

Taft/

# **Summary of Minnesota Certificate of Need and Route Permit Procedures for High Voltage Transmission Lines**

Current as of January 2025

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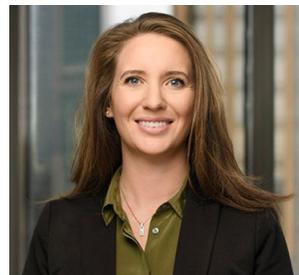
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## **I. INTRODUCTION**

This document reviews the procedures for seeking a certificate of need and a route permit from the Minnesota Public Utilities Commission (“Commission”) for the construction of a high-voltage transmission line in Minnesota. As of the development of this Summary, the Commission has not developed rules to augment Minn. Stat. § 216T. In brief, a certificate of need proceeding determines whether a proposed project is needed and what can be built and a route proceeding determines where it can be built. More specifically, in a certificate of need proceeding, the Commission determines (1) whether there is a need for the proposed project and (2) whether the size, type, and timing of the project as proposed presents the best system configuration to meet that need. In a route proceeding, the Commission determines where the facility should be constructed between the system configuration endpoints defined in the certificate of need proceeding.

By statute, neither process should take longer than a year. However, in practice, the deadline is routinely extended. Minn. Stat. § 216B.243, subd. 5 (requiring certificate of need decision within one year of filing an application but allowing Commission to extend deadline upon receiving the consent of the parties or on its own motion, for “good cause”); Minn. Stat. § 216I.06, subd. 4 (requiring decision in major review process within one year after completeness determination but allowing Commission to extend for three months for “just cause or upon agreement of the applicant”); Minn. Stat. § 216I.07, subd. 5 (requiring decision in standard review process within six months after completeness determination but allowing Commission to extend for three months for “just cause or upon agreement of the applicant”). If a high voltage transmission line qualifies for local approval of a route, that process is much shorter as it is generally regulated by a local jurisdiction’s conditional use permit process or other local zoning ordinance. Generally, if a high voltage transmission line requires a certificate of need, it will necessarily require a route permit or equivalent local approval. Some transmission projects, however, due to the differing definitions of qualifying facilities, do not require a certificate of need but must still obtain a route permit prior to construction.

The following summary provides both a brief overview of the procedures for obtaining a certificate of need and route permit for a high voltage transmission line project in Minnesota and a detailed summary of the key steps associated with the processes for obtaining a certificate of need and a route permit. The appendix includes process charts and checklists highlighting the various statutory and rule requirements for certificates of need and route permits (major, standard, and local processes).

## **II. EXECUTIVE SUMMARY**

### **A. Certificate of Need Procedures for High Voltage Transmission Lines**

Subject to certain exceptions, no “large energy facility,” which includes high voltage transmission lines, shall be sited or constructed in Minnesota without a certificate of need from the Commission. Minn. Stat. § 216B.243, subd. 2. For purposes of a certificate of need proceeding, a “large energy facility” as it relates to high voltage transmission lines, is defined as a transmission line “with a capacity of 300 kilovolts or more and greater than one mile in length”

and a transmission line “with a capacity of 100 kilovolts or more with more than 10 miles of its length in Minnesota.” Minn. Stat. § 216B.2421, subds. 2(2) and 2(3).

In making its decision on a certificate of need application, the Commission is required to consider the following general factors:

- A. the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant’s customers, or to the people of Minnesota and neighboring states . . . [;]
- B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record . . . [;]
- C. by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health . . . [; and]
- D. the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

Minn. R. 7849.0120. There are additional specific statutory and rule assessment criteria that the Commission must consider that are discussed in Section III.F.2 of this summary.

Under Minnesota’s Right of First Refusal (“ROFR”) statute, if a transmission line has been approved in a transmission plan of a federally registered planning authority (*i.e.*, approved by MISO in its annual Transmission Expansion Plan (“MTEP”)), then a transmission owner(s) must give notice to the Commission in writing within 60 days of that approval of its intent to construct, own, and maintain the transmission line. Minn. Stat. § 216B.246, subd. 3(a). A transmission owner(s) has 12 months from the date of the notice to file a certificate of need application for the transmission line. Minn. Stat. § 216B.246, subd. 3(a). This notice only needs to identify the entities that will construct, own, and operate the transmission line; it does not need to identify how these activities will be split among transmission owners.

A decision that must be made early in the application process is whether a joint certificate of need and route permit proceeding is desired or even feasible. The statute states a preference for joint hearings, but in practice, the Commission has not required them when the applicant has advocated for separate proceedings. *See, e.g., In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kV Transmission Projects*, Docket No. ET2, E002, et al./CN-06-1115, ORDER APPROVING NOTICE PLANS AND REQUIRING COMPLIANCE FILINGS at 12 (Nov. 3, 2006). Given that the ROFR statute requires a certificate of need to be filed within 12 months after providing notice to the Commission, a joint certificate of need and route permit proceeding may not be feasible if additional time is needed to develop a proposed route and to file a route permit

application. While there is nothing in Minnesota statute prohibiting it, there is also nothing allowing for an applicant for a certificate of need submitting an application by the 12-month deadline and request the Commission to suspend any further action on that application until a route permit application is also filed.

The first step in the certificate of need process is the submission of a “Notice Plan” for Commission approval. Minn. R. 7829.2550. This filing must be made at least three months prior to filing the certificate of need application and entails the applicant filing with the Commission a proposed plan for providing notice of the project to all persons “reasonably likely to be affected by the proposed line.” Minn. R. 7829.2550, Subp. 1. The applicant is required by rule to send out the notices within 30 days of Commission approval of the plan. Minn. R. 7829.2550, Subp. 6. An applicant, may, however, request a variance of this rule to, instead, tie the mailing and publication of notices to the filing of the certificate of need application. *See, e.g., In the Matter of the Application of Minnesota Power for a Certificate of Need for the Duluth Loop Reliability Project in St. Louis County*, Docket No. E015/CN-21-140, ORDER APPROVING NOTICE PLAN AND GRANTING VARIANCES AND EXEMPTIONS at 6 (May 17, 2021) (“The Commission grants a variance to Minnesota Rule 7829.2550, Subp. 6, and directs that the notices identified in the notice plan shall occur no more than 60 days and no less than 14 days prior to the filing of the certificate of need application.”).

The next step in the process is to determine whether to seek exemptions from any of the Commission’s data content requirements for the application which are set forth in the Commission’s rules. Minn. R. 7849.0200, Subp. 6 (providing process by which an applicant may request to be exempted from certain data content requirements for the application). If exemptions are desired, the request must be made to the Commission at least 45 days prior to filing the application. Minn. R. 7849.0200, Subp. 6.<sup>1</sup> Taft recommends filing the exemption request at the same time as the Notice Plan and filing both at least four months prior to the anticipated filing date of the certificate of need application.

Once the notice plan and any exemptions are approved, the applicant will send notices as required by the approved Notice Plan and then file its an certificate of need application demonstrating the need for the proposed project. The rules provide that the Commission is to make a decision on whether the application is complete within 30 days of submission. Minn. R. 7849.0200, Subd. 5. The Commission, however, may extend the time on its own motion for good cause or with the parties’ consent. Additionally, the Commission may, and typically does solicit comments on the completeness of the certificate of need application. Minn. R. 7829.2500, Subp. 6. The topics for comments include whether the certificate of need application contains all of the information required by Minn. R. Ch. 7849 (subject to any exemptions that were granted);

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<sup>1</sup> Minn. Stat. § 216B.243 was amended in 2024 to specifically prohibit the Commission from considering alternative end points for a high voltage transmission line that qualifies as a large energy facility unless alternative end points are either consistent with end points identified in a federally registered transmission planning authority transmission plan or otherwise agreed to for further evaluation by the applicant. Minn. R. 7849.0260(B)(6) states that an application must include, in its discussion of alternatives, transmission lines with different terminals or substations. This discrepancy has not been clarified by the Commission as of the date of this Summary. Therefore, an applicant may wish to seek an exemption from this rule requirement in any exemption request based on the language of the statute.

whether there are any issues of contested fact; whether the application should be subject to a joint proceeding with a route permit; whether the application should be evaluated using the Commission’s informal process or referred to a contested case proceeding by the Office of Administrative Hearings (“OAH”). See *In the Matter of the Application of Minnesota Power for a Certificate of Need for the Duluth Loop Reliability Project*, Docket No. E015/CN-21-140, NOTICE OF COMMENT PERIOD ON CERTIFICATE OF NEED APPLICATION COMPLETENESS (Oct. 28, 2021). In seeking these comments, the timeline for the Commission to issue its completeness determination is extended. If the Commission determines that the application is not complete, the applicant will have an opportunity to supplement the application with the required additional information. Minn. R. 7849.0200, Subp. 5.

After the application is deemed complete, and there is no identified contested issue of fact, the rules provide that the Commission may decide to act on a certificate of need application through an informal process. Under the informal process, the Commission issues a notice for comments and then solicits initial, reply, and supplemental comments on the certificate of need application and holds a public hearing designed to encourage members of the public to express their views on the application. Minn. R. 7829.1200; Minn. R. 7829.2500, Subp. 9.

If the Commission determines that there are contested issues of fact or other significant disputes, the Commission will refer a certificate of need application matter to the OAH for a contested case hearing before an administrative law judge (“ALJ”). A contested case proceeding is similar to a litigation proceeding that goes to trial. In a contested case proceeding, however, discovery is usually confined to responding to written information requests and direct, rebuttal, and other necessary testimony is pre-filed in written form. These procedures leave only cross-examination and entry of exhibits for the “live” contested case evidentiary hearing.

Prior to the public hearings, the Commissioner of the Department of Commerce (“Department”) must prepare an environmental report (“ER”) on the project. Minn. R. 7849.1800, Subp. 1. As of July 1, 2025, the Department of Commerce-Environmental Review and Analysis (“DOC-EERA”) staff will be moving to a unit organized within the Commission. See generally Minn. Stat. § 216I.

The DOC-EERA is responsible for holding a public meeting to gather public input on the scope of the environmental review. Minn. R. 7849.1400, Subp. 3. After the public meeting, the Commissioner issues a scoping decision regarding the system configuration alternatives to be considered. Minn. R. 7849.1400, Subp. 7. DOC-EERA<sup>2</sup> then issues an ER containing information on “the human and environmental impacts of the proposed project associated with the size, type, and timing of the project, system configurations, and voltage,” as well as “information on alternatives to the proposed project and . . . mitigating measures for anticipated adverse impacts.” Minn. R. 7849.1200.

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<sup>2</sup> As of January 1, 2025, DOC-EERA will be moved into a unit under the Commission. It is unclear if, under the new administrative organization, if the Department will produce an environmental report when a certificate of need application is submitted without a concurrent route permit application or if the new unit organized under the Commission will complete that document.

After the close of the contested case hearing record, the ALJ makes a report that includes conclusions and recommendations to the Commission along with any other information the Commission requested in its referral order. The parties then have an opportunity to file exceptions to the ALJ's report with the Commission. Minn. R. 7829.2700. The Commission makes its final determination at an agenda meeting after the time for filing exceptions has expired.

**B. Route Permit Procedures for High Voltage Transmission Lines**

The Minnesota Energy Infrastructure Permitting Act ("MEIPA") governs routing of high voltage transmission lines in Minnesota. Minn. Stat. 216I. Subject to certain exceptions, no person may construct a high voltage transmission line in Minnesota without a route permit from the Commission. Minn. Stat. § 216I.05, subd. 2. The definition of a "high voltage transmission line" in a route permit proceeding is broader than the high voltage transmission line definition of a "large energy facility" in the certificate of need statute. The MEIPA defines a high voltage transmission line as a conductor of electric energy and associated facilities that are "designed for and capable of operation at a nominal voltage of 100 kilovolts or more and [] greater than 1,500 feet in length." Minn. Stat. § 216I.02, subd. 8. In comparison, the certificate of need statute defines a "large energy facility" as a transmission line "with a capacity of 300 kilovolts or more and greater than one mile in length" and a transmission line "with a capacity of 100 kilovolts or more with more than 10 miles of its length in Minnesota." Minn. Stat. § 216B.2421, subsd. 2(2) and 2(3). As a result, some high voltage transmission lines require a route permit, but not a certificate of need.

The MEIPA provides for three types of Commission review processes for route permits: 1) the major route permit review process; 2) the standard review process; and 3) a local review process for a limited number of instances. Minn. Stat. §§ 216I.06, 216I.07, and 216I.08. The major and standard permit review processes follow similar procedures for the application process, but each requires different environmental review documents, public hearing requirements, and timelines.

Minnesota Statutes Section 216I.05, subdivision 11(a) provides that the Commission's "route permit determinations must (1) be guided by the state's goals to conserve resources; (2) minimize environmental impacts, minimize human settlement and other land use conflicts; (3) consider impacts to environmental justice areas, as defined in section 216B.1691, subdivision 1, paragraph (e), including cumulative impacts, as defined in section 116.065, to environmental justice areas; and (4) ensure the state's electric energy security through efficient, cost-effective power supply and electric transmission infrastructure." Subdivision 11 further provides:

(b) When determining whether to issue a site permit for a large energy infrastructure facility, the commission must include but is not limited to:

(1) evaluating research and investigations relating to: (i) large energy infrastructure facilities' effects on land, water, and air resources; and (ii) the effects water and air discharges and electric and magnetic fields resulting from large energy infrastructure facilities have on public

health and welfare, vegetation, animals, materials, and aesthetic values, including baseline studies, predictive modeling, and evaluating new or improved methods to minimize adverse impacts of water and air discharges and other matters pertaining to large energy infrastructure facilities' effects on the water and air environment;

(2) conducting environmental evaluation of sites and routes that are proposed for future development and expansion, and the relationship of proposed sites and routes for future development and expansion to Minnesota's land, water, air, and human resources;

(3) evaluating the effects of measures designed to minimize adverse environmental effects;

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

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

(6) evaluating adverse direct and indirect environmental effects that are unavoidable should the proposed site and route be accepted;

(7) evaluating alternatives to the applicant's proposed site or route, if applicable;

(8) when appropriate, evaluating potential routes that would use or parallel existing railroad and highway rights-of-way;

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

(10) evaluating the future needs for large energy infrastructure facilities in the same general area as any proposed site or route;

(11) evaluating irreversible and irretrievable commitments of resources if the proposed site or route is approved;

(12) when appropriate, considering the potential impacts raised by other state and federal agencies and local entities;

(13) evaluating the benefits of the proposed facility with respect to (i) the protection and enhancement of environmental quality, and (ii) the reliability of state and regional energy supplies;

(14) evaluating the proposed facility's impact on socioeconomic factors; and

(15) evaluating the proposed facility's employment and economic impacts in the facility site's vicinity and throughout Minnesota, including the quantity, quality, and compensation level of construction and permanent jobs. The commission must consider a facility's local employment and economic impacts, and may reject or place conditions on a site or route permit based on the local employment and economic impacts.

(c) If the commission's rules are substantially similar to existing federal agency regulations the utility is subject to, the commission must apply the federal regulations.

(d) The commission is prohibited from designating a site or route that violates state agency rules.

(e) When applicable, the commission must make a specific finding that the commission considered locating a route for a high-voltage transmission line on an existing high-voltage transmission route and using parallel existing highway right-of-way. To the extent an existing high-voltage transmission route or parallel existing right-of-way is not used for the route, the commission must state the reasons.

An applicant for a new high voltage transmission line route permit must first evaluate what process best fits the project.

The standard review process requires an Environmental Assessment ("EA") to be prepared by the applicant and filed with the route permit application. An EA is an environmental review document that discusses the project's human and environmental impacts and potential mitigation strategies. Projects that qualify for the standard review process include high-voltage transmission lines with a capacity between 100 kV and 300 kV and less than 30 miles in length, as well as high-voltage transmission lines over 300 kV where at least 80 percent of the proposed route follows existing transmission line rights-of-way. *See generally* Minn. Stat. § 216I.07. The EA focuses solely on the project's environmental impact and mitigation measures, without assessing the need for the project.

The major review process requires the preparation of an Environmental Impact Statement ("EIS") by the Commission to assess the potential environmental consequences. Projects that qualify for major review include high-voltage transmission lines with a capacity of 300 kV or more where less than 80 percent of the proposed route follows existing transmission line rights-of-way or transmission lines between 100 kV and 300 kV that exceed 30 miles in length. The EIS focuses solely on the project's, and any alternative's, environmental impact and mitigation measures, without assessing the need for the project. *See generally* Minn. Stat. § 216I.06. The EIS process provides for publication of a draft EIS, the opportunity for a public hearing and

comment period on the draft EIS, and then issuance of a final EIS. Minn. Stat. § 216I.06(c) and (d).

The local review process applies to smaller energy projects that can be handled by local units of government (“LGUs”), bypassing the need for a route permit from the Commission if local approval is granted. Projects that qualify for local review are: (1) high-voltage transmission lines with a capacity between 100 kV and 200 kV; (2) substations with a voltage designed for and capable of operation at a nominal voltage of 100 kV or more; (3) high-voltage transmission line extensions to a single customer that between 200 and 300 kV and less than 10 miles in length; and (4) high-voltage transmission line rerouting to serve the demand of a single customer, if at least 80 percent of the rerouted line is located on property owned or controlled by the customer or the owner of the transmission line. *See generally* Minn. Stat. § 216I.08. For projects undergoing local review, the LGU is responsible for conducting or requesting an Environmental Assessment and must allow public participation during the process, typically through the LGU’s conditional use permit process.

After the route permit process is determined, the application for either the major or standard review process must be drafted by the applicant in conformance with the content requirements outlined in Minn. Stat. § 216I.05, subd. 3, which specifies the necessary components of an application. The statutory requirements apply to both the major and standard review processes.

At least 30 days before filing a route permit application in the major and standard review process, the applicant must provide notice to: (1) LGUs within which a route may be proposed; (2) Minnesota Tribal governments, as defined under Minn. Stat. § 10.65, subd. 2; and (3) the state technical resource agencies. Minn. Stat. § 216I.05, subd. 5. This notice must describe the proposed project and provide the entities with the opportunity for preapplication coordination or feedback. The statutory preapplication consultation is not required for the local review process. *See* Minn. Stat. § 216I.08. However, early coordination with the LGU is still necessary to ensure compliance with local zoning regulations and to avoid delays during the local review.

Before a route permit application is filed, the applicant must provide a draft application to Commission staff for review. Minn. Stat. § 216I.05, subd. 6. If a route permit is planned to be submitted under the standard review process, a draft of the EA must also be provided for review. Minn. Stat. § 216I.07, subd. 3. The Commission staff’s review will focus on the completeness of the application and staff must provide the applicant with a summary of their completeness review.

Once a route permit application is submitted, the Commission or its designee has 10 working days to determine whether the application is complete. Minn. Stat. § 216I.05, subd. 7. Although the statute sets this deadline, historically, it has not been unusual for the Commission to take longer to reach a decision on the application’s completeness. In practice, this timeframe often extends to 60 days.<sup>3</sup> The Commission may also solicit comments from stakeholders regarding the completeness of the application before rendering a decision. *See In the Matter of*

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<sup>3</sup> However, it is unclear how the Commission will operate under the new statute starting in July 2025 as to timelines.

*the Application of Northern States Power doing business as Xcel Energy for a Route Permit for the Southwest Twin Cities Scott County – Westgate 115 kV Transmission Line Rebuild Project, Docket No. E002/TL-11-948, Notice Soliciting Comments (Apr. 18, 2012).*

If an application is made to a LGU for local review, the applicant must notify the Commission of its selection of the local review process within ten days of submitting an application to the LGU for approval of an eligible project. Minn. Stat. § 216I.08, subd. 3. The LGU has up to 60 days after receiving the application to refer the project to the Commission if it decides it no longer wants jurisdiction over the project. If the LGU requests that the Commission assume jurisdiction and make a decision on a route permit, the applicant must then submit an application that complies with the content requirements outlined in Minn. Stat. § 216I.05, subd. 3.

Upon acceptance of the route permit application as complete, the statute requires the Commission publish and provide notice about the project and to schedule a public meeting in the route project area to provide information to the public about the proposed project, to answer questions, to allow the public to make comments and to scope the EIS for the project or propose alternative routes for consideration in the addendum to the EA. In the major review process, the Commission will prepare an EIS, and in the standard review process, Commission staff will prepare an addendum to the EA prepared by the applicant if additional routes are identified after the public meeting. Minn. Stat. § 216I.06, subd. 1; Minn. Stat. § 216I.07, subd. 3.

For the major review process, the Commission may refer the matter to the OAH for a contested case hearing to be conducted before an ALJ. The contested case hearing and/or the public hearing will be held after the draft EIS is issued. During the contested case hearing, the draft EIS, testimony, and other exhibits will be introduced and cross-examination of those submitting testimony will occur. After the hearing, the ALJ will identify a date on which the hearing record will close. The record may close after the final EIS has been submitted so it is part of the record, but sometimes it will close before that submission. After the close of the record, the applicant and other parties will file post-hearing briefs and proposed findings. The ALJ will then issue a report to the Commission, which will include conclusions and recommendations to the Commission. Parties will have the opportunity to submit exceptions to the ALJ's report prior to the Commission's decision.

For the standard review process, after the Commission issues an addendum to the EA, the Commission will conduct a public hearing, at which the parties and the public will have an opportunity to submit testimony and exhibits. The Commission must conduct the public hearing under procedures established by the Commission and may request that an ALJ from OAH conduct the hearing and prepare a report. The applicant must be present at the hearing to answer any questions. The Commission must provide opportunity at the public hearing for any person to present comments and to ask questions of the applicant and Commission staff.

Under the local review process, the LGU is responsible for preparing an EA. Minn. Stat. § 216I.08, subd. 4. The LGU must solicit public input on the scope of the EA and prepare an EA that complies with the requirements outlined in Minn. Stat. § 216I.05, subd. 4. Coordination with the LGU is critical to ensure the procedural and environmental review requirements are met.

The MEIPA provides that the Commission must issue its final decision on a route permit within 60 days of receiving the ALJ's report or, if no report was requested, within 60 days of the record closing, and the Commission will hold a public meeting to deliberate and make its decision. Minn. Stat. § 216I.06, subd. 4; Minn. Stat. § 216I.07, subd. 5.

### **III. DETAILED SUMMARY OF CERTIFICATE OF NEED PROCEDURES FOR HIGH VOLTAGE TRANSMISSION LINES**

#### **A. Certificate of Need Application**

##### **1. Determining Whether Certificate of Need Is Required for Project**

Subject to certain exceptions, no “large energy facility” shall be sited or constructed in Minnesota without a Commission-issued certificate of need. Minn. Stat. § 216B.243, subd. 2. “Large energy facility” is defined to include, among other things, “any high-voltage transmission line with a capacity of 300 kilovolts or more and greater than one mile in length in Minnesota” and “any high-voltage transmission line with a capacity of 100 kilovolts or more with more than 10 miles of its length in Minnesota.” Minn. Stat. § 216B.2421; *see also* Minn. R. 7849.0030 (identifying facilities that require a certificate of need). The rules clarify that the requirement applies to “new” facilities or the “expansion of [a high voltage transmission line] when the expansion is itself of sufficient size to come within the definition of . . . ‘large high voltage transmission line’ in part 7849.0010.” Minn. R. 7849.0030. This definition refers back to that contained in Minnesota Statutes § 216B.2421, subdivision 2(2) “and associated facilities necessary for normal operation of the conductor, such as insulators, towers, substations, and terminals.” Minn. R. 7849.0010.

Projects that are exempt from this certificate of need requirement include, among others, “a high-voltage transmission line proposed primarily to distribute electricity to serve the demand of a single customer at a single location”; “the upgrade to a higher voltage of an existing transmission line that serves the demand of a single customer that primarily uses existing rights-of-way”; a “high-voltage transmission line of one mile or less required to connect a new or upgraded substation to an existing, new, or upgraded high-voltage transmission line, “transmission lines that directly interconnect large wind energy conversion systems, solar energy generating systems, or energy storage systems to the transmission system,” and “relocation of an existing high voltage transmission line to new right-of-way, provided that any new structures that are installed are not designed for and capable of operation at higher voltage.” Minn. Stat. § 216B.243, subd. 8.

Other exemptions to the certificate of need requirement include an innovative energy project exception for qualifying facilities (*see* Minn. Stat. § 216B.1694, subd. 2(a)(1)); a project that has received resource plan approval in proceedings conducted like those for a certificate of need (*see* Minn. Stat. § 216B.2422, subd. 6); and a project that is certified by the Commission as a priority electric transmission project as part of the biennial planning process (*see* Minn. Stat. § 216B.2425, subd. 4).

## **2. Determining Whether to Submit a Joint Application for Certificate of Need and Route Permit**

There is a statutory preference for joint hearings on certificate of need and routing applications. The controlling statute provides: “Unless the commission determines that a joint hearing on siting and need under this subdivision and chapter 216I, is not feasible or more efficient, or otherwise not in the public interest, a joint hearing under these subdivisions and chapter 216I must be held.” Minn. Stat. § 216B.243, subd. 4. Nevertheless, this preference is not uniformly applied. The reason, in part, is that there is no requirement that an applicant file a certificate of need and routing permit application simultaneously, so applicants can, and do, file applications sequentially. In addition, given that Minnesota’s ROFR statute requires that a certificate of need application be filed within one year of filing a notice of intent, combining the need and route processes may not be feasible. Minn. Stat. § 216B.246, subd. 3(a). In such cases, for example in the CapX2020 Certificate of Need matter, the Commission has been willing to make the necessary finding that joint hearings are not feasible or more efficient, or otherwise not in the public interest. *See, e.g., In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kV Transmission Projects*, Docket No. ET2, E002, et al./CN-06-1115, ORDER APPROVING NOTICE PLANS AND REQUIRING COMPLIANCE FILINGS at 12 (Nov. 3, 2006).

## **3. Right of First Refusal Notice**

Under Minnesota’s ROFR statute, if a transmission line has been approved in a transmission plan of a federally registered planning authority (*i.e.*, approved by MISO in its annual Transmission Expansion Plan (“MTEP”)), then a transmission owner(s) must give notice to the Commission in writing within 60 days of that approval of its intent to construct, own, and maintain the transmission line. Minn. Stat. § 216B.246, subd. 3(a). A transmission owner(s) has 12 months from the date of the notice to file a certificate of need application for the transmission line. Minn. Stat. § 216B.246, subd. 3(a).

## **4. Notice Plan**

Three months before filing a certificate of need application for a high voltage transmission line, the applicant must file a “Notice Plan.” The Notice Plan must describe how the applicant will provide notice of the proposed project to all persons “reasonably likely to be affected by the proposed line.” Minn. R. 7829.2550, Subp. 1. The Notice to be sent to these persons must meet the content requirements of Minn. R. 7829.2550, Subp. 4. In the Notice Plan the applicant must state that it will provide notice to the following persons by the method specified:

- (1) direct mail notice to landowners (based on county tax assessment rolls) reasonably likely to be affected by the proposed transmission line;
- (2) direct mail notice to all mailing addresses within the area reasonably likely to be affected by the proposed transmission line;

(3) direct mail notice to tribal governments and governments of towns, statutory cities, home rule charter cities, and counties whose jurisdictions are reasonably likely to be affected by the proposed transmission line; and

(4) newspaper notice to members of the public in areas reasonably likely to be affected by the proposed transmission line.

Minn. R. 7829.2550, Subp. 3.

An applicant shall serve its proposed Notice Plan on the Department of Commerce, the Residential and Small Business Utilities Division of the Office of the Attorney General, and all persons on the “General List of Persons Interested in Power Plants and Transmission Lines” maintained by the Commission. Minn. R. 7829.2550, Subp. 1. Initial comments on proposed Notice Plans must be filed within 20 days of the date of filing. Minn. R. 7829.2550, Subp. 2. Reply comments must be filed within 20 days of the expiration of the initial comment period. *Id.* The Commission staff will then file briefing papers, before the Commission determines whether to accept the Notice Plan. If there is no controversy related to the proposed Notice Plan, the Commission may elect to approve the Notice Plan through its consent agenda rather than a formal hearing.

The Notice Plan rule requires that the applicant implement its Notice Plan within 30 days of the Commission’s approval of the proposed plan. Minn. R. 7829.2550, Subp. 6. An applicant, may, however, request a variance of this rule to, instead, tie the mailing and publication of notices to the filing of the certificate of need application. *See, e.g., In the Matter of the Application of a Certificate of Need for the Iron Range – Benton County – Big Oaks Transmission Project*, Docket No. E015, ET2/CN-22-416, ORDER (June 21, 2023) Granting applicants’ request to implement the notice plan no more than 60 days and no less than one week prior to the filing of the certificate of need application).

## **5. Determining Whether to Request Exemptions from Any Application Data Requirements**

The governing rules provide detailed content requirements for a certificate of need application. *See* Minn. Stat. §§ 216B.243, 216B.2426; Minn. R. 7849.0120, 7849.0220, 7849.0240 and 7849.0260 to 7849.0340. Before submitting an application, an applicant may request to be exempted from any data requirements of Minnesota Rules parts 7849.0010 to 7849.0400 if the applicant “(1) requests an exemption from specified rules, in writing to the commission, and (2) shows that the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document.” Minn. R. 7849.0200, Subp. 6. Exemptions may be appropriate depending on the need to be addressed. In cases where the need is providing additional transmission capacity to support new and existing renewable generation, for example, many of the load forecasting data requirements are not relevant.

A request for exemption must be filed at least 45 days before submitting an application. *Id.* The Commission shall respond in writing to a request for exemption within 30 days of receipt and include the reasons for the decision. Minn. R. 7849.0200, Subpart 6. The actual time between submission of the request for exemptions and final decision by the Commission will likely take longer than 30 days. *See In the Matter of the Application of a Certificate of Need for*

*the Iron Range – Benton County – Big Oaks Transmission Project*, Docket No. E015, ET2/CN-22-416, ORDER (June 21, 2023) (2 months from submission of exemption request to final written order)); *In the Matter of the Application for a Certificate of Need for the Big Stone South – Alexandria – Big Oaks Transmission Project*, Docket No. E017, ET2, E002, ET010, E015/CN-22-538, ORDER (April 19, 2023) (1 month and 9 days from submission of exemption request to final written order).

## **6. Preparation of Application for Certificate of Need**

When drafting an application for a certificate of need, satisfying the content requirements is the paramount consideration.

### **a. Content Requirements**

Minnesota Rule 7849.0220 provides that an application for a certificate of need “shall include all of the information required by parts 7849.0240 and 7849.0260 to 7849.0340.” The content required by these rules is summarized below:<sup>4</sup>

- **Need Summary**: An application must contain a summary of the major factors that justify the need for the proposed facility. The summary must not exceed, without Commission approval, 15 pages in length, including text and figures. Minn. R. 7849.0240, Subp. 1.
- **Additional Considerations**: An application must contain an explanation of the relationship of the proposed facility to the following socioeconomic considerations: (1) “socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality”; (2) “promotional activities that may have given rise to the demand for the facility”; and (3) “the effects of the facility in inducing future development.” Minn. R. 7849.0240, Subp. 2.
- **Description of the Facility**: An application must contain a description of various information pertaining to the type and general location of the proposed facility. *See* Minn. R. 7849.0260(A) for specific information to be included.
- **Alternatives to the Facility**: An application must contain a discussion of the availability of alternatives to the facility, including but not limited to new generation of various technologies, sizes, and fuel types; upgrading of existing transmission lines or existing generating facilities; transmission lines with different design voltages or with different numbers, sizes, and types of conductors; transmission lines with different terminals or substations; double circuiting of existing transmission lines; DC or AC transmission

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<sup>4</sup>A Certificate of Need Application Completeness Checklist, which lists the content requirements for a certificate of need application, is included in the appendices attached hereto, Tab 6.

lines; overhead or underground transmission line; and any reasonable combinations of the above alternatives. Minn. R. 7849.0260 (B).<sup>5</sup>

- Comparison of Facility and Alternatives: An application must contain a discussion of various factors in relation to the proposed facility and each of the alternatives discussed pursuant to Minn. R. 7849.0260(B). Minn. R. 7849.0260(C) (providing list of factors to be considered).
- System Map: An application must contain a map (of appropriate scale) showing the applicant's system or load center to be served by the proposed facility. Minn. R. 7849.0260(D).
- Other Information: An application must contain such other information about the proposed facility and each alternative as may be relevant to determination of need. Minn. R. 7849.0260(E).
- Peak Demand and Annual Consumption Forecast: An application must contain "pertinent data concerning peak demand and annual electrical consumption within the applicant's service area and system." *See* Minn. R. 7849.0270 (providing direction on content of forecast, forecast methodology, database for forecast, and assumptions and special information with respect to forecast).
- System Capacity: An application must include a description of the ability of the applicant's existing system to meet the demand for electrical energy forecast and the extent to which the proposed facility will increase this capability. *See* Minn. R. 7849.0280 (providing what information must be included in this description).
- Conservation Programs: An application must include information regarding, among other things, the efforts, goals, and impacts with respect to the applicant's present and future conservation and efficiency programs. *See* Minn. R. 7849.0290 (listing the information to be included).
- Consequences of Delay: An application must include a discussion of anticipated consequences to its system, neighboring systems, and the power pool should the proposed facility be delayed one, two, and three years, or postponed indefinitely. Minn. R. 7849.0300.

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<sup>5</sup> Minn. Stat. § 216B.243 was amended in 2024 to specifically prohibit the Commission from considering alternative end points for a high voltage transmission line that qualifies as a large energy facility unless alternative end points are either consistent with end points identified in a federally registered transmission planning authority transmission plan or otherwise agreed to for further evaluation by the applicant. Minn. R. 7849.0260(B)(6) states that an application must include, in its discussion of alternatives, transmission lines with different terminals or substations. This discrepancy has not been clarified by the Commission as of the date of this Summary. Therefore, an applicant may wish to seek an exemption from this rule requirement in any exemption request based on the language of the statute.

- Environmental Information: An application shall include environmental data for the proposed facility and for each alternative considered in detail in response to Minn. R. 7849.0260(C). Minn. R. 7849.0310.
- Generating Facilities: An application shall provide certain information for any alternative that would involve construction of a large electric generating facility. *See* Minn. R. 7849.0320 (listing information to be provided).
- Transmission Facilities: An application shall provide certain information including ozone and schematic drawings of structures for each alternative that would involve construction of a large high voltage transmission line. *See* Minn. R. 7849.0330 (listing information to be provided).
- No-Facility Alternative: An application shall include certain information for a no-facility alternative at the three levels of demand provided for in Minn. R. 7849.0300. *See* Minn. R. 7849.0340 (listing information to be provided).

b. Format Requirements

All documents, forms, and schedules filed with an application must be typed on 8-1/2 inch by 11-inch paper “except for drawings, maps, and similar materials.” Minn. R. 7849.0200, Subp. 2. An application must contain a title page and a complete table of contents that includes the applicable rule by the titles and numbers given in Minn. R. 7849.0010 to 7849.0400. *Id.* The date of preparation and the applicant’s name must appear on the title page, as well as on each document filed with the application. *Id.* All appendices should be labeled in the header or footer with the appendix name, page number, and docket number(s). If there is any trade secret information in the application, PUBLIC and NONPUBLIC versions of the application or appendix must be prepared, marked accordingly, and accompanied with a trade secret justification.

If an application must be changed or corrected after it has already been filed, each page with a change or a correction to a previously filed page must be marked with the word “REVISED” and with the date the revision was made. Minn. R. 7849.0200, Subp. 3. The original copy of the changes or corrections must be filed with the administrative law judge, and the remaining copies must be submitted to the commission. *Id.* The applicant shall send to those persons who received a copy of the application a like number of copies of changed or corrected pages. *Id.*

**7. Filing of Application for Certificate of Need**

a. Filing Procedures

The administrative rules governing certificates of need provide that an original and 13 copies of the application must be filed with the Commission and that copies shall be provided to other state agencies with regulatory responsibilities in connection with the proposed facility and to other interested persons who request copies. Minn. R. 7849.0200, Subp. 2. By statute, materials that are to be filed with the Commission must be filed via the Commission’s electronic

filing system. Minn. Stat. § 216.17, subd. 3. The applicant must also provide a hard copy and an electronic copy of the application and all accompanying materials to the Department and a copy to the Residential Utilities Division of the Office of Attorney General. Minn. R. 7849.7040; Minn. R. 7829.2500, Subp. 3.

As many of the state agencies no longer want paper copies, or fewer paper copies than are required by the rules, it is recommended that the applicant asks how many copies the state agencies want of an application. The applicant shall also serve a copy of the application or at least a copy of the summary of the application on “those persons on an applicable general service list and on those persons who were parties to its last general rate case or incentive plan proceeding, if applicable.” Minn. R. 7829.2500, Subp. 3. The applicant is to maintain a distribution list of the application copies. A cover letter signed by an authorized officer or agent of the applicant must accompany the application. Minn. Stat. 7849.0200, Subp. 4. The cover letter must specify the type of facility for which a certificate of need is requested. *Id.*

b. Filing Fees

The fee for processing an application is \$10,000 plus \$40 per kilovolt of design voltage for large high voltage transmission lines, plus “such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility.” Minn. R. 7849.0210, Subp. 1. The rules provide for the following payment schedule: 25 percent of the fee must accompany the application<sup>6</sup> and the balance must be paid in three equal installments within 45, 90, and 135 days after submission of the application. Minn. R. 7849.0210, Subp. 2. The applicant will be notified and billed for costs not already mentioned above. *Id.* The billing of such additional fees should be accompanied by an itemized document showing the necessity for the additional assessment. *Id.* The Commission cannot enter a decision on the certificate of need if any fee amount remains outstanding. Minn. R. 7849.0210, Subp. 3.

**B. Completeness Determination**

The rules provide that the Commission must notify the applicant within 30 days of the receipt of an application if the application is not substantially complete. Minn. R. 7849.0200, Subp. 5. However, this timeline is routinely extended. Additionally, the Commission may solicit comments related to the completeness of the certificate of need application. Minn. R. 7829.2500, Subp. 6. In seeking these comments, the timeline to receive a completeness determination is extended. During the comment period on completeness, the Commission also requests comment on whether the certificate of need should be evaluated in the informal process or referred to the OAH for a contested case proceeding. Upon notification, the applicant may correct any deficiency with a supplemental filing. Minn. R. 7849.0200, Subp. 5. If the revised application is substantially complete, the date of its submission is considered the application date. *Id.*

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<sup>6</sup> Many applicants maintain a state general fund and costs are covered through that fund in lieu of providing a paper check.

### **C. Other Agency Participation**

Other state agencies authorized to issue permits for siting, construction, or operation of large energy facilities, and those state agencies authorized to participate in matters before the Commission involving utility rates and adequacy of utility services, are required by statute to present their position regarding need and participate in the public hearing process prior to the issuance or denial of a certificate of need. Minn. Stat. § 216B.243, subd. 7(a). The issuance of a certificate of need, however, is “the sole and exclusive prerogative of the [C]ommission and . . . shall be binding upon other state departments and agencies, regional, county, and local governments and special purpose government districts,” subject to certain statutory exceptions. *Id.*

### **D. Environmental Review**

After submission of an application, the Commissioner of the Department<sup>7</sup> must prepare an ER on a proposed high voltage transmission line at the “need stage.” Minn. R. 7849.1200.<sup>8</sup> The ER must contain information on “the human and environmental impacts of the proposed project associated with the size, type, and timing of the project, system configurations, and voltage,” as well as “information on alternatives to the proposed project and . . . mitigating measures for anticipated adverse impacts.” *Id.* The Commissioner is responsible for the completeness and accuracy of all information in the environmental report. *Id.* Minn. R. 7849.1300 to 7849.2100 further explain, among other things, what information is required for an ER, the preparation process of an ER, and the content of the ER.

The applicant is required to pay the Commissioner of the Department the “reasonable costs incurred by the commissioner in preparing the [ER].” Minn. R. 7849.2100, Subp. 1. The applicant must pay “a minimum payment of \$5,000 to the commissioner *at the time the application* or request is filed with the [Commission].” Minn. R. 7849.2100, Subp. 2 (emphasis added). Any additional required payments shall be made within 30 days of notification by the agency that additional fees are necessary for completion of the environmental review. *Id.* After receiving a final accounting, the applicant shall make the final payment (if any amount remains owed) within 30 days of notification. *Id.*

#### **1. Notice of Application**

Upon receipt of an application for a certificate of need, the Commissioner of the Department must mail notice of the application (containing specific information listed in Minn. R. 7849.1400, Subp. 2) to the following: (1) those on the list of persons who have requested to be

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<sup>7</sup> It is anticipated that this and all other tasks designated to the Department in Minn. R. 7849 will be performed by Commission staff after DOC-EERA staff moves to the Commission in July 2025.

<sup>8</sup> The Minnesota Rules have not been updated to recognize the addition of the ER rules, 7849.1200 to 7849.2100. Minn. R. 7849.0230 still provides that the applicant is to designate certain information in the application as “draft environmental report” and distribute it in accordance with Minn. R. 4410.7100, Subp. 5, which has been repealed. but the Commission has recognized that the new rules supplanted Minnesota Rule 7849.0230. *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kV Transmission Projects*, Docket No. ET-2, E-002, *et al.*/CN-06-1115, ORDER ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE PENDING SUPPLEMENTAL FILING at 4 (Nov. 21, 2007).

notified of applications regarding transmission line or generation facilities maintained pursuant to Minnesota Rule 7850.2100; (2) those on the general service list maintained by the applicant; (3) those on the project service list; (4) those who are required to be given notice under Commission rules; (5) local governmental officials in the area of the proposed project; and (6) landowners with property “within any route identified by the applicant as a preferred location for the project or . . . [any] route under serious consideration by the applicant.” Minn. R. 7849.1400, Subp. 1.<sup>9</sup>

The applicant will often assist the Department by completing this Notice mailing or providing the list of landowners to the Department.

## **2. Notice of Public Meeting**

The Commissioner of the Department must hold a public meeting within 40 days after receipt of an application for a certificate of need. Minn. R. 7849.1400, Subp. 3. At least 15 days prior to the meeting, the Commissioner shall mail notice of the public meeting to those who were required to receive the notice of the application. *Id.* The Commissioner shall also publish notice of the meeting in a newspaper of local circulation in the area at least 10 days before the meeting, as well as publish notice in the EQB Monitor and post the notice on the Commissioner’s website. *Id.*

## **3. Public Meeting/ER Scoping Meeting**

The public meeting must be held in a location that is “convenient for people who live near a proposed project.” *Id.* At the public meeting, the Department staff shall explain the process for preparation of the ER, and the public must be afforded an opportunity to ask questions and present comments and to suggest alternatives and possible impacts to be evaluated in the ER. Minn. R. 7849.1400, Subp. 4. The Commissioner is to provide at least 20 days from the day of the public meeting for the public to submit written comments regarding the proposed project. *Id.* The meeting shall be audio recorded. *Id.* Representatives of the applicant shall attend the public meeting in order to respond to questions about the proposed project. Minn. R. 7849.1400, Subp. 5.

The applicant will have an opportunity to respond to any request for an alternative or impact to be included in the ER. Minn. R. 7849.1400, Subp. 6. The Commissioner may “exclude from analysis an alternative that does not meet the underlying need for or purpose of the project or that is not likely to have any significant environmental benefit compared to the project as proposed, or if another alternative that will be analyzed is likely to have similar environmental

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<sup>9</sup> Minn. R. 7829.2500 requires the applicant to “publish notice of the filing [of a certificate of need application] in newspapers of general circulation throughout the state.” The Commission has not clarified whether this rule must be complied with in addition to the Notice Plan publication or if the Notice Plan publication is sufficient to comply with this rule. If a variance from the requirement that published notices required by the Notice Plan be completed within 30 days of the Commission’s approval of the Notice Plan is requested to, instead, require the applicant to provide published notices within 30 days of, or prior to, the submission of the certificate of need application, separate compliance with Minnesota Rule 7829.2500 is likely not required.

benefits with substantially less adverse economic, employment, or sociological impacts than the suggested alternative.” *Id.*

#### **4. Commissioner Decision**

Within 10 days after close of the public comment period, the Commissioner shall issue an order (often referred to as the “scoping decision”) determining (1) the alternatives to be addressed in the environmental report; (2) the specific potential impacts to be addressed; (3) the schedule for completion of the ER; and (4) other matters to be included in the ER. Minn. R. 7849.1400, Subp. 7. At the time of the Commissioner’s scoping decision, the Commissioner shall mail the order to those persons who have requested to be notified. Minn. R. 7849.1400, Subp. 8. These deadlines will be extended based upon the workload of the Department and on the number and complexity of scoping comments received. The Commission has, recently, included its own review and approval of the scoping decision, whether by consent agenda or regular agenda meeting.

#### **5. Notice of Availability of Environmental Report**

The ER is to be completed within four months of the submission of the application and accompanying materials to the Commissioner of the Department. Minn. R. 7849.1400, Subp. 9. Upon completion of the ER, the Commissioner shall publish notice in the EQB Monitor of the availability of the ER and mail notice of the availability of the ER to those persons who have requested to be notified. Minn. R. 7849.1400, Subp. 10. The Commissioner shall provide a copy of the ER to the Commission and to any other public agency with authority to permit or approve the proposed project as well as post the ER on the Department’s website. *Id.*

#### **6. Environmental Report Content**

Certain information must be contained in the ER. Minn. R. 7849.1500. It is prudent for the applicant to include as much of this information in the application as possible. Additionally, the Department may request certain information from the applicant to complete its review. The required information for high voltage transmission lines includes:

- 1) General description of the proposed project and associated facilities.
- 2) General description of alternatives.
- 3) Analysis of human and environmental impacts of the proposed project and identified alternatives.
- 4) Analysis of project-specific impacts.
- 5) Analysis of mitigative measures that could be reasonably implemented to minimize or eliminate adverse impacts for the proposed project or alternatives.
- 6) Analysis of the feasibility of each alternative.
- 7) List of permits required for the project.

- 8) Discussion of other matters identified by the Commissioner of the Department.
- 9) Typical right-of-way required for construction.
- 10) Anticipated size and type of structures required.
- 11) Electric and magnetic fields anticipated for the line and associated facilities.
- 12) Noise impacts anticipated for the line and associated facilities.
- 13) Visual impacts anticipated for the line and associated facilities.

Minn. R. 7849.1500, Subps. 1 and 3.

## **7. Commission Decision Regarding the Environmental Report**

The ER must be completed, and copies provided to the Commission, before the Commission can hold any public hearing (except for conducting prehearing matters) or render a final decision on an application. Minn. R. 7849.1800, Subp. 1. At the time the Commission makes a final decision on the application, the Commission shall determine whether the ER and the record created in the matter address the issues identified by the Commissioner's scoping decision. Minn. R. 7849.1800, Subp. 2. The Commission may direct the Commissioner to prepare a supplement to the ER if the Commission determines that an additional alternative or impact should be addressed, or supplemental information should be provided. *Id.*

## **8. Joint Proceedings**

If an applicant for a certificate of need applies for a route permit at the same time, or within a timeframe that allows the two applications to be processed together, the Commissioner does not need to prepare an ER. Minn. R. 7849.1900. If the route permit application is submitted under the major review process, the Commissioner may elect to prepare an EIS instead of an ER; if submitted under the standard review process, the applicant may prepare an EA with its route permit application and the Commission staff may issue an addendum to that EA.<sup>10</sup> Minn. R. 7849.1900, Subps. 1 and 2; Minn. Stat. § 216I.07, subd. 3.

### **E. Informal Proceedings**

The Commission may decide to act on a certificate of need application through an informal process and hold a public hearing designed to encourage members of the public to express their views on the application. Minn. R. 7829.1200; Minn. R. 7829.2500, Subp. 9. In an informal proceeding, Commission staff will issue a notice seeking initial comments, reply comments, and supplemental comments on whether the Commission should issue a certificate of need for the project. *See In the Matter of the Application of a Certificate of Need for the Big*

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<sup>10</sup> The EA or EIS must include the information required for environmental review under the certificate of need rules and the MEIPA.

**F. Public Hearing**

By statute, the Commission must “hold at least one public hearing pursuant to chapter 14,” which shall be held “at a location and hour reasonably calculated to be convenient for the public.” Minn. Stat. § 216B.243, subd. 4. “An objective of the public hearing shall be to obtain public opinion on the granting of a certificate of need and, if a joint hearing is held, a site or route permit.” *Id.* The Commission is to designate a Commission employee whose duty shall be to facilitate citizen participation in the hearing process. *Id.* Public hearings are usually held in the project area. The Commission may refer the matter to the OAH for an ALJ to conduct a contested case. The required public hearing is usually scheduled to take place during the same time period that the contested case evidentiary hearing is being conducted. *See* Minn. R. 7829.2500, Subp. 9 (requiring a public hearing designed to encourage members of the public to express their views on the application but not specifying when the hearing should take place).

**G. Contested Case Proceedings**

The Commission may also refer a certificate of need application matter to the OAH for a contested case proceeding.

**1. Contested Case Proceeding Process**

A contested case proceeding is similar to a litigation proceeding that goes to trial. An ALJ assigned to the matter has responsibilities similar to those of a judge in a court of law. *See* Minn. R. 1400.5500 (enumerating ALJ responsibilities). The evidentiary hearings are separate from the public meetings. The evidentiary hearings are typically held at the Commission offices in St. Paul. The contested case proceedings are governed by Minnesota Rule Chapter 1400. Each of the rules that govern a contested case are not summarized here, but a few of the rules merit highlighting.

- Notice and Order for Hearing: A contested case is commenced, after an ALJ has been assigned, by service of a notice of and order for hearing by the Commission (the referring agency). Minn. R. 1400.5600, Subp. 2 (listing information to be included in this Notice and Order).
- Notice of Appearance: Within 20 days of the date of service of the notice of and order for hearing (or sooner if the ALJ schedules a prehearing conference before the 20 day deadline), each party intending to appear at a contested case hearing shall file with the ALJ and serve upon other known parties a notice of appearance which shall advise the ALJ of the party’s intent to appear and shall indicate the title of the case. The Commission’s ordering the hearing, the party’s current address and telephone number, and the name, office address, and telephone number of the party’s attorney or other representative. Minn. R. 1400.5700.

- Right to Counsel: Parties may be represented by an attorney but do not need to be represented by an attorney and instead can participate pro se or be represented by a person of their choice if not otherwise prohibited as the unauthorized practice of law. Minn. R. 1400.5800; Minn. R. 1400.7100, Subp. 5.
- Intervention in Proceedings as Party: Any person who is not named in the notice of hearing who desires to intervene in a contested case as a party shall submit a timely written petition to intervene to the ALJ and shall serve the petition upon all existing parties and the Commission. Minn. R. 1400.6200, Subp. 1. The ALJ may, and often does, set a deadline for the submission of intervention petitions. *Id.*
- Objection to Petition for Intervention: Within seven days of service of a petition, any party may object to the petition for intervention by filing a written notice of objection. The notice must state the reasons for the objection and shall be served upon all parties, the Commission, and the person submitting the objectionable petition. Minn. R. 1400.6200, Subp. 2.
- Parties' Rights: Each party has the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses. Minn. R. 1400.7100.
- Nonparties' Rights: With the approval of an ALJ, any person may offer testimony or other evidence relevant to the case and if does so, may be questioned by parties to the case and by the ALJ. Minn. R. 1400.7150, Subp. 1. The ALJ may allow nonparties to question witnesses if deemed necessary for the development of a full and complete record. Minn. R. 1400.7150, Subp. 2. Prior to the prehearing conference, the parties typically work to develop a proposed procedural schedule and protective order for the ALJ to review.
- Prehearing Conference: An ALJ will hold an initial prehearing conference to identify the issues and to set a schedule for the contested case proceeding, identifying the timing for submission of pre-filed testimony, dispositive motions, exchange of exhibit and witness lists, etc. Minn. R. 1400.6500.
- Motions: Parties may make motions to the ALJ; such motions shall be in writing, state with particularity the grounds therefore, and shall set forth the relief or order sought. Minn. R. 1400.6600. No memorandum of law may exceed 25 pages, except with the permission of the judge. *Id.* If any party desires a hearing on the motion, a request for a hearing must be made at the time of the submission of the party's motion or response. *Id.* No motions shall be made directly to or be decided by the Commission subsequent to the assignment of the ALJ and prior to the completion and filing of the ALJ's report unless the motion is certified to the Commission by the ALJ. Minn. R. 1400.7600 (listing factors ALJ should consider when determining whether to certify a motion to the Commission). Uncertified motions shall be made to and decided by the ALJ and considered by the Commission in its consideration of the record as a whole subsequent to the filing of the ALJ's report. *Id.*

- Discovery: Although the rules allow “any means of discovery available pursuant to the Rules of Civil Procedure for the District Court of Minnesota,” the primary discovery tool used in a contested case proceeding involving high voltage transmission lines is information requests. Minn. R. 1400.6700. These are similar to interrogatories. The scheduling order, which usually provides the time within which an information request must be answered, should be consulted and generally provides that a response is due 10 business days from receipt of the information request. The rules do allow for requests for admission of fact or opinions and depositions if deemed necessary. Minn. R. 1400.6800 and 1400.6900. However, these discovery mechanisms have not been used in recent cases.
- Pre-filed Testimony/Witnesses: Contested case proceedings provide for pre-filing written direct testimony by the parties long before the actual evidentiary hearing but during a time frame dictated by the ALJ’s scheduling order. All parties are then allowed to file rebuttal testimony and in some cases a scheduling order will allow for subsequent surrebuttal testimony. By doing this, only cross-examination remains to be conducted “live” at the evidentiary hearing. Any objection to testimony and evidence attempted to be admitted through this testimony that is based on a lack-of-foundation argument must be made two business days before the evidentiary hearing, otherwise the foundation objection is considered waived. Minn. R. 1400.6950, Subp. 2.
- Evidentiary Hearing: The ALJ shall preside at the evidentiary hearing in a contested case and shall maintain the official record for that case. Minn. R. 1400.7400 and 1400.7800. Rules of evidence, specified in Minnesota Rule 1400.7300, apply. Normally, contested case evidentiary hearings are open to the public, and similar to a trial, parties are allowed to give opening statements (although rarely do),<sup>11</sup> witnesses are then cross-examined, and the parties are allowed to give closing arguments (again, a rare occurrence). Minn. R. 1400.7800.
- Post-Hearing Briefing and Proposed Findings: The record of the contested case proceeding shall be closed upon the receipt of any post-hearing briefing, hearing transcripts, or late filed exhibits agreed upon by the parties and the ALJ. Minn. R. 1400.7800(J). The hearing schedule typically provides for initial and reply briefs as well as proposed findings by the applicant that are redlined by other parties during the reply brief period.
- ALJ’s Report: Following the close of the record, the ALJ shall make a report (pursuant to Minn. Stat. § 14.50) which states findings of fact, conclusions of law, and recommendations. Minn. R. 1400.8100. Upon completion of this report, a copy of the report shall be served upon all parties. *Id.*
- Exceptions to ALJ’s Report: Exceptions must be filed and served within 15 days of the filing of the ALJ Report. Minn. R. 7829.2700, Subp. 1. Replies to exceptions must be filed and served on all other parties within 10 days of the due date for exceptions. Minn.

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<sup>11</sup> The parties often confer and make a joint recommendation to the ALJ on opening statements.

R. 7829.2700, Subp. 2. Replies are not permitted in cases subject to statutory deadlines.  
*Id.*

## **2. Certificate of Need Assessment Criteria**

In making his or her decision, the ALJ will assess the application and the developed record, in accordance with the criteria provided by statute and rule. The Commission will consider the same assessment criteria when issuing its final decision on the certificate of need. The certificate of need assessment criteria for a proposed transmission facility are summarized below.

Minnesota Statutes Section 216B.243, subdivision 3, provides that the applicant must “show that the demand for electricity cannot be met more cost effectively through energy conservation and load-management measures unless the applicant has otherwise justified its need.” Section 216B.243 also provides that the Commission shall evaluate the following factors when assessing the need for the proposed project, including:

- 1) the accuracy of the long-range energy demand forecasts on which the necessity for the facility is based;
- 2) the effect of existing or possible energy conservation programs under sections 216C.05 to 216C.30 and this section or other federal or state legislation on long-term energy demand;
- 3) the relationship of the proposed facility to overall state energy needs, as described in the most recent state energy policy and conservation report prepared under section 216C.18, or, in the case of a high-voltage transmission line, the relationship of the proposed line to regional energy needs, as presented in the transmission plan submitted under section 216B.2425;
- 4) promotional activities that may have given rise to the demand for this facility;
- 5) benefits of this facility, including its uses to protect or enhance environmental quality, and to increase reliability of energy supply in Minnesota and the region;
- 6) possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy generation and transmission facilities, load-management programs, and distributed generation, except that the Commission must not require evaluation of alternative end points for a high-voltage transmission line qualifying as a large energy facility unless the alternative end points are (i) consistent with end points identified in a federally registered planning authority transmission plan, or (ii) otherwise agreed to for further evaluation by the applicant;

- 7) the policies, rules, and regulations of other state and federal agencies and local governments;
- 8) \* \*<sup>12</sup>
- 9) with respect to a high-voltage transmission line, the benefits of enhanced regional reliability, access, or deliverability to the extent these factors improve the robustness of the transmission system or lower costs for electric consumers in Minnesota;
- 10) whether the applicant or applicants are in compliance with applicable provisions of sections 216B.1691 and 216B.2425, subdivision 7, and have filed or will file by a date certain an application for certificate of need under this section or for certification as a priority electric transmission project under section 216B.2425 for any transmission facilities or upgrades identified under section 216B.2425, subdivision 7; [and]
- 11) whether the applicant has made the demonstrations required under subdivision 3a[.]<sup>13</sup>

Subdivision 3a of Section 216B.243 further provides that the Commission is not to grant a certificate of need unless the applicant of a proposed transmission facility demonstrates “to the [C]ommission’s satisfaction that it has explored the possibility of generating power by means of renewable energy sources and has demonstrated that the alternative selected is less expensive (including environmental costs) than power generated by a renewable energy source.” For purposes of subdivision 3, “renewable energy source” includes “hydro, wind, solar, and geothermal energy and the use of trees or other vegetation as fuel.”

Minnesota Statutes Section 216B.2426, also governing the analysis in a certificate of need proceeding, provides that “the Commission shall ensure that opportunities for the installation of distributed generation, as that term is defined in section 216B.169, subdivision 1, paragraph (c), are considered in any proceeding under sections 216B.2422, 216B.2425, or 216B.243.” In turn, Minnesota Statutes Section 216B.169, subdivision 1(c) defines “distributed generation” as “a distributed generation facility of no more than 10 MW of interconnected capacity that is certified by the commissioner under subdivision 3 as a high-efficiency, low-emissions facility.”

Minnesota Rule 7849.0120 provides that a certificate of need for a high voltage transmission line shall be granted if it is determined that:

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<sup>12</sup> Subdivision 3(8) does not appear to apply to transmission facilities, which provide transmission not generation. *See* Minn. Stat. § 216B.243, subd. 3(8) (“any feasible combination of energy conservation improvements, required under section 216B.241, that can (i) replace part or all of the energy to be provided by the proposed facility, and (ii) compete with it economically”).

<sup>13</sup> Subdivision 3(12) is inapplicable because it relates solely to generating plants: “if the applicant is proposing a nonrenewable generating plant, the applicant’s assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the plant, including a proposed means of allocating costs associated with that risk.” Minn. Stat. § 216B.243, subd. 3(12).

- A. the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering:
- 1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;
  - 2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;
  - 3) the effects of promotional practices of the applicant that may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;
  - 4) the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand;
  - 5) the effect of the proposed facility, or a suitable modification thereof, in making efficient use of resources;
- B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record, considering:
- 1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;
  - 2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;
  - 3) the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives;
  - 4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;
- C. by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health, considering:
- 1) the relationship of the proposed facility, or a suitable modification thereof, to overall state energy needs;

- 2) the effects of the proposed facility, or a suitable modification thereof, upon the natural and socioeconomic environments compared to the effects of not building the facility;
  - 3) the effects of the proposed facility, or a suitable modification thereof, in inducing future development;
  - 4) the socially beneficial uses of the output of the proposed facility, or a suitable modification thereof, including its uses to protect or enhance environmental quality; and
- D. the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

**H. Commission Decision on Certificate of Need Application**

Following the receipt of the ALJ's report, the Commission shall make its final decision but not before the report has been made available to the parties for at least 10 days and the parties have had the opportunity to file exceptions and present argument to a majority of the Commission who are to render the decision. Minn. Stat. § 14.61; Minn. R. 1400.8200; Minn. R. 7829.2800. The Commission's final decision must be in writing. Minn. Stat. § 14.62. *See also*, Minn. Stat. § 216B.243, subd. 5 (providing generally for Commission's final decision).

If a high voltage transmission line requires a certificate of need, it will necessarily require a route permit. Some transmission projects, however, do not require a certificate of need but must still obtain a route permit prior to construction. The route permit process is detailed below.

**I. Reconsideration**

Commission statutes provide that a party or person aggrieved *may* seek rehearing from the Commission within 20 days after service of the decision. Minn. Stat. § 216B.27, subd. 1. (emphasis added). An aggrieved person must seek reconsideration with the Commission as a precondition for bringing an appeal. Minn. Stat. § 216B.27, subd. 2. The Commission then sets deadlines for response to the reconsideration application. Minn. Stat. § 216B.27, subd. 3. If the Commission takes no action to grant the application for rehearing within 60 days of its filing, the application is deemed denied. Minn. Stat. § 216B.27, subd. 4.

**J. Appeal of Commission Decision**

Any party to a proceeding before the commission or any other person aggrieved by a decision and order and directly affected by it, may appeal the decision and order to the Minnesota Court of Appeals. Minn. Stat. § 216B.52. To commence an appeal, a petition for a writ of certiorari must be filed with the court of appeals and served on all parties to the contested case not more than 30 days after the party receives the final decision and order of the Commission. Minn. Stat. § 14.63. The filing of the writ of certiorari shall not stay the

Commission’s decision; but the agency may do so, or the court of appeals may order a stay upon such terms as it deems proper. Minn. Stat. § 14.65.

#### **IV. DETAILED SUMMARY OF ROUTE PERMIT PROCEDURES FOR HIGH VOLTAGE TRANSMISSION LINES**

##### **A. Route Permit Application**

##### **1. Determining Whether a Route Permit Is Required for Project**

The Commission has jurisdiction over the route selection for high voltage transmission lines. Minn. Stat. § 216I.03, subd. 2. Subject to certain exceptions, a person is prohibited from constructing a high-voltage transmission line without a route permit issued by the Commission and such a line may only be constructed along a route approved by the Commission. Minn. Stat. § 216I.05, subd. 2. The threshold for the route permit requirement is lower than that for a certificate of need. A “high voltage transmission line” is defined as “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.” Minn. Stat. § 216I.02, subd. 8.<sup>14</sup>

In addition to high voltage transmission lines, large electric generation facilities, such as power plants, wind farms, and solar arrays with a capacity of 50 MW or more, also require a site permit under Minn. Stat. § 216I.05. Where generation facilities require the construction of associated transmission lines for interconnection, a route permit must be obtained for those lines, consistent with the Commission’s routing process.

A route permit is also required in certain circumstances when a proposed project entails the expansion of an existing facility. *See* Minn. R. 7850.1300, Subp. 3 (listing circumstances when the expansion of an existing facility requires a route permit “or other approval from the commission”). Other small projects or certain existing facilities may not require a route permit, although they may still require some kind of environmental review. *See* Minn. R. 7850.1400 (excepting certain small projects); Minn. R. 7850.1500 (excepting certain existing facilities).

##### **2. Applicability Determination**

An applicant can request that the Commission determine whether a transmission line proposal qualifies as a large energy infrastructure facility—and thus falls under the Commission’s routing jurisdiction or requires a specific review process. Minn. Stat. § 216I.04, subd. 1.

For transmission lines, the petitioner must clearly describe the applicability question and provide sufficient facts to support the determination. Minn. Stat. § 216I.04, subd. 3. This means applicants should detail how their project aligns with or differs from the criteria that define a large energy infrastructure facility, supplying all necessary information to substantiate their position.

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<sup>14</sup> Note: This 2005 revision to the statute was not tracked through to the corresponding rule. Minn. R. 7850.1000, Subp. 9 (omitting reference of 1,500-foot requirement).

The Commission is required to offer forms and assistance to help applicants request an applicability determination. Minn. Stat. § 216I.04, subd. 4(a). Upon receiving a written request, the Commission or its designee must provide a written determination of applicability. Minn. Stat. § 216E.05, subd. 4(b). This determination must be issued within 30 days of receiving the request or within 30 days after receiving any additional information requested by the Commission, whichever is later. *Id.* The written determination constitutes a final decision of the Commission on the matter. *Id.*

### **3. Determining Whether to Use the Major Review Process or the Standard Review Process**

Minnesota law provides for two types of Commission review processes for high voltage transmission line route permits: the major review and the standard review. Minn. Stat. §§ 216I.06 (governing major review process), 216I.07 (authorizing standard review process for certain described projects). A local review process is also available for limited types of projects. Minn. Stat. § 216I.08. Minnesota Statute § 216I.05 governs both the major and standard review process and outlines certain content that must be included in the route permit application. Under both review processes, the applicant must propose a single route for a high-voltage transmission line. *Id.*

Only certain transmission projects are eligible for the standard review process. *See* Minn. Stat. § 216I.07, subd. 2. To qualify for the standard review process, a transmission project must be: (1) a high voltage transmission line with a capacity between 100 and 300 kV; (2) a high-voltage transmission line with a capacity in excess of 300 kV and less than 30 miles in Minnesota; and (3) a high voltage transmission line with a capacity in excess of 300 kV, if at least 80 percent of the distance of the line in Minnesota, as proposed by the applicant, is located along existing high voltage transmission line right-of-way. Minn. Stat. § 216I.07, subd. 2.

An applicant who intends to use the standard review process must notify the Commission of such intent at the time of submitting an application for the project. Minn. Stat. § 216I.07, subd. 1.

An applicant must determine whether its proposed project is eligible for standard review and if such a review is desirable under the circumstances. The major and standard review processes are summarized below. These two processes are similar in many respects, but the following discussion notes where these processes differ. The requirements to use a local review process are discussed in Chapter V.

### **4. Determining Whether a Joint Proceeding for the Route Permit and the Certificate of Need Will be Held**

As noted, if a facility will require both a certificate of need and a route permit, the applicant must consider the appropriateness of joint hearings. *See* Minn. Stat. § 216B.243, subd. 4.

## 5. Project Notice

Under both the major and standard review process, at least 30 days before filing an application for a route permit with the Commission, an applicant must provide notice to each LGU within which a route “may be” proposed, Minnesota Tribal governments,<sup>15</sup> and state technical resource agencies. Minn. Stat. § 216I.05, subd. 5. The notice must describe the proposed project and provide the entities receiving the notice an opportunity for preapplication coordination or feedback. *Id.*

## 6. Preparation of Application for Route Permit

Under both the major and standard review process, an application for a site or route permit must be prepared and filed. Minnesota statutes and administrative rules specify the content of applications for route permits. It is paramount to satisfy the content requirements when preparing an application for a route permit.

### a. Content Requirements

Minnesota Statute § 216I.05, subd. 3, identifies the information that should be included in an application for a route permit for a high voltage transmission line.<sup>16</sup> This statute requires that the applicant must propose a single route for a high-voltage transmission line. Minn. Stat. § 216I.05, subd. 3(a). The remaining content required by this statute is summarized below:<sup>17</sup>

- Ownership: The route permit application shall include a statement of proposed ownership of the facility at the time of filing the application and after commercial operation;
- Initial Permittee: The route permit application shall include the name of any person(s) or organization(s) to be initially named as permittee or permittees and the name of any other person(s) to whom the permit may be transferred if transfer of the permit is contemplated.
- Description of Proposed Project: The route permit application shall include a description of the proposed high voltage transmission line and all associated facilities including the size and type of the high voltage transmission line and the anticipated in service date.
- Environmental Information: An application for route permit shall include the following information:
  1. a description of the environmental setting for the route;

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<sup>15</sup> As defined under Minn. Stat. § 10.65, subd 2.

<sup>16</sup> As of January 2025, it is unclear whether Minn. Stat. § 216I.05 subd. 3 will replace the former rules governing the content of a route permit application or if new rules will be promulgated.

<sup>17</sup> Completeness Checklists for both the Major Review Process and the Standard Review Process for route permit applications, which list the content requirements for a route permit application, are included in the appendices at Tab 7.

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

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

4. a description of the effects of the facility on archaeological and historic resources;

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

6. a description of the greenhouse gas emissions associated with construction and operating the facility;

7. a description of the facility's climate change resilience;

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

9. a list that identifies the human and natural environmental effects that cannot be avoided if the facility is approved at a specific site or route; and

10. a description of measures that might be implemented to mitigate the potential human and environmental impacts identified in items 1 to 7 and the estimated costs of such mitigative measures.

Minn. Stat. § 216I.05, subd. 4. An applicant using the standard process may include the environmental information in the applicant's EA.

- Affected Property Owners: The route permit application shall include the names of each owner whose property is within any of the proposed routes for the high voltage transmission line.
- Maps: The route permit application shall include United States Geological Survey topographical maps or other maps acceptable to the Commission showing the entire length of the high voltage transmission line.
- Existing Rights-of-Way: The route permit application shall include an identification of existing utility and public rights-of-way along or parallel to the proposed routes that have the potential to share right-of-way with the proposed line.

- Engineering and Operation: The route permit application shall include the engineering and operational design concepts for the proposed high voltage transmission line, including information on the electric and magnetic fields of the transmission line.
- Cost: The route permit application shall include cost analysis of each route, including the costs of constructing, operating, and maintaining the high voltage transmission line.
- Future Expansion: The route permit application shall include a description of possible design options to accommodate expansion of the high voltage transmission line in the future.
- Right-of-Way Acquisition: The route permit application shall include the procedures and practices proposed for the acquisition and restoration of the right-of-way and construction, and maintenance of the high voltage transmission line.
- Other Permits: The route permit application shall include a listing and brief description of federal, state, and local permits that may be required for the proposed high voltage transmission line.
- Certificate of Need: The route permit application shall discuss whether a certificate of need is required and, if a certificate of need is required, whether the certificate of need application has been submitted.
- Route Alternatives: The route permit application shall include whether any other routes were considered and rejected by the applicant.
- Required Information: The route permit application shall include any information the Commission requires pursuant to an administrative rule.<sup>18</sup>
- Tribal Coordination: The route permit application shall include a discussion regarding the coordination with Tribal governments by the applicant.

b. Format Requirements

There are no specific format requirements for route permit applications as there are for applications for certificates of need.

**7. Preapplication Review**

Before submitting an application, an applicant must provide a draft application for the Commission staff to review. Minn. Stat. § 216I.05, subd. 6(a). The draft application must not be filed electronically. *Id.* The Commission staff's review must focus on the application's completeness and clarifications that may assist the Commission's review of the application. Minn. Stat. § 216I.05, subd. 6(b). Upon the completion of the preapplication review, the staff must provide the applicant a summary of the completeness review. *Id.*

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<sup>18</sup> As of January 2025, MEIPA does not have any promulgated administrative rules.

## **8. Filing of Application for Route Permit**

### **a. Filing Procedures**

Materials that are to be filed with the Commission must be filed via the Commission's electronic filing system. Minn. Stat. § 216.17, subd. 3.

### **b. Filing Fees**

An applicant must pay a fee, in an amount determined in accordance with Minn. Stat. § 216I.28, subd. 1, for the processing of the permit application. Currently, there are no promulgated rules that address how payment and fees are determined in accordance with Minnesota Statutes Section 216I.

## **B. Completeness Determination**

The statute provides that within 10 business days of receipt of an application for a route permit, the Commission shall determine whether the application is complete and notify the applicant in writing of the acceptance or rejection of the application. Minn. Stat. § 216I.05, subd. 7(a). An application is deemed complete if omitted information in the application may be obtained from the applicant prior to the initial public meeting and if omitted information is not essential to provide adequate notice. Minn. Stat. § 216I.05, subd. 7(b). Currently there are not promulgated rules that address the Commission's timeline or an applicant's recourse should an application be deemed incomplete.

Historically, there was no expectation that the Commission will decide completeness of a route permit application within 10 days of submission. The timeframe was typically 60 days. The Commission may solicit comments from persons already on the project service list on the completeness of the application before taking up the decision. *See In the Matter of the Application of Northern States Power doing business as Xcel Energy for a Route Permit for the Southwest Twin Cities Scott County – Westgate 115 kV Transmission Line Rebuild Project*, Docket No. E002/TL-11-948, NOTICE SOLICITING COMMENTS (Apr. 18, 2012).

Under the pre-July 1, 2025 statutory and administrative rule scheme, if the Commission rejected an application, an applicant could address the deficiencies identified by the Commission and supplement the application with additional information. Minn. R. 7850.2000, Subp. 2 and 7850.3200. The Commission, then, would review the application within 10 days and determine whether the application is complete. Minn. R. 7850.2000, Subp. 2 and 7850.3200. The date of the Commission's completeness determination was the start of the schedule for the Commission's final decision on the permit application. Minn. R. 7849.5230, Subp. 4. Based on review time that is longer than the 10 days provided for in the rule, the Commission was likely to extend the period to supplement information beyond 60 days from application submission.

## **C. Other Agency Participation**

By statute, state agencies authorized to issue permits required for construction or operation of high-voltage transmission lines are required to participate during routing and siting

at public hearings and all other activities of the Commission on specific route designations and design considerations of the Commission. Minn. Stat. § 216I.18, subd. 3. These agencies shall clearly state whether a 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. *Id.*

**D. Notice of Application**

Upon a finding an application is complete, the Commission must:<sup>19</sup>

(1) publish notice of the application in a legal newspaper of general circulation in each county in which the route is proposed;

(2) provide notice of the application to any regional development commission, Minnesota Tribal governments, county, incorporated municipality, and town in which any part of the route is proposed;

(3) provide notice of the of the application and description of the proposed project to each owner whose property is along any of the proposed routes for the transmission lines; and

(4) send the same notice of the submission of the application and project description to those who have requested to be placed on a list maintained by the commission for receiving notice of proposed high voltage transmission lines.

Minn. Stat. § 216I.05, subd. 8(a). The Commission must identify a standard format and content for the application notice. At a minimum, the notice must include:

(1) a description of the proposed project, including a map showing the general area of the proposed site or proposed route;

(2) a description detailing how a person may receive more information and future notices regarding the application; and

(3) a location where a copy of the application may be reviewed.

Minn. Stat. § 216I.05, subd. 8(b). If the proposed project impacts cultivated agricultural land, the Applicant must notify the Commissioner of the Minnesota Department of Agriculture. Minn. Stat. § 216I.18, subd. 3(b). Although not required by statute, the applicant should send to the Commissioner of the Department of Agriculture and other governmental entities via certified mail a notice of submission of the application and a copy of the application. The notice must also provide information regarding the date and location of the public meeting and where the public may learn more about the proposed project and the commission's review process. Minn. Stat. 216I.05, subd. 4.

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<sup>19</sup> Under the former statutory regime, the applicant(s) were responsible for sending these notices. Under MEIPA this now falls under the purview of the Commission.

**E. Public Advisor**

Upon acceptance of the application, the Commission shall designate a staff person to act as the public advisor, who must be available to answer questions from the public about the permitting process. Minn. Stat. § 216I.16, subd. 2.

**F. Public Meeting**

The Commission must hold at least one public meeting in a location near the proposed route to explain the permitting process, present major issues, accept public comments on the scope of the environmental review document (an EIS or an EA, depending on the review process being used), and respond to the public. Minn. Stat. § 216I.05, subd. 9(a). Currently there are no promulgated rules that address the conduct of the public meeting or required notices. At the meeting and for ten days following the date of the public meeting, the Commission must accept comments the potential impacts and alternate routes to be considered for the environmental review document (an EIS or an EA, depending on the review process being used), and permit conditions. Minn. Stat. § 216I.05, subd. 9(b).

**G. Draft Permit and Environmental Review Scope**

Upon the close of the 10-day public comment period required under Minn. Stat. § 216I.05, subd. 9(b), the Commission must prepare a draft route permit and identify the scope of the environmental review document. Minn. Stat. § 216I.05, subd. 10. The draft route permit must identify the person(s) who are the permittee, describe the proposed project, and include proposed permit conditions. Minn. Stat. § 216I.05, subd. 10(1). This draft permit does not authorize the construction of a project. *Id.* The Commission may change the draft permit before issuance or deny the permit. *Id.* Additionally, the Commission must identify the scope of the environmental review (an EIS or an EA, depending on the review process being used). Minn. Stat. § 215I.05, subd. 10(2). The Commission cannot give direction to the environmental review staff except in a publicly-noticed meeting or publicly-available Commission notice or order. *Id.*

**H. Environmental Review**

The major and the standard review processes differ with respect to what kind of environmental review is required and who is required to prepare the environmental review document.

**1. Major Review Process: Environmental Impact Statement**

For the major review process, the Commission is required to prepare an EIS on the proposed transmission facility. Minn. Stat. § 216I.06, subd. 1(a). The Commission must publish a scoping document, a draft EIS, and final EIS. Minn. Stat. § 216I.06, subd. 1(c) and(d). The Commission staff will provide the public with an opportunity to participate in the development of the scope of the EIS by, as already discussed above, holding a public meeting and soliciting comments. Minn. Stat. § 216I.05, subd. 9. Following this public meeting, the Commission must: (1) prepare a draft route permit; and (2) identify the scope of the EIS. Minn. Stat. § 216I.05, subd. 10. The Commission will then prepare and publish a draft EIS. After publication of the draft EIS, the Commission will hold another public hearing to provide for public comments on

the draft EIS and the application for a route permit Minn. Stat. § 216I.06, subd. 1(c) and 2. The Commission must publish a final EIS responding to the timely substantive comments regarding the draft EIS and consistent with the scope of the EIS required under Minn. Stat. § 216I.06, subd. 1(d). Minn. Stat. § 216I.06, subd. 1(d). At appropriate points, the EIS must discuss and respond to any reasonable opposing views related to scoping issues that were not adequately discussed in the draft EIS. *Id.* The Commission must consider the final EIS and the entire record related to human and environmental impacts when making its final decision. *Id.*

The Commission must determine the adequacy of the EIS. Minn. Stat. § 216I.06, subd. 1(e). The determination must not happen for at least ten days after the final EIS is published on the EQB Monitor. *Id.* The EIS is deemed adequate if it:

- (1) addresses the issues and alternative raised in the scoping;
- (2) provides responses to timely substantive comments received during the draft EIS review process; and
- (3) was prepared in compliance with §§ 216I.05 and 216I.06.

Minn. Stat § 216I.06, subd. 1(e). If the Commission finds the EIS inadequate, it must direct commission staff to respond to the deficiencies and resubmit the revised EIS to the commission as soon as possible. *Id.*

## **2. Standard Review Process: Environmental Assessment**

For the standard review process, the applicant must prepare and submit an EA with its application.<sup>20</sup> Minn. Stat. § 216I.07, subd. 3(a). An applicant must also provide a draft EA to commission staff as part of the preapplication review under Section 216I.05, subdivision 6. *Id.* An applicant applying under the standard review process must include the environmental information required by Section 216I.05, subdivision 4 for each proposed route in its application and may also include this information in its EA. Minn. Stat. § 216I.05, subd. 4(a) and (b). That information is discussed in Section IV.A.7 but reiterated here for completeness. An application for a route permit shall include the following information:

1. a description of the environmental setting for each site or route;
2. a description of the effects of construction and operation of the facility on human settlement, including, but not limited to, public health and safety, displacement, noise, aesthetics, socioeconomic impacts, cultural values, recreation, and public services;
3. a description of the effects of the facility on land-based economies, including, but not limited to, agriculture, forestry, tourism, and mining;

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<sup>20</sup> The EA is the only state environmental review document required to be prepared on a project qualifying for review under the standard review process.

4. a description of the effects of the facility on archaeological and historic resources;

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

6. a description of the greenhouse gas emissions associated with construction and operating the facility;

7. a description of the facility's climate change resilience;

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

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

10. a description of measures that might be implemented to mitigate the potential human and environmental impacts identified in items 1 to 7 and the estimated costs of such mitigative measures.

Minn. Stat. § 216I.05, subd. 4. The EA must include information regarding the proposed project's human and environmental impacts and address mitigating measure for identify impacts. Minn. Stat. § 216I.07 subd. 3. If, after the public meeting, which follows the application completeness determination, the Commission identifies other routes or potential impacts for review, the Commission must prepare an addendum to the EA that evaluates the human and environmental impacts and any additional mitigating measures for identify impacts. Minn. Stat. § 216I.07 subd. 3(b). The public may provide comments on the EA and any addendum at the public hearing discussed below. *Id.* The Commission must consider the EA, any addendums, and the entirety of the record related to human and environmental impacts when making its final decision. Minn. Stat. § 216I.07 subd. 3(b).

## **I. Hearing**

### **1. Major Review Process: Public Hearing and potential Contested Case Hearing**

No sooner than 15 days after the draft EIS is published, the Commission must hold a public hearing on the application. Minn. Stat. § 216I.06, subd. 2(a). This hearing must be conducted by an ALJ from the OAH. *Id.* The Commission may designate a portion of the hearing to be conducted as a contested case proceeding under Minn. Stat. Ch. 14. Minn. Stat. § 216I.06, subd. 2(b). The Commission must provide notice of the hearing at least ten days before but no earlier than 45 days before the hearing commences. Minn. Stat. § 216I.06, subd. 2(c). The Commission must provide notice by: publishing a legal newspaper of general circulation in the county in which the public hearing is being held; mailing to chief executives of the regional

development commission counties, organized towns, townships, and incorporated municipalities in which the site or route is proposed; and Tribal governments as defined by Minnesota Statutes Section 10.65, subd. 2. *Id.*

Any person may appear at the hearings and offer testimony and exhibits without the necessity of intervening as a formal party to the proceedings. Minn. Stat. § 216.06, subd. 2(d). The ALJ may allow any person to ask questions of other witnesses. Minn. R. Ch. 1405 also applies to the hearing(s) involving the permitting of a high voltage transmission line. Chapter 1405 provides for a substantially similar process as the contested case proceedings provided for in a certificate of need matter by Chapter 1400, and are summarized above; therefore, the specifics of Chapter 1405 will not be summarized here. One notable difference between the contested case procedures for a certificate of need and a route permit is that contested case hearings for a route permit under Chapter 1405 allow for broader public participation without requiring that a member of the public intervene in the docket. The rules provide the public the opportunity to participate by:

A. Offering direct testimony with or without benefit of oath or affirmation and without the necessity of pre-filing as required by part 1405.1900.

B. Offering direct testimony or other material in written format or following the hearing. However, testimony which is offered without benefit of oath or affirmation, or written testimony, which is not subject to cross-examination, shall be given such weight as the administrative law judge deems appropriate.

C. Questioning all persons testifying. Any person who wishes to cross-examine a witness but who does not want to ask questions orally, may submit questions in writing to the administrative law judge, who will then ask the questions of the witness. Questions may be submitted before or during the hearings.

Minn. R. 1405.0800. In contested case hearings for a certificate of need, such public participation is at the ALJ's discretion. Minn. R. 1400.6200, Subp. 5.

The ALJ must hold a portion of the hearing in an area where the large energy infrastructure facility's location is proposed. Minn. Stat. § 216I.06, subd. 2(e). The Commission and ALJ must accept written comments for at least 20 days following the public hearing. Minn. Stat. § 216I.06, subd. 2(f).

## **2. Standard Review Process: Public Hearing**

After the Commission issues any addendum to the EA and a draft permit, the Commission must hold a public hearing in the area where the facility's location is proposed. Minn. Stat. § 216I.07, subd. 4(a). The Commission must provide notice in the same manner as it does for the major review process. Minn. Stat. § 216I.07, subd. 4(b). The Commission must conduct the public hearing under procedures established by the Commission and may request that an ALJ from OAH conduct the hearing a prepare a report. Minn. Stat. § 216I.07, subd. 4(c).

The applicant must be present at the hearing to answer any questions. Minn. Stat. § 216I.07, subd. 4(d). The Commission must provide opportunity at the public hearing for any person to present comments and to ask questions of the applicant and Commission staff. *Id.* The ALJ must hold a portion of the hearing in an area where the large energy infrastructure facility's location is proposed. Minn. Stat. § 216I.06, subd. 2(e). The Commission and ALJ must accept written comments for at least 20 days following the public hearing. Minn. Stat. § 216I.06, subd. 2(f).

**J. ALJ Report and Exceptions**

The ALJ must issue a report and recommendations after the completion of the post-hearing briefing or the date the public comment period, whichever is later. Minn. Stat. § 216I.06, subd. 3. Exceptions must be filed and served within 15 days of the filing of the ALJ Report. Minn. R. 7829.2700, Subp. 1. Replies to exceptions must be filed and served on all other parties within 10 days of the due date for exceptions. Minn. R. 7829.2700, Subp. 2. Replies are not permitted in cases subject to statutory deadlines. *Id.*

**K. Commission Decision on Route Permit Application**

Under the major review process, the Commission must make a final decision on a route permit application within 60 days of the date of the ALJ report is received. Minn. Stat. § 216I.06, subd. 4.

Under the standard review process, the Commission must make a final decision within 60 days of the date the public comment period following the public hearing closes, or the date the ALJ report is filed whichever is later. Minn. Stat. § 216I.07, subd. 5.

**1. Route Permit Assessment Criteria**

Both the ALJ and the Commission take into consideration the following assessment criteria provided for by statute and rule when determining whether a route permit for a proposed high voltage transmission line should be issued.

Minnesota Statutes Section 216I.05, subdivision 11(a),<sup>21</sup> provides that the Commission's route permit determinations "must be guided by the state's goals to conserve resources; minimize environmental impacts and minimize human settlement and other land use conflicts; consider impacts to environmental justice areas;<sup>22</sup> and ensure the state's energy security through efficient, cost-effective energy supply infrastructure. When determining whether to issue a route permit, the Commission must include but is not limited to:

- (1) evaluating research and investigations relating to: (i) large energy infrastructure facilities' effects on land, water, and air resources; and (ii) the effects water and air discharges and electric and magnetic fields resulting from large energy infrastructure facilities have on public

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<sup>21</sup> This assessment criteria applies to both the major and standard review process.

<sup>22</sup> As defined by Minn. Stat. § 216B.1691, subd 1(e), including cumulative impacts as defined in Minn. Stat. § 116.065.

health and welfare, vegetation, animals, materials, and aesthetic values, including baseline studies, predictive modeling, and evaluating new or improved methods to minimize adverse impacts of water and air discharges and other matters pertaining to large energy infrastructure facilities' effects on the water and air environment;

(2) conducting environmental evaluation of sites and routes that are proposed for future development and expansion, and the relationship of proposed sites and routes for future development and expansion to Minnesota's land, water, air, and human resources;

(3) evaluating the effects of measures designed to minimize adverse environmental effects;

\* \* \*<sup>23</sup>

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

(6) evaluating adverse direct and indirect environmental effects that are unavoidable should the proposed site and route be accepted;

(7) evaluating alternatives to the applicant's proposed site or route, if applicable;

(8) when appropriate, evaluating potential routes that would use or parallel existing railroad and highway rights-of-way;

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

(10) evaluating the future needs for large energy infrastructure facilities in the same general area as any proposed site or route;

(11) evaluating irreversible and irretrievable commitments of resources if the proposed site or route is approved;

(12) when appropriate, considering the potential impacts raised by other state and federal agencies and local entities;

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<sup>23</sup> Subdivision 11(b)(4) is inapplicable to transmission facilities. *See* Minn. Stat. § 216I.06, subd. 11(b)(4) (“(4) evaluation of the potential for beneficial uses of waste energy from proposed electric generating plants”).

(13) evaluating the benefits of the proposed facility with respect to (i) the protection and enhancement of environmental quality, and (ii) the reliability of state and regional energy supplies;

(14) evaluating the proposed facility's impact on socioeconomic factors; and

(15) evaluating the proposed facility's employment and economic impacts in the facility site's vicinity and throughout Minnesota, including the quantity, quality, and compensation level of construction and permanent jobs. The commission must consider a facility's local employment and economic impacts, and may reject or place conditions on a site or route permit based on the local employment and economic impacts

Pursuant to Minnesota Statutes Section 216I.05, subdivision 11(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." And pursuant to Minnesota Statutes Section 216I.05, subdivision 11(d), "[n]o site or route shall be designated which violates state agency rules." Minnesota Statutes Section 216I.05, subdivision 11(e) requires the Commission to "make specific findings that it has considered locating a route for a high-voltage transmission line on an existing high-voltage transmission route and the use of parallel existing highway right-of-way and, to the extent those are not used for the route, the commission must state the reasons."

## **2. Final Decision**

The Commission is required to issue a site or route permit when it is demonstrated to be in the public interest under the relevant statutes. Minn. Stat. § 216I.05, subd. 12(a) The Commission may impose any reasonable conditions on the site or route permit that are necessary to protect the public interest. *Id.* Additionally, the commission retains continuing jurisdiction over the site and route permits and any conditions contained within them. *Id.*

The Commission cannot issue a route permit that violates the route selection standards and criteria established under this section and the rules the Commission adopts. Minn. Stat. § 216I.05, subd. 12(c). Upon designating a route, the Commission must issue a permit for the construction of a high-voltage transmission line specifying the design, routing, right-of-way preparation, and facility construction deemed necessary, including any other appropriate conditions. *Id.* The Commission may order the construction of high-voltage transmission line facilities capable of expanding transmission capacity through multiple circuiting or design modifications. *Id.* A notice of the Commission's decision must be published in the EQB Monitor within 30 days of issuing the route permit. *Id.*

As a condition of permit issuance, the Commission must require that the permit recipient and all construction contractors and subcontractors pay no less than the prevailing wage rate as defined in Minnesota Statutes Section 177.42. Minn. Stat. § 216I.05, subd. 12(d). They are also

subject to the requirements and enforcement provisions under Sections 177.27, 177.30, 177.32, 177.41 to 177.435, and 177.45. *Id.*

Immediately following the Commission's vote granting a route permit, and prior to the issuance of a written Commission order embodying the decision, the applicant may submit preconstruction compliance filings to Commission staff for review, specifying details of the proposed site or route operations. Minn. Stat. § 216I.05, subd. 12(e).

### **3. Commission Decision Timing**

Under the major review process, the Commission must issue its final decision within one year after its completeness decision; this deadline may be extended up to three months for just cause or by agreement of the applicant. Minn. Stat. § 216I.06, subd. 4. In the standard review process, the Commission must issue its final decision within six months after its completeness determination; this deadline may also be extended up to three months for just cause or by agreement of the applicant. Minn. Stat. § 216I.07, subd. 5. Notice of the Commission's final decision is due within 30 days after the decision is made Minn. Stat. § 216I.05, subd. 12(b); Minn. Stat. § 216I.05, subd. 12(c). Additionally, the Commission shall also publish notice of its final permit decision in the EQB Monitor. *Id.*

#### **L. Reconsideration**

Commission statutes provide that a party or person aggrieved may seek rehearing from the Commission within 20 days after service of the decision. Minn. Stat. § 216B.27, subd. 1. (emphasis added). However, subdivision 2 of this statute, which provides that a rehearing request *must* be made before an appeal to the Court of Appeals, does not apply to the Commission's route permit decisions. *Radio Fargo-Moorhead v Minnesota Public Utilities Commission*, Docket No. A10-534, A10-535, p. 2 (Order, Apr. 20, 2010).

Commission Staff has stated that the Commission will still entertain rehearing motions for route permits, an outcome that is not foreclosed by the *Radio* decision. The *Radio* Court did not address the question of whether the Commission could consider rehearing requests, only that a rehearing request was not mandatory for bringing an appeal.

If a request for rehearing is made, the order is not effective until 10 days after the rehearing motion is determined. Minn. Stat. § 216B.27, subd. 3. The Commission has 60 days to rule on a motion for rehearing and if no action is taken, the request is deemed denied. Minn. Stat. § 216B.27, subd. 4. A decision of the Commission is not final until a decision is made on the motion or the 60-day period for rehearing motions has passed with no action. Minn. Stat. § 216B.27, subd. 5 (the Commission has not fully exercised its legislative powers until the Commission has acted upon the request or it has been denied by implication).

#### **M. Appeals**

The Commission's order granting a route permit must be appealed by certiorari to the Minnesota Court of Appeals in accordance with Minnesota Statutes Section 216I.25. Section 216I.25 grants the right of appeal to "a party or person aggrieved by the *issuance* of a site or route permit, minor alteration, amendment, or emergency permit from the commission or a

certification of continuing suitability filed by a permittee with the commission or by a final order in accordance with any rules promulgated by the commission . . . in accordance with Chapter 14.” *Id.* (emphasis added).

The timing of such an appeal is unclear because Section 216I.25 is ambiguous. Section 14.63 of the Minnesota Administrative Procedures Act provides that an appeal must be taken within “30 days after the party receives the final decision and order of the agency.” *Id.* Section 216I.25 provides that an appeal must be brought within “30 days after the date the notice of the commission’s permit issuance is published in the EQB Monitor, certification is filed with the commission, or any final order is filed by the commission. *Id.* (emphasis added).

The ambiguity relates to the interpretation of which event, final order or publication, controls under Section 216I.25 (the Commission does not issue certifications). A reasoned interpretation is that an aggrieved person could appeal within the latest deadline—30 days after the permit notice. The Commission is required to publish notice of the decision in the EQB Monitor within 30 days of issuance of the permit. Minn. Stat. § 216I.025. The conservative estimate of the last date to appeal would be 30 days after the date of publication of the notice of the issuance of the permit in the state register.

In the event of such an appeal, the Commission’s route permit would not be stayed unless the Commission stays its order, or the Court of Appeals may order a stay upon such terms as it deems proper. Minn. Stat. § 14.65.; see also Minn. Stat. § 216B.53; *Peoples Nat. Gas Co. v. Minn. Pub. Util. Comm’n*, 342 N.W.2d 152, 155 (Minn. Ct. App. 1983). And, if a stay is granted, the appellant should be required to post a “bond” or “other further security” for damages resulting from the delay caused by an appeal. *Id.* Therefore, work could proceed on a project during the pendency of appellate review, unless a stay is granted. However, in the unlikely event that the Court of Appeals reverses, this some risk that the facilities could need to be modified or relocated.

## **V. LOCAL REVIEW IN LIEU OF COMMISSION REVIEW FOR A ROUTE PERMIT**

Minnesota Statutes Section 216I.08 allows certain high voltage transmission line projects to seek approval from local government units instead of from the Commission. Specifically, the following: (1) high-voltage transmission lines with a capacity between 100 kV and 200 kV; (2) substations with a voltage designed for and capable of operation at a nominal voltage of 100 kV or more; (3) high-voltage transmission line extensions to a single customer that between 200 and 300 kV and less than 10 miles in length; and (4) high-voltage transmission line rerouting to serve the demand of a single customer, if at least 80 percent of the rerouted line is located on property owned or controlled by the customer or the owner of the transmission line. Minn. Stat. § 216I.08, subd. 2(3)-(6). To be a “high voltage transmission line,” the line must be in greater than 1,500 feet in length and over 100 kV. Minn. Stat. § 215I.02, subd. 8. When an applicant utilizes the local zoning process, the applicant is exempt from obtaining a route permit from the Commission. Minn. Stat. § 216I.08, subd. 1(a).

To use the local process, the LGU must have sufficient ordinances in place to exercise jurisdiction over the project. Minn. Stat. § 216I.08, subd. 1(a). This may mean, in practice, that

although a city within which a project is located does not have sufficient ordinances, the county in which the city is located does, and, therefore, the county may become the LGU. The local process can be a helpful tool for small transmission projects, projects using existing rights-of-way or easements, or projects that have local support.

Under Minnesota Statutes Section 216I.08, subdivision 1(b), a LGU with jurisdiction over the project may request that the Commission assume jurisdiction and make a decision on a route permit. This request must be filed with the Commission within 60 days of the date the applicant submits an application to any one LGU. *Id.* If any LGU with jurisdiction requests the Commission to assume jurisdiction, jurisdiction over the project transfers to the Commission. *Id.* If the LGUs maintain jurisdiction, the Commission must select the appropriate LGU to be the responsible governmental unit (“RGU”) to conduct the project’s environmental review. *Id.*

An applicant must notify the Commission that they have elected to seek local approval of the proposed project within ten days of submitting an application to an LGU. Minn. Stat. § 216I.08, subd. 3.

Once an application has been submitted to an LGU that maintains jurisdiction, the LGU must prepare or request that the applicant prepare an EA for the project. Minn. Stat. § 216I.08, subd. 4(a). The LGU must afford the public an opportunity to participate in developing the scope of the EA before it is prepared. *Id.*

Upon completing the EA, the LGU must publish notice in the EQB Monitor indicating: the EA is available for review; how a copy of the EA may be reviewed; that the public may comment on the EA; and the procedure for submitting comments to the LGU. Minn. Stat. § 216I.08, subd. 4(b). The LGU must also provide a copy of the EA to the Commission upon completion. *Id.*

The LGU is prohibited from making a final decision on the permit until at least ten days after the date the notice appears in the EQB Monitor. Minn. Stat. § 216I.08, subd. 4(c). If more than one LGU has jurisdiction over the project and cannot agree on which LGU will prepare the EA, any LGU or the applicant may request that the Commission select the appropriate LGU to be the RGU to conduct the environmental review of the project. *Id.* Once the EA process is complete and the required waiting period has passed, the LGUs may act on permitting the project through the appropriate ordinances.

A list of local permitting process is included at Tab 5.

## **VI. MODIFICATIONS TO ROUTE PERMIT**

### **A. Route Permit Amendments**

Under Minnesota Statutes Section 216I.09, the owner of a high voltage transmission line may request to modify any provision or condition of a route permit issued by the Commission. This includes, upgrades or rebuilds of an existing electric line and associated facilities to a voltage capable of operating between 100 kilovolts and 300 kilovolts that do not result in

significant changes in the human and environmental impact of the facility are eligible for permit amendments Minn. Stat. § 216I.09, subd. 1(1).

To request a permit amendment, the owner must apply to the Commission in writing. The application must describe the alteration to be made or the amendment sought and explain why the request meets the eligibility criteria under Minnesota Statutes Section 216I.09, subdivision 1. Minn. Stat. § 216I.09, subd. 2. Additionally, the application must describe any changes to the environmental impacts evaluated by the Commission during the initial permit approval. *Id.* If there are significant changes to the environmental impacts, an environmental review must be conducted pursuant to the applicable requirements of Minnesota Rules Chapter 4410 and parts 7849.1000 to 7849.2100. Minn. Stat. § 216I.09, subd. 2.

Upon receipt of the application, the Commission must mail notice that the application was received to persons on the general list and to persons on the project contact list, if one exists. Minn. Stat. § 216I.09, subd. 3. The Commission must provide at least a 10-day period for interested persons to submit comments on the application or to request that the matter be brought to the Commission for consideration. The applicant may respond to submitted comments within seven days after the comment period closes. Minn. Stat. § 216I.09, subd. 4.

Within 30 days of the date the applicant responds to submitted comments, the Commission must decide whether to authorize the permit amendment; bring the matter to the Commission for consideration; or determine that the application requires a permitting decision under another section of the statute. Minn. Stat. § 216I.09, subd. 5. The Commission may authorize an amendment but may impose reasonable conditions on the approval. The Commission must notify the applicant in writing of its decision and send a copy to any person who requested notification or filed comments on the application. Minn. Stat. § 216I.09, subd. 6.

It is important to note that under the statutory scheme effective July 1, 2025, only the owner of the facility may request a permit amendment. Affected landowners or other third parties cannot apply for permit amendments or modifications. If the proposed amendment results in significant changes in the human or environmental impact of the facility, the Commission may determine that a full permitting decision under another section is required. In such cases, additional environmental review and public participation processes may be necessary.

## **B. Local Review of Route Permit Amendments**

For a high voltage transmission line that was not issued a permit by the Commission, the owner or operator of the nonpermitted facility may seek approval of a project listed under Minnesota Statutes Section 216I.09, subdivision 1, from the local unit of government, provided the facility qualifies for standard review under Minnesota Statutes Section 216I.07 or local review under Minnesota Statutes Section 216I.08. Minn. Stat. § 216I.09, subd. 7. In such cases, the owner or operator must comply with the local unit of government's zoning and permitting requirements. If the facility qualifies for local review, the local unit of government will oversee the approval process, including any necessary environmental assessments and public participation opportunities.

### **C. Permit Transfer**

Under Minnesota Statutes Section 216I.13, a permittee holding a site or route permit for a large energy infrastructure facility may request the transfer of the permit to another entity. To initiate this process, the permittee must submit a written application to the Commission that includes:

1. The name of the existing permittee;
2. The name and description of the entity to which the permit is to be transferred;
3. The reasons for the transfer;
4. A description of the facilities affected; and
5. The proposed effective date of the transfer.

Minn. Stat. § 216I.13, subd. 1.

Additionally, the entity receiving the permit (the transferee) must furnish the Commission with any information required to determine whether the new permittee is able to comply with the permit's conditions. Minn. Stat. § 216I.13, subd. 1. Upon receipt of the application, the Commission is obligated to mail notice of receipt to all persons on the general list at least seven days in advance of the date the Commission considers the matter. *Id.* If a project contact list exists, the same notice must be sent to those individuals as well. *Id.*

The Commission must approve the transfer if it determines that the new permittee can comply with the conditions of the permit. Minn. Stat. § 216I.13, subd. 2. In granting approval, the Commission may impose reasonable additional conditions on the permit as part of the approval process. *Id.* Furthermore, the Commission may decide to hold a public meeting to provide the public with an opportunity to comment on the transfer request before making its decision. *Id.*

### **D. Permit Revocation or Suspension**

Under Minnesota Statutes Section 216I.14, the Commission has the authority to revoke or suspend a route permit for a large energy infrastructure facility under specific circumstances. The process can be initiated either by the Commission on its own motion or upon the request of any person who has made prima facie showing—supported by affidavit and documentation—that a violation of the act or the permit has occurred. Minn. Stat. § 216I.14, Subd. 1.

If the Commission initiates action to consider revoking or suspending a permit, it must provide the permittee with an opportunity for a contested case hearing conducted by an ALJ from OAH. Minn. Stat. § 216I.14, subd. 2. This ensures that the permittee has a fair chance to present their case and respond to any allegations.

Should the Commission find that a violation has occurred, it may take one or more of the following actions:

1. Revoke or suspend the permit;
2. Require the permittee to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension;
3. Require corrective measures and suspend the permit.

Minn. Stat. § 216I.14, subd. 3. In determining the appropriate sanction, the Commission must consider several factors:

1. Whether the violation results in any significant additional adverse environmental effects;
2. Whether the results of the violation can be corrected or ameliorated; and
3. Whether suspending or revoking a permit impairs the permittee's electrical power system reliability.

Minn. Stat. § 216I.14, subd. 3.

## **VII. EXCEPTIONS TO ROUTE PERMIT REQUIREMENTS FOR CERTAIN FACILITIES**

Under Minnesota Statutes Section 216I.11, there are certain projects that do not constitute "construction of a large energy infrastructure facility" and can be constructed without a permit from the Commission. These facilities are: (1) maintaining or repairing an existing large energy infrastructure facility within an existing right-of-way; (2) adding equipment at an existing substation that does not (i) require more than a one-acre expansion of the land needed for the substation, and (ii) involve an increase in the voltage or changes in the location of existing transmission lines, except that up to the first five transmission line structures outside the substation may be moved to accommodate the equipment additions, provided the structures are not moved more than 500 feet from the existing right-of-way; (3) reconductoring or reconstructing a high-voltage transmission line that does not result in a change to voltage or a change in right-of-way; or (4) relocating a high-voltage transmission line that is required by a local or state agency as part of road, street, or highway construction. Minn. Stat. § 216I.11, subd. 1-4.

Even though these projects do not require a permit from the Commission, the Commission must be notified in writing at least 30 days before commencing construction of these type of changes. Minn. Stat. § 216I.11, subd. 3.

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## APPENDICES

1. Certificate of Need Proceeding Process Chart
2. Major Review Route Permit Proceeding Process Chart
3. Standard Review Route Permit Proceeding Process Chart
4. Process Comparison Chart
5. Local Route Permit Proceeding Process
6. Certificate of Need Application Completeness Checklist
7. Major Review and Standard Review Route Permit Application Completeness Checklist
8. Certificate of Need Statutes (Minn. Stat. §§ 216B.2421, 216B.243, 216B.246)
9. Energy Infrastructure Permitting Statutes (Minn. Stat. § 216I)

**Attorney-Client Privilege**

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**Attorney-Client Privilege**