

September 19, 2014

COMMENT on Rule 7850 - September 2014 Draft

Ms. Kahlert, I sincerely thank you for this chance to comment on the current 7850 Rule Draft as we arrive at the final meeting.

I see some good things, but overall would like to see more public participation. There should also be more burden placed upon project applicants to bring forward accurate information. Our experience has been alarming because applicants have hidden behind trade secret claims while misrepresenting essential information. The public brings needed information, IF they know when, where, and how in the permit process. Documentation shows applicants have submitted incomplete information and misinformation. The public has been held to a higher standard and has respectfully brought solid, verified information to the table about proposed projects in their local areas.

The public is serious. They want to see good projects, not unnecessary projects and bad behavior that is backed and even promoted for the sake of perceived jobs, political gain, and profits. The value and ability of the Minnesota public to comment on projects should never be diminished by the State Government. The people have many decades and cumulative centuries of valuable experience, information, and observations to share. This is not about “who is right” but about “getting it right!”

I appreciate you personally welcoming me to attend these meetings, though I am not on the committee. Here are some of my observations regarding the current draft to lend improvement and give balance to the big picture view we should take of the permitting process.

Thank you.

Sincerely,

Marie McNamara

THE BIG POINTS. Not all the points, just the big ones that stuck out like sore thumbs in the 9/2014 draft:

First, I know you are charged with administrating the statutes and staff is working hard to do that.

Second, for the record, the impacted Minnesota public also knows that applicants have written the statutes, or at times were and are active at side-stepping standards to accomplish their projects. There are good reasons for the standards that applicants are asked to meet. Please keep striving for common sense, protective standards in the rules for everyone—all stakeholders, keeping in mind the intent of the law. It is so important for good outcomes.

Third, in this section,

7850.1000 Definitions

Pg. 4 “Utility” Draft says:

Subp. 19. **Utility.** "Utility" means any entity engaged or intending to engage in this state in the generation, transmission, or distribution of electric energy including, but not limited to, a private investor

owned utility, a cooperatively owned utility, a public or municipally owned utility, a limited liability company, or a private corporation.

Make change:

Subp. 19. **Utility.** "Utility" means any entity engaged or intending to engage in this state in the generation, transmission, or distribution of electric energy including, but not limited to, a private investor owned utility, a cooperatively owned utility, a public or municipally owned utility., ~~a limited liability company, or a private corporation.~~

Reason: LIMITED LIABILITY COMPANY or a PRIVATE CORPORATION does not fit here. It is not viewed this way by statute. This would broaden definition in the rule that is not in the law, granting powers that were not intended. In Chapter 216E the definitions in 216E.01 Subd. 10 do NOT include LLC or private corporations!

Fourth,

7850.1700 PERMIT APPLICATION UNDER FULL PERMITTING PROCESS FILING REQUIREMENTS.

Pg. 10-11 Subp. 6 Draft at top of pg. 11 says:

Subp. 6. **Changes in project schedule.** The applicable statutory deadline under Minnesota statutes, section 216E.03, subd. 9, or section 216 E.04, subd. 7, can be extended by the commission for up to three months for just cause or upon agreement of the applicant.

Make change:

Subpart 5. **Project schedule.** At the time the commission staff makes a determination on completeness, staff must set a project schedule to ensure that applicable statutory deadlines for the project are met. The schedule must be sent to the department, ~~and~~ the applicant, and ~~project list, eFiled, and~~ be made available to the public upon request.

Reason: In statute, Chapter 216E.08 there is a charge to adopt broad spectrum citizen participation as a PRINCIPLE OF OPERATION. The project list includes the public who must have this information shared to them. It is important to efile for access and to make part of the record. Thank you in advance for making the information available to the public who will be new and coming forward to request this.

Five:

7850.1900 SITE PERMIT APPLICATION CONTENTS.

Pg. 11-12 Draft says:

Subpart 1. **General requirements.** An application for a large electric power generating plant must include a proposed site that does not overlap with any proposed alternative site. The application must identify sites that are intended to mitigate known significant impacts of any other proposed site.

Subpart ~~1~~2. **Site permit for LEPGP.** An application for a site permit for a large electric power generating plant must contain the following information:

- A. a statement of proposed ownership of the facility as of the day of filing and after

commercial operation;

Make change:

Subpart 1. General requirements. An application for a large electric power generating plant must include a proposed site that does not overlap with any proposed alternative site. The application must identify sites that are intended to mitigate known significant impacts of any other proposed site.

~~Subpart 12.~~ **Site permit for LEPGP.** An application for a site permit for a large electric power generating plant must contain the following information:

A. a statement of ~~proposed~~ ownership of the facility as of the day of filing and proposed ownership after upon commencement of commercial operation;

Reason: Ownership is important. It is part of the language in a permit, and it is important for the PUC to know who is filing the application and later, who is owning as operation begins. This language change clarifies who owns the project WHEN. "After" is not when a permittee is required to notify the PUC.

Ownership in the AWA Goodhue project was changed, but misrepresented as the same owner. This was not in reality the case. Legal ownership at specific times is critical for the regulatory body to know of and be able to approve. Some projects are changing owners many times. In the past the state has not known who the owner was, and changes to the projects have and can be made without knowledge of correct owners. Big problem.

Also, in same section, pg. 11, letter F, Draft says:

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

Make change:

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

Reason: Applicants have not told the truth about land acquisition. They say contracts are trade secret. Not providing verification is now a problem. This is a burden of proof that needs to be placed upon the applicant. It is not extremely difficult for the applicant to provide proof to the PUC with a shaded map and contract pages with signatures, no matter what the project is. Provided information can still be marked proprietary, if that is a real concern, but in the interest of transparency it could be made part of the record. I would think the applicant would be proud of who their partners are. It is extremely important for the PUC to know the truth about how much project area the applicant controls. This goes to the viability of any project. If the PUC has no proof, no assurance of the true viability of a project, much time, money, and resources are wasted. Please know that the intent of the law under 216E.16 Rules is that the PUC may ask for more stringent criteria as stated in the Chapter:

216E.16 Rules. The commission, in order to give effect to the purposes of this chapter, may adopt rules consistent with this chapter, INCLUDING "promulgation" ("make known; make public; put law into action or force") of site and route designation criteria, the description of the information to be furnished by the utilities, establishment of..." Rule goes on to speak about public hearings by Administrative Law Judges to,

“...attempt to maximize citizen participation in these processes...” How else will you build a truthful record. Applicants are too blinded to accomplishing their project by all means possible.

Six:

same section, 7850.1900, Letter N. pg. 12. Draft says:

N. United States Geological Survey topographical maps or other maps showing the entire proposed project area.

Change to:

N. United States Geological Survey topographical maps or other maps showing in comparable scale the entire proposed project area.

Reason: Applicants are turning in maps of all different scales. The maps may show archeological sites, historical sites, sensitive environmental areas, waterways, etc. That's fine if they want to do that. Then the rule should also make sure there are a set of maps submitted **in comparable scale the entire proposed project area.** When out of scale to one another, the Commission is missing the relation of the project to the environment where it is proposed to be sited. This burden (which not that difficult in the age of computers) to provide clear, in scale maps must be put upon the applicant. Please include this important request to better police the deceptions that have occurred. Staff has told us they want to see burden upon the applicant. This is an important and good solution. Many resources have been wasted when inadequate maps have been provided. **WHAT GOOD IS A MAP (or MAPS) IF NOT SHOWING THE TRUE RELATIONSHIP OF THE PROJECT TO ITS PROPOSED SITE? (Map: “something that represents with a clarity suggestive of a map; a map usually being a representation on a flat surface.”)** See Chapter 216E.03 Subd.7 “Considerations in designating sites and routes.” A lengthy list exists there that charges the Commission **“to facilitate the study, research, evaluation, and designation of sites and routes” ...and...“shall be guided by, but not limited to”**...the list provided. There must be a more diligent approach to **research and evaluation.** The intent of the statute is to give the Commission the regulatory power to effectively and accurately research and evaluate. Simply ask the Applicant to submit better information and second person verified information. This may be as easy as the applicant submitting verified information from the County(s) and the Township(s).

Also the same change needed in this area a little further on:

7850.1950 ROUTE PERMIT APPLICATION CONTENTS.

Pg. 11 Draft says in Subp. 2, G. and H. :

G. the names of each owner whose property is within any of the proposed routes for the high voltage transmission line;

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

Make this change here and elsewhere in Rule 7849 and 7850 to be consistent:

G. the verified names of each owner whose property is within any of the proposed routes for the high voltage transmission line;

H. United States Geological Survey topographical maps or other maps acceptable to the commission in comparable scale showing the entire length of the high voltage transmission line on all proposed routes;

Seven:

pg. 14 Draft says:

7850.4500 1975 PERMIT APPLICATION REJECTION.

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

Make changes:

Make change to include language to refer to where prohibited sites are listed, the statute, and include language that the Commission may reject permit application for gross incompleteness. If the PUC has been giving the applicant time to correct or complete, this time is stretching out, the process is being taken advantage of, and causing a great use of resources. Let the applicant reapply when they are ready. At least use the 3 strike rule and save the taxpayer some money by weeding out the poor projects that are problem-ridden and making them go back to the drawing board. That is what the rest of us do when we don't have our ducks in a row. Get it together, then resubmit the application when you are ready. Broaden the scope of rejected application, since we see more revoked permits at the PPSA than we ever have before.

Eight:

Pg. 14-15-16 the Draft says:

7850.2000 APPLICATION REVIEW NOTICE LISTS.

In Subp. 4.

Subp. 4. **Landowner list.** The applicant must maintain and make available to the commission and department upon request a list of landowners. The list must include landowners whose property is along any proposed route or landowners whose property is on or adjacent to any proposed site. An owner is the person whose name is shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer. The list must be alphabetical and be grouped by zip code.

This section is better than all other drafts, except need to Make this Change :

Subp. 4. **Landowner list.** The applicant must maintain, eFile, and make available to the commission, and department, and public upon request a list of landowners. The list must include landowners whose property

is along any proposed route or landowners whose property is on or adjacent to any proposed site. An owner is the person whose name is shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer. The list must be alphabetical **by last name, in a searchable format**, and be grouped by zip code.

Reason: This is important public information. All information must be filed by last name, or in the case of an agency comment, by the agency name and not the first name or the name of the commenter. Landowner lists are as important to the public knowing who is forgotten as it should be to the state to find out who is not included.

Nine:

Pg. 17, in Subp. 2 the Draft says:

7850.2100 PROJECT NOTICE OF APPLICATION FILING.

Subp. 2. **Newspaper notice.** Within 10 days after submission of an application, the applicant shall publish notice in a legal newspaper of general circulation in each county in which a site, route, or any alternative is proposed to be located that an application has been submitted and a description of the proposed project.

Make change:

Subp. 2. **Newspaper and Radio notice.** Within 10 days after submission of an application, the applicant shall publish notice in a legal newspaper of general circulation in each county in which a site, route, or any alternative is proposed to be located that an application has been submitted and a description of the proposed project.

Reason: Many of the project applications impact rural areas where people are working outside. In the effort to have “**broad spectrum citizen participation as a principal of operation**” (216E.08) this is a simple action to use a standard PSA form sent by the applicant to area radio stations, and then provide dated, signed verification the PSA’s were sent. Please insert “and Radio notice” in 7849 and 7850 sections to be consistent.

Ten:

Please include language in the rule about Buy the Farm.

Please include language for more public participation on Advisory Task Forces.

Make timing consistent at least with the ten day notice rule for hearings before the Commission, and nothing should be 7 days.

Please add language that affords regulation of solar projects over 50 MW in size. This is important to keep an eye on this industry. Many in the wind industry are moving into solar and bringing along some

of the same questions about how the application information is submitted and processed. It would be good to be cautious and have solar develop in an orderly manner.

PLEASE expand the language about the Public Advisor that includes in their job description that they PROVIDE information to callers. Sometimes the public does not know what to ask. That public advisor must provide information, which does not cross into legal advice at all.

Last, in an effort to be brief, make known in the 7850 Siting Rule that there are consequences. Be sure to add this to the rule:

Minn. R. 7850.5300 ENFORCEMENT, PENALTIES.

Subp. 1. Criminal penalty. Any person who violates this chapter or any rule promulgated hereunder, or knowingly submits false information in any report required by this chapter is guilty of a misdemeanor for the first offense and a gross misdemeanor for the second and each subsequent offense. Each day of violation shall constitute a separate offense.

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

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

Sincerely,

Marie McNamara
