

Minnesota Energy Infrastructure Permitting Reform

by Zev Simpser and Brian Bell

Governor Tim Walz recently signed the Minnesota Energy Infrastructure Permitting Act and amendments to the certificate of need requirements (Permitting Act).[1] The Permitting Act includes significant reforms to streamline permitting for renewable energy and transmission projects to assist with meeting Minnesota's 100% by 2040 law.[2] The Permitting Act contains important changes to both the certificate of need, and route and site permit processes.

Limiting Certificate of Need Requirements

Lawmakers modified the definition of "large energy facility" to clarify the types of generators that require certificates of need and to limit the size of transmission lines requiring certificates of need.[3]

The amendments clarify that certificates of need are not required for wind and solar electrical facilities if the Minnesota Public Utilities Commission (PUC) determines the project is a reasonable approach to meeting Minnesota's carbon-free standards.[4] Additionally, energy storage systems will no longer require a certificate of need.

Additionally, the Permitting Act exempts the following transmission lines from the certificate of need requirements:

- High-voltage transmission lines with capacities between 200 kilovolts (kV) and 300 kV if less than ten miles of the length is located within Minnesota,
- High-voltage transmission lines with a capacity of 100 kV or more that cross state lines unless more than ten miles of the length is located within Minnesota, and
- High-voltage transmission lines of all capacities provided that less than one mile of the length is located within Minnesota.

Lawmakers also sought to expedite the process by which renewable energy projects interconnect to the grid. Generation tie lines are exempt from the certificate of need

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requirements if they interconnect:

- Wind energy conversion systems or combinations of systems that have a combined nameplate capacity of five megawatts (MW) and above;
- Solar energy systems with a combined nameplate capacity of 50 MW and above; and
- Energy storage systems with a nameplate capacity of 10 MW and above.[5]

Finally, certificates of need will no longer be required when relocating high-voltage transmission lines to new rights-of-way at the same or lower voltage.[6]

Modifications to Route Permit and Site Permit Processes

The Permitting Act repeals the old “Minnesota Power Plant Siting Act,” Minn. Stat. ch. 216E, under which route and site permits were granted through either a “Full Process” or an expedited “Alternative Process.” The Permitting Act replaces these categories with a “Major Review” process and an expedited “Standard Review” process. Major Review can be seen as roughly comparable to the Siting Act’s Full Process and the Standard Review as similar to the Alternative Process.

Although the Siting Act required applicants to propose at least two routes or sites, the new Permitting Act requires only a single route or site, though additional sites and routes may be proposed by stakeholders and considered by the PUC.[7]

Major Review

Major Review generally applies to site permits for large electric power generating plants of 80 MW or more that do not utilize renewable resources. Major Review also applies to route permits for high-voltage transmission lines above 300 kV that have greater than 30 miles of their length within Minnesota.[8]

Despite significant changes, the Major Review process retains many aspects of its predecessor. For example, under the Major Review process, the PUC must still make a final decision regarding a route or site permit within one year of the date it deems the application complete, which may be extended for up to three months with the agreement of the applicant or for just cause.[9]

Standard Review

The Standard Review process expands the types of facilities eligible for expedited permitting. Specifically, Standard Review extends the expedited review process to include:

- All high-voltage transmission lines with capacities between 200 kV and 300 kV; and
- Wind energy conversion systems or combinations of systems that have a combined nameplate capacity of 50 MW and above.

Many of the infrastructure projects that were eligible under current Alternative Review remain eligible under Standard Review. For example, Standard Review will encompass

power plants smaller than 80 megawatts, power plants powered by natural gas, high-voltage transmission lines with capacities between 100 kV and 200 kV, high-voltage transmission lines with capacities exceeding 300 kV if less than 30 miles of length is located within Minnesota, high-voltage transmission lines with capacities greater than 300 kV if 80 percent or more of the proposed length within Minnesota is located in existing rights-of-way, solar plants, and energy storage systems. Unlike under the previous law, the rerouting of a high-voltage transmission line to a single customer does not, standing alone, qualify the reroute for the expedited process.^[10]

Although the Department of Commerce prepared environmental reviews under the Alternative Review process, applicants are now responsible for preparing and submitting their own environmental reviews under the Standard Review process. The PUC may supplement the review with an addendum if it identifies issues not addressed by an applicant's environmental review.^[11]

The Standard Review process generally requires the PUC to reach a final decision within six months of the date it deems an application complete.

Conclusion

The new energy infrastructure legislation will hopefully simplify and expedite the permitting process for many energy projects. These efficiencies should, in turn, assist Minnesota in meeting its ambitious 100% by 2040 goals.

^[1] Minn. Law ch. 126, arts. 7-8 (to be codified in Minn. Stat. ch. 216I and scattered sections of Minn. Stat. ch. 216B).

^[2] Minnesota's 100% by 2040 law requires 100% of the electricity Minnesota electric utility's provide to retail customers in Minnesota to come from carbon-free technologies by 2040. Minn. Stat. § 216B.1691, subd. 2g.

^[3] Minn. Law ch. 126, art. 8, sec. 1 (to be codified at Minn. Stat. § 216B.2421, subd. 2).

^[4] Minn. Law ch. 126, art. 8, sec. 6 (to be codified at Minn. Stat. § 216B.243, subd. 9). The previous statute exempted projects that were reasonable approaches to meeting Minnesota's renewable energy standards. Minn. Stat. § 216B.243, subd. 9.

^[5] Minn. Law ch. 126, art. 8, sec. 6 (to be codified at Minn. Stat. § 216B.243, subd. 8(a)(9)(10)).

^[6] *Id.* (to be codified at Minn. Stat. § 216B.243, subd. 8(a)(11)).

^[7] See Minn. Law ch. 126, art. 7, sec. 5 (to be codified at Minn. Stat. § 216I.05, subd. 3).

^[8] See Minn. Law ch. 126, art. 7, secs. 5, 7 (to be codified at Minn. Stat. § 216I.05 subd.

10(2), .06, subd. 2).

^[9] Minn. Law ch. 126, art. 7, sec. 6 (to be codified at Minn. Stat. § 216I.06, subd. 4).

^[10] Minn. Law ch. 126, art. 7, sec. 7 ((to be codified at Minn. Stat. § 216I.07, subd. 2).

^[11] Minn. Law ch. 126, art. 7, sec. 7 ((to be codified at Minn. Stat. § 216I.07, subd. 3).