proposing alternative routes and sites. No rule adopted by the commission shall grant priority to state-owned wildlife management areas over agricultural lands in the designation of route avoidance areas. The provisions of chapter 14 shall apply to the appeal of rules adopted by the commission to the same extent as it applies to review of rules adopted by any other agency of state government.

The chief administrative law judge shall adopt procedural rules for public hearings relating to the site and route permit process. The rules shall attempt to maximize citizen participation in these processes consistent with the time limits for commission decision established in sections 216E.03, subdivision 10, and 216E.04, subdivision 7.

**History:** 1973 c 591 s 16; 1975 c 271 s 6; 1977 c 439 s 22; 1978 c 658 s 2; 1982 c 424 s 130; 1984 c 640 s 32; 2001 c 212 art 7 s 27; 2005 c 97 art 3 s 19

#### **216E.17 ENFORCEMENT, PENALTIES.**

Subdivision 1. **Criminal penalty.** Any person who violates this chapter or any rule

promulgated hereunder, or knowingly submits false information in any report required by this chapter is guilty of a misdemeanor for the first offense and a gross misdemeanor for the second and each subsequent offense. Each day of violation shall constitute a separate offense.

Subd. 2. **Enforcement.** The provisions of this chapter or any rules promulgated hereunder may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county wherein the violation takes place. The attorney general shall bring any action under this subdivision upon the request of the commission.

Subd. 3. **Civil penalty.** When the court finds that any person has violated this chapter, any rule hereunder, knowingly submitted false information in any report required by this chapter, or has violated any court order issued under this chapter, the court may impose a civil penalty of not more than \$10,000 for each violation. These penalties shall be paid to the general fund in the state treasury.

**History:** 1973 c 591 s 18; 1975 c 271 s 6; 1977 c 439 s 24; 2005 c 97 art 3 s 19

#### **216E.18 BIENNIAL REPORT; APPLICATION FEES; APPROPRIATION; FUNDING.**

Subdivision 1. **Biennial report.** Before November 15 of each even-numbered year the commission shall prepare and submit to the legislature a report of its operations, activities, findings, and recommendations concerning this chapter. The report shall also contain information on the commission's biennial expenditures, its proposed budget for the following biennium, and the amounts paid in permit application fees and in assessments pursuant to this section. The proposed budget for the following biennium shall be subject to legislative review.

Subd. 2. **Site application fee.** Every applicant for a site permit shall pay to the commissioner of commerce a fee to cover the necessary and reasonable costs incurred by the commission in acting on the permit application and carrying out the requirements of this chapter. The commission may adopt rules providing for the payment of the fee. Section 16A.1283 does not apply to establishment of this fee. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the commissioner of commerce to pay expenses incurred in processing applications for site permits in accordance with this chapter and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Subd. 2a. **Route application fee; appropriation.** Every applicant for a transmission line route permit shall pay to the commissioner of commerce a fee to cover the necessary and reasonable costs incurred by the commission in acting on the permit application and carrying out the requirements of this chapter. The commission may adopt rules providing for the payment of the fee. Section 16A.1283 does not apply to the establishment of this fee. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the commissioner of commerce to pay expenses incurred in processing



applications for route permits in accordance with this chapter and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Subd. 3. **Funding; assessment.** The commission shall finance its baseline studies, general environmental studies, development of criteria, inventory preparation, monitoring of conditions placed on site and route permits, and all other work, other than specific site and route designation, from an assessment made quarterly, at least 30 days before the start of each quarter, by the commission against all utilities with annual retail kilowatt-hour sales greater than 4,000,000 kilowatt-hours in the previous calendar year.

Each share shall be determined as follows: (1) the ratio that the annual retail kilowatt-hour sales in the state of each utility bears to the annual total retail kilowatt-hour sales in the state of all these utilities, multiplied by 0.667, plus (2) the ratio that the annual gross revenue from retail kilowatt-hour sales in the state of each utility bears to the annual total gross revenues from retail kilowatt-hour sales in the state of all these utilities, multiplied by 0.333, as determined by the commission. The assessment shall be credited to the special revenue fund and shall be paid to the state treasury within 30 days after receipt of the bill, which shall constitute notice of said assessment and demand of payment thereof. The total amount which may be assessed to the several utilities under authority of this subdivision shall not exceed the sum of the annual budget of the commission for carrying out the purposes of this subdivision. The assessment for the second quarter of each fiscal year shall be adjusted to compensate for the amount by which actual expenditures by the commission for the preceding fiscal year were more or less than the estimated expenditures previously assessed.

**History:** 1973 c 591 s 19 subds 1-3; 1975 c 271 s 6; 1977 c 439 s 25; 1981 c 356 s 313-315; 1982 c 482 s 5; 1Sp1985 c 13 s 240; 1987 c 186 s 15; 1987 c 304 s 1; 1988 c 690 art 1 s 4; 1989 c 335 art 1 s 269; 1990 c 597 s 56; 1995 c 220 s 110; 2001 c 212 art 7 s 28; 2005 c 97 art 3 s 11,12,19