

**REPORT TO THE MINNESOTA PUBLIC UTILITIES COMMISSION
ON THE 2006 ANNUAL HEARING OF THE
POWER PLANT SITING PROGRAM
Docket Number E999/M-06-1733**

06-1733

The Annual Hearing required by the Minnesota Power Plant Siting Act was conducted by the Minnesota Public Utilities Commission (the "Commission") at its Small Hearing Room on Tuesday, January 23, 2007¹.

The annual hearing is intended to advise the public of matters relating to the siting of large electric power generating plants and routing of high voltage transmission lines and to afford interested persons an opportunity to be heard regarding any aspects of the Commission's activities, duties, or policies pursuant to the Power Plant Siting Act, Minnesota Statutes sections 116C.51-.69, or its Power Plant and Transmission Line Siting Rules, Minnesota Rules chapter 4400.

The official notice of the hearing is provided in Exhibit AH06-1. Additionally, the exhibit includes the EQB Notice published on December 17, 2007, the affidavit of mailed notice on December 17, 2007 to the Power Plant Siting general list maintained by the Department of Commerce, a print copy of email notice to the informal email list kept by the PUC staff, and a list of registered persons attending the hearing. Notice was also posted on the Commission's web calendar. An audio tape of the proceeding is on file at the Commission.

Notice of the hearing indicated that the record would remain open for additional written comments until February 2, 2007. Subsequently, upon request, the written comment period was extended to February 16, 2007. A summary of the record of the proceeding follows.

Summary Minutes of Proceeding

Bob Cupit convened the hearing at approximately 2:00 PM, and moderated the discussion through the prepared agenda. Marya White and Deb Pile represented the Department of Commerce.

An overview was provided describing continuing efforts to manage energy facility siting under the dual-agency structure set up by the 2005 legislation, i.e., authority moved to the Commission and the former EQB siting staff move to the Department of Commerce. Mr. Cupit observed that the arrangement was working adequately and that proper decision records were being developed and adjudicated. There would need to be adjustments of procedural rules at some point.

¹ Due to significant docket load and agreement of known interested parties, Commission staff sought a variance of Minnesota Rules 4400.6050 providing for the annual hearing to be held in November or December. The Commission agreed in its December 29, 2006 *ORDER GRANTING VARIANCE DEFERRING PUBLIC HEARING TO JANUARY 2007*.

Ms. Pile noted challenges in managing joint need and siting dockets when the rules are separate and not designed for joint record development. She reviewed a handout showing, for 2006, completed projects by type, projects under review, and projects on the horizon, including power plants, transmission lines, pipelines and wind farms (Exhibit AH06-2)

Several questions were asked about how the CapX2020 Certificate of Need review was going to work. The CapX utilities rationale for filing a Certificate of Need for three lines together was described, with the filing expected in 2007. As provided in rule, the Department will prepare an Environmental Report in the CON process.

Further questions requested an explanation of how the Department manages the separate tasks of producing the ER and filing comments on need. It was explained that there are separate staff units that do those two tasks and that by statute the need analysis represents a public advocacy position and that work on an ER, and subsequently work on siting, is a neutral rather than advocacy effort.

Concern was expressed about how the Department could serve as public advisor and remain neutral in siting process. Mr. Reinhardt was particularly concerned about how the public advisor roles worked – and perceived by some to not work – on the MinnCan pipeline project. The exchange on this topic was somewhat confrontational and difficult to summarize, though it is clear that several attendees were concerned that the Department's roles in joint need and siting reviews caused confusion to some members of the public. Later written comments filed by the Reinhardts, Mike Michaud, and Paula Maccabee develop this concern in detail.

There was a brief discussion in response to a question about the back-stop siting authority granted the Federal Energy Regulatory Commission by 2005 legislation. Minnesota is not yet implicated by DOE efforts to identify national interest corridors, but both the Commission and the Department are participating in the interest of preserving the state's authority to regulate the siting of energy facilities.

Susan Heffron, representing the Minnesota Pollution Agency, described how the MPCA is adjusting its environmental review procedures now that siting authority is at the PUC. They will work directly with the Department as needed, and appreciated having the project status handouts provided by the Department.

Carol Overland submitted a map representing, by her markup, where coal fueled power plants were being studied (Exhibit AH06-3), and alleged that the CapX transmission projects were being proposed principally to enable more new coal plants.

There was discussion of web-based information about projects available to the public. An explanation of how edockets and the separate facilities permitting databases are designed and are working was provided. This capability is an important aspect of public participation and needs to be continually improved.

Concerns were also expressed about how citizen's advisory task forces, pursuant to rule, were being used, or, to several commenters, concern that they are not being used. Deb Pile described that the Department's Energy Facility Permitting staff recognized that the nature of some projects did not justify formation of a task force, and outlined the four characteristics of projects that they considered in making that determination: 1) complexity, 2) known and anticipated controversy, 3) sensitivity of affected resources, and 4) length of project, if a transmission line. An example of such a determination was provided for the Big Stone II Transmission Project. Mr. Cupit noted that there is not a rigid formula for making the determination, and the Commission has expressed an interest in looking at the need for a task force on a case basis.

Bill Neuman emphasized that more detail is needed in need and siting records that represent the known costs of environmental effects, such as the economic cost of the visual intrusion of a transmission line. Other values, such as the monetary value of various wildlife species, have been computed for proper balancing of impacts. Mike Michaud agreed that the Commission, with its traditional focus on economics, should better balance its economic and environmental responsibilities with more environmental values.

A comment for Beverly Topp was read into the record by Kristen Eide-Tollefson. (Ms. Topp later filed a revised written comment which replaces the oral comment.

There being no further testimony, the hearing was adjourned.

Written Comments Received After the Hearing

Five written comments were received during the comment period following the hearing. Summaries are provided below, and the complete comments, with the exception of lengthy attachments, are attached as exhibits.

January 23, 2007: Filed Comment: Paula Maccabee

Ms. Maccabee addresses two concerns:

- 1) rectifying some of the disparities in resources that prevent effective public participation in the siting and permitting process; and
- 2) ensuring that the process pertaining to energy facilities is in compliance with the Minnesota Environmental Policy Act (MEPA).

Addressing the first concern, she suggests: 1) Empower an ombudsperson in the Attorney General's Office. This attorney would be charged with protection of property owners and consumers and ensuring compliance with Minnesota statutes and rules in the process of certifying and permitting energy infrastructure. The ombudsperson could participate as a party in commission proceedings and also mediate concerns raised by individuals potentially subject to eminent domain actions; 2) Provide intervener funding based on the likelihood that the intervener will improve public participation, environmental review under MEPA and/or consideration of alternatives in a permitting process. Current intervener funding provisions are rarely used as well as limited in scope: 3) Provide

property owners affected by a proposed energy facility with information sufficient to communicate with other property owners. This would permit citizens to share information and resources in the process and reduce the "divide-and-conquer" approach. The Commission could allow property owners to opt out of this shared information so that persons who wanted to protect their privacy could do so.

Addressing the second concern, she suggests: 1) Clear determination by the Commission in the MPL pipeline case that the Commission has an obligation as well as jurisdiction under MEPA to minimize environmental and human impacts of energy facilities, including a rejection of the Company's arguments to strike pertinent findings and proposed conditions.

2) Staff provision for each proposed project of an independent environmental report in the certificate of need process and an independent environmental assessment pertaining to the routing and siting portion of the Commission process. Accepting the utility or company analysis is not sufficient to comply with either the letter or intent of governing law.

3) Participation in the process of review by the Attorney General as part of the Attorney General's jurisdiction pertaining to MEPA compliance. This responsibility would be separate from and in addition to representing the Department of Commerce in Commission proceedings and could include cross-examination, presentation of briefs and arguments and/or submission of evidence.

February 16, 2007: Filed Comment: Kristen Eide-Tollefson

Ms. Eide-Tollefson implores the Commission to revisit the foundation of the policy, procedural frameworks and practices by which the public interest, and other interests designated by the state, are executed. She observes that the pressures of reorganization of siting authorities has obscured essential connections between policy and procedure across the three interdependent elements of facility permitting: Certificate of Need, Routing and Siting, and Environmental Review. She reviews in detail the statutory and historical basis for the Commission's siting jurisdiction, and analyzes three areas accompanied by proposed remedies.

Item #1. Providing Public Participation Plan and Information Access

1. The Commission to require the following of all pending and future applications for certificate of need, and siting / routing permits

a. that a public participation plan be submitted to the Commission for review, comment and approval (coordinated with notice plan and application acceptance).

b. Where multiple lines are included in one certification proceeding, the Commission shall consider and invite comments on whether the lines should have individual coordinated, or a single participation plan.

c. Diagrammatic and written forms of the participation plan shall be made available to all persons requiring notice and in all public meeting venues.

2. An approved public participation plan will be:
- a) posted immediately on PUC and DOC websites;
 - b) included in hardcopy, with web citation, in all required notice formats;
 - c) available at all hearings and public informational meetings.
 - d) The plan shall be accompanied by and linked with general explication of CoN routing/siting processes, rules; the rights of the public to participate in contested and non-contested proceedings, and the interests of the public in participation.

Item #2: Lists.

PUC, DOC and the utilities all use different lists. As we understand it, DOC lists are 'project lists' assembled during the siting and routing process. There is easy access to sign up on line for this list at the facilities planning site. It is an exemplar) process, which has no parallel yet on the PUC side, for Certificate of Need proceedings. The PUC should create a parallel opportunity for members of the public to sign up on-line to be on the service list at the PUC.

Item #3: Exemptions and transparency in Pre-Certification Phase

Decisions are made in the pre-application phase which substantially affects the information development and procedural requirements of the proceeding.

Suggested remedies: 1) require a pre-application conference, 2) at a minimum, better notice exemptions, etc prior to filing, 3) allow discovery prior to filing, and 4) appoint stakeholder group to review alternative procedures.

February 7, 2007: Filed Comment: Beverly Topp

Ms. Topp addresses concerns about how early information becomes available to local governments, particularly townships. Her concerns are oriented to notices and meetings that were provided in accord with the Biennial Transmission Plan rules.

February 19, 2007: Filed Comment: Mike Michaud for North American Water Office

Mr. Michaud observes a fundamental flaw created by the transfer of environmental review of energy facilities to the Commissioner of the Department of Commerce. This appears to set up a conflict between statutory prescription for the Department's siting staff to assess environmental impacts without considering need, and for the Department's advocacy staff to specifically take a position on the question of need. This can create conflicts of interest for the Commissioner that can result in a potential bias of analysis in the environmental review. He further challenges the timing of environmental review, relating evidence of flawed timing in the Monticello Dry Cask Storage docket. And in closing, he notes that the changing circumstances of the understanding of the risks from impending global climate change and the rise of the desire for community owned energy projects, has elevated the need for the Commission to reconsider how it will evaluate these "non direct cost to ratepayer"

factors in its decisions. Economic factors cannot be given precedence in decisions over these other vital societal interest factors.

February 15, 2007: Filed Comment: Laura and John Reinhardt (see edockets for attachments to comments)

Laura and John Reinhardt assert that the state's siting process is broken and that affected landowners have been denied their legal due process rights. They highlight two examples: 1) Project advocacy by the Department of Commerce unfairly prejudices regulatory review. The project advocate cannot also serve as the regulatory analyst, the environmental reviewer, and the public advisor. The Department's early advocacy in favor of applications for energy facilities sets up an immediate conflict of interest and eliminates the neutral analysis necessary to assist decision makers. 2) The state's public advisor program does not assist affected citizens in understanding or participating in regulatory proceedings. The public advisors should be explaining Minnesota's regulatory processes to the citizens and ensuring that timely proper notice is provided. The Reinhardt's believe the public advisor should intervene as a party on behalf of affected landowners.

The Reinhardt's offer six suggestions to fix the broken process:

1. The Department of Commerce Must Stop Advocating for Approval of Facilities in the Application Process.
2. If the Company Enjoys the Benefit of State Agency Advocacy, Then the Public is Entitled to That Representation Too.
3. Explain the Energy Facility Permitting Processes to the Public in Language They Can Understand. The Federal Energy Regulatory Commission's website is cited as a good template.
4. Explain that the Applicant is Asking for the State's Power of Eminent Domain in Language the Public Can Understand, and Explain Exactly How That Process Works.
5. Due Process Requires that Moving the Project onto New Landowners Moves the Process Back to the Starting Line. All affected citizens must be provided with the same opportunity to participate in the record before decisions are made that affect them.
6. Notice Rules for Pipeline Projects Must be Finalized.

Note: The Reinhardt's comments were accompanied by 111 pages of attachments, which may be reviewed on edockets for this docket number, 06-1733.

EXHIBIT LIST

2006 ANNUAL HEARING OF THE POWER PLANT SITING PROGRAM

(Held on January 23, 2007)

- AH06-1 Official Notice and Agenda, Affidavit of Mailed Notice*
- AH06-2 EQB Monitor Notice*
- AH06-3 PUC Weekly Calendar Notice*
- AH06-4 Email Notice*
- AH06-5 Prehearing Comment: US. Corps of Engineers, St. Paul
- AH06-6 Filed Comment: Paula Maccabee
- AH06-7 Completed Projects by Type in 2005, Projects under Review, and Projects Anticipated in 2007
- AH06-8 Carol Overland map of coal plants
- AH06-9 Filed Comment: Kristen Eide-Tollefson
- AH06-10 Filed Comment: Bev Topp
- AH06-11 Filed Comment: Mike Michaud for North American Water Office
- AH06-12 File Comment: Laura and John Reinhardt (see edockets for attachments)

*See edockets – not replicated here

Exhibit 5
06-1733

Bob Cupit

From: Cameron, Tamara E MVP [Tamara.E.Cameron@mvp02.usace.army.mil]
Sent: Monday, January 22, 2007 5:02 PM
To: Bob Cupit
Subject: Comments on PUC routing program (UNCLASSIFIED)



Classification: UNCLASSIFIED
Caveats: NONE

Mr. Cupit,

I received your letter regarding the annual hearing on the power plant siting and transmission line routing program tomorrow from 2 to 4 pm. I am interested in learning more about this process and whether there are opportunities for early coordination of federal Clean Water Act (CWA) Section 404 permit evaluation requirements, where proposals would impact waters of the U.S. (including adjacent wetlands). Unfortunately, I am unable to attend tomorrow's meeting.

If there is a presentation or any handout associated with the meeting, I would very much appreciate a copy. In addition, any information you could provide me that would aid in my understanding of the PUC process would also be very much appreciated. I am hoping to submit comments to the PUC by the 2/2/07 deadline on the subject of coordinating PUC reviews with CWA Section 404 permit reviews.

Sincerely,

Tamara Cameron
Regulatory Branch Lead Project Manager
Army Corps of Engineers, St. Paul District tamara.e.cameron@mvp02.usace.army.mil
ph: (651) 290-5197
fax: (651) 290-5330

Classification: UNCLASSIFIED
Caveats: NONE

Bob Cupit

From: Paula Maccabee [pmaccabee@visi.com]
Sent: Tuesday, January 23, 2007 1:09 PM
To: Bob Cupit
Cc: Kristen Eide-Tollefson; Lisa Daniels; Chuck Dayton; Atina Diflely; sriedm@earthlink.net; Daly Edmunds; Mike Michaud; Carol Overland
Subject: Energy Facilities Public Hearing Annual Review
*** Attachments:** ltr B.HaarMPLPermit192007.pdf



Bob Cupit
 Senior Facility Planner
 Reliability and Facilities Permitting
 Minnesota Public Utilities Commission
 Phone: 651-201-2255

Dear Bob:

It was a pleasure talking with you this morning. I appreciate your offer to provide comments on the issues we discussed: 1) rectifying some of the disparities in resources that prevent effective public participation in the siting and permitting process; and 2) ensuring that the process pertaining to energy facilities is in compliance with the Minnesota Environmental Policy Act (MEPA).

Effective Public Participation

My experience representing individuals and non-profit organizations in certification, siting and permitting processes for energy facilities as well as in agency rulemaking suggests that there is a need to ensure that public participation is effective. Lack of information, experts and resources is a critical problem, particularly when the certification and permitting processes are joined, as in the recent Minnesota Pipe Line (MPL) crude oil pipeline case. Citizens and landowners are consistently overwhelmed by the resources and expertise of the parties proposing infrastructure and may even be deprived of rights provided under Minnesota statutes and rules.

In the recent pipeline case, MPL's proposed route would have effectively destroyed the livelihood of a successful organic farm, the Gardens of Egan. As a result of the extent of the threat (as well as the skills of the affected farmers), it was possible to provide substantial advocacy, both to reroute the pipeline away from the organic farm and to provide an environmental analysis of the impacts of pipelines on organic farms.

However, in this case as a whole, there was little environmental analysis either of alternatives for the project or even of ways to mitigate impacts if the pipeline were to be permitted. Practices of agents for MPL were very one-sided and in some cases were in conflict with Minnesota law which requires specification of easements, provision of appraisals, reconstruction of roads and other protections of individual landowners. The financial consequences for any single landowner are usually insufficient to permit a person of ordinary means to protect their own rights, let alone to substantially affect an energy permitting process.

As we discussed, there are several possible approaches to rectify this imbalance. I would suggest that they all be employed in future cases:

- 1) Empower an ombudsperson in the Attorney General's Office. This attorney would be charged with protection of property owners and consumers and ensuring compliance with Minnesota statutes and rules in the process of certifying and permitting energy infrastructure. The ombudsperson could participate as a party in commission proceedings and also mediate concerns raised by individuals potentially subject to eminent domain actions.
- 2) Provide intervenor funding based on the likelihood that the intervenor will improve public participation, environmental review under MEPA and/or consideration of alternatives in a permitting process. Current intervenor funding provisions are rarely used as well as limited in scope.
- 3) Provide property owners affected by a proposed energy facility with information sufficient to communicate with other property owners. This would permit citizens to share information and resources in the process and reduce the "divide-and-conquer" approach. The Commission could allow property owners to opt out of this shared information so that persons who wanted to protect their privacy could do so.

MEPA Compliance

We briefly discussed the question of MEPA compliance in energy facilities proceedings. I believe that there is a critical deficiency in environmental analysis of alternatives to the projects proposed (the need portion of the analysis), which was the initial intent of the MEPA legislation. For many projects, there is no independent agency staff environmental analysis on which the Commission can rely in making a judgment that a project is needed or that its scope and scale are appropriate, given an analysis of alternatives.

In the MPL pipeline case, the first case without Environmental Quality Board involvement in permitting, there was also no independent environmental analysis of issues pertaining to location of the pipeline or conditioning of the permit. When the Administrative Law Judge

recommended conditions to comply with MEPA in response to public testimony and testimony of local government representatives, the Company filed detailed exceptions asserting that the ALJ and the Commission had no jurisdiction to minimize environmental and human impacts of the project. I have attached my response to the Company's exceptions for inclusion in this record.

Suggestions are as follows:

1) Clear determination by the Commission in the MPL pipeline case that the Commission has an obligation as well as jurisdiction under MEPA to minimize environmental and human impacts of energy facilities, including a rejection of the Company's arguments to strike pertinent findings and proposed conditions.

2) Staff provision for each proposed project of an independent environmental report in the certificate of need process and an independent environmental assessment pertaining to the routing and siting portion of the Commission process. Accepting the utility or company analysis is not sufficient to comply with either the letter or intent of governing law.

3) Participation in the process of review by the Attorney General as part of the Attorney General's jurisdiction pertaining to MEPA compliance. This responsibility would be separate from and in addition to representing the Department of Commerce in Commission proceedings and could include cross-examination, presentation of briefs and arguments and/or submission of evidence.

Bob, I really appreciate your interest in making sure that public participation is effective and ensuring compliance with MEPA. A more balanced and fair process would protect citizens, property owners, customers and the legitimacy of the process. I hope that you will be able to draw together other decision-makers concerned about these issues.

Please feel free to contact me at any time to follow through on these ideas or other suggestions you may have to improve the process.

Best regards,

Paula Maccabee, Esq.
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"Justice, justice shall you pursue." (Deut. 16:20)

Energy Facility Permitting Completed Projects by Type

December 2005 - December 2006

Project Type	Name (Docket No.) PUC Decision	Project Description	Date
Generation	Faribault Energy Park (02-48-PPS-FEP) ET-6133/MC-06-1458 Minor Alteration	Minnesota Municipal Power Agency's addition of a nominal 25 MW duct burner to the combined cycle portion of the Faribault Energy Park facility currently under construction in Rice County	Nov '06
Transmission	Summit-Loon Lake Xcel 115/115 kV (E002/TR 05-1192) Route Permit	New Xcel Energy double circuit 115/115 kV high voltage transmission line from the existing Summit-Loon Lake 115 kV transmission line to the Eastwood Substation on the east side of Mankato	Dec. '05
	Tower/Badoura HVTL (E015/TL 05-867) Need Certification (DOC ER)	Two geographically separate projects proposed by Minnesota Power and Great River Energy as part of their Biennial Transmission Projects Report. The Tower 115 kV project would upgrade existing 46 kV lines in the Tower-Ely area by building 14 miles of 115 kV line in St. Louis County. The Badoura 115 kV project would upgrade the existing grid in Hubbard, Cass and Crow Wing counties by building approximately 56.5 miles of new 115 kV line.	April '06
	RDO 115kV (GRE) ET2/TL-06-468 Route Permit and Minor Alteration	Great River Energy and Itasca-Mantrap Electric Cooperative Assoc. upgrade of RDO substation near Park Rapids from 34.5 kV to 115 kv and upgrade and replacement of 2.5 miles of 34.5 kV electrical line to 115 kV in Hubbard County south of Park Rapids.	Sept '06 (permit) Nov '06 (alter.)
	Cannon Falls 115kV (Xcel) E-002/TL-06-459 Route Permit	Xcel Energy 0.98 mile (5,170 ft) double circuit 115 kV/115 kV transmission line, 1.3 miles (6,945 ft) of two single circuit 115 kV transmission lines, a new substation (Colvill) and the expansion of the Cannon Falls Transmission Substation.	Sept '06
Pipeline	High Bridge Pipeline (G002/GP-05-1706) Route Permit and Amendment	Xcel 2.5-mile natural gas pipeline from Mendota Regulator Station in Dakota County and to the High Bridge generating facility in Ramsey County	Feb '06 (permit) Dec '06 (amend.)

	Riverside Pipeline (CenterPoint) G008/GP-06-426 Route Permit	CenterPoint Energy 16.3 mile, 20-inch diameter high-pressure (650 psi) natural gas pipeline originating at the Northern Natural Gas facility located in Andover (Anoka County) and terminating at the Riverside Generating Plant Conversion Project in Minneapolis (Hennepin County).	Sept '06
	Cannon Falls Pipeline (GMT) PL-6580/GP-06-931 Route Permit	Greater Minnesota Transmission (GMT) 13 mile, 16-inch diameter high-pressure natural gas pipeline in Dakota and Goodhue counties; from a new Northern Natural Gas town border station south of Coates, terminating at the proposed Cannon Falls Energy Center Power Plant in Cannon Falls.	Oct. '06
Wind	Fenton LWECS (enXco) PT-6499/WS-05-1707 Wind Site Permit	205.5 Megawatt Large Wind Energy Conversion System consisting of up to 137 units of 1.5 MW wind turbines and associated power collection systems in Murray and Nobles counties	April '06
	High Prairie Wind I LWECS PT-6528/WS-06-91 Wind Site Permit	98.9 MW LWECS and associated facilities in Mower County	May '06
	MinnDakota LWECS (PPM Energy) E6530WS-06-157 Wind Site Permit	100 MW, with as many as 67 wind turbine generators in Lincoln County (formerly Ivanhoe Wind Farm)	June '06
Other	Monticello Dry Cask Storage Facility (CN-05-123) Certificate of Need (DOC EIS)	A dry cask independent spent fuel storage facility at the Xcel Energy Nuclear Generating Facility in Monticello	Oct. '06

January 2007

Energy Facility Permitting Projects Under Review

Project	Description	Authorization Required	Status
Power Plants			
Mesaba Energy Project (E6472/TR 05-1277)	A 1,200 MW coal gasification plant on the Iron Range, high voltage transmission lines and pipeline by Excelsior Energy Joint EIS with DOE	PUC combined Site and Route Permit for power plant, HVTL and pipeline	Draft EIS expected Q2 '07 Hearings Q3 '07 PUC decision Q4 '07
Transmission Lines			
Big Stone II 345 kV HVTLs (OTP, et.al) (E017/TR 05-1275)	Two separate high voltage transmission lines from the proposed 630 MW coal-fired Big Stone II Plant in South Dakota proposed by Otter Tail Power Company and six other utilities: one line running north and east from the plant to Morris; a second line running south within South Dakota, then east to Canby and Granite Falls.	PUC Certificate of Need and Route Permit Environmental documents, hearings combined	FEIS and hearings complete ALJ report Q1 '07 PUC decision Q2 '07
BRIGO (Buffalo Ridge Outlet)3-115 kV CON (Xcel) E-002/CN-06-154	Xcel Energy has filed an application for a Certificate of Need to construct three 115 kV transmission lines in southwestern Minnesota. Xcel indicates that the proposed lines are needed to create additional capacity to export wind energy from the Buffalo Ridge to the company's customers and to resolve electric reliability issues in the city of Marshall.	PUC Certificate of Need and Route Permit	ER scoping meetings Q1 '07 ER Q2 '07 Three separate route permit applications expected in '07

Mud Lake to Lake Wilson 115kV (GRE) CON/Route Permit CN-06-367 TL-06-980	GRE proposes to build a new 115 kilovolt (kV) high voltage transmission line approximately 12 miles long from the Mud Lake substation owned by Minnesota Power to the Wilson Lake Substation owned by GRE's distribution customer Mille Lacs Energy Cooperative, plus a 4.55 acre expansion of the Wilson Lake substation.	PUC Certificate of Need and Route Permit Environmental documents, hearings combined	EA and hearings complete PUC need and route decision Q1 '07
Tower 115kV (MP-GRE) ET-2,E015/TL-06-1624	MP and GRE propose to construct approximately 14 miles of 115 kilovolt (kV) transmission line, a 115/69/46 kV substation located near the city of Tower and a 115 kV switching station.	PUC Route Permit	Application accepted EA scoping meeting Q1 '07 EA, hearings Q2 '07 PUC decision Q3 '07
Appleton to Canby 115kV (Ottetail) CON/Route Permit E002/CN-06-677 TL-06-1265	Ottetail Power Company proposes to construct a 115 kV transmission line approximately 42 miles long between the substation in Appleton and the substation in Canby, plus changes in the substations at Canby, Dawson, Louisburg Junction and Appleton.	PUC Certificate of Need and Route Permit Environmental documents, hearings combined	EA complete Hearings Q1 '07 PUC decision Q1 '07
Chisago 115kV (Xcel) CON/Route permit E-002/CN-04-1176 E-002/TL-06-1677	A transmission line about 20 miles long between the Chisago Substation and St. Croix Falls to be built by Xcel Energy	PUC Certificate of Need and Route Permit	Applications accepted Q1 '07 EA scoping meeting Q1 '07 EA, hearings Q2 '07 PUC decision Q3 '07
Pipelines			
MinnCan Pipeline (Koch) P15/PPL-05-2003 Parallel with CON	Proposed 295-mile between Clearbrook in Clearwater County and the Flint Hills Resources refinery in Rosemont in Dakota County	PUC Certificate of Need and Route Permit Hearings combined	Hearings complete, ALJ's report filed PUC decision Q1 '07

Wind			
High Prairie Wind Farm II PT-6556/CN-06-1428 PT-6556/WS-06-1520	Wind farm to be constructed on more than 17,000 acres in Mower County and involving more than 80 landowners and 61 Vestas V82 1.65 MW wind turbines.	PUC Certificate of Need and Site Permit	CON and site applications accepted, draft site permit issued, and public meetings held ER (for CON) Q1 '07 PUC decision Q2 '07
Ridgewind (Project Resources Corp) IP-6603/WS-06-1327	Project Resources Corporation, on behalf of Ridgewind Power Partners, LLC, proposes to construct and operate the Ridgewind Wind Project, a 27 MW Large Wind Energy Conversion System in Pipestone and Murray counties.	PUC Site Permit	Applications accepted, draft site permit issued, and public meetings held PUC decision Q1 '07
Kenyon Wind IP-6605/WS-06-1445	Kenyon Wind LLC, proposes to construct and operate the Kenyon Wind project, a 18.9 MW Large Energy Conversion System in Goodhue county.	PUC Site Permit	Applications accepted Q1 '07 Draft site permit, public meetings Q1 '07 PUC decision Q2 '07

DOC Energy Facility Permitting

Projects on the Horizon – January 2007

Project	Description	Authorization Required	Application Anticipated
Power Plants			
Elk River Plant (GRE)	160 MW; gas or dual fuel	PUC Certificate of Need and Site Permits	Q2 '07
Other possible power plant: Rosemount Gas Plant (GRE) Sherco Capacity Upgrade (Xcel) Prairie Island Capacity Upgrade (Xcel)			
Transmission Lines			
CapX Group I, 3-345 kV HVTLs Brookings to TC (GRE) CN06-857 Fargo to St. Cloud (Xcel) CN06-1115 TC-Rochester-La Crosse (Xcel) CN06-979	A group of projects including: CapX West from Brookings to the Twin Cities; CapX Southeast from Hampton Corners to Rochester and La Crosse; and CapX Northwest from Fargo to St. Cloud and Bemidji to Grand Rapids	PUC Certificate of Need and Route Permits	Single CON filing anticipated Q2 '07 Subsequent separate route filings
CapX Group I – Bemidji North Central 230 kV (OTP, Minnkota, MP)	New 230 kV line from Wilton substation near Bemidji to Boswell substation near Grand Rapids approximately 70 miles long	PUC Certificate of Need and Route Permit Joint state/fed EIS, public participation (RUS as fed lead)	Notice Plan Q3 '07 CN/Route apps Q4 '07

Badoura 115 kV, (MP-GRE)	The Badoura 115 kV project would upgrade the existing grid in Hubbard, Cass and Crow Wing counties by building approximately 56.5 miles of new 115 kV line.	PUC Route Permit	Route application Q2 '07
Pipelines			
Southern Lights/Alberta Clipper Pipeline (Enbridge)	Southern Lights includes: new 675-mile diluent pipeline from Clearbrook to Chicago; new crude oil line from Manitoba to Clearbrook; reversal of crude line from Clearbrook to Alberta. Clipper includes 1,000 mile crude oil pipeline from Alberta to Superior.	PUC Certificate of Need and Route Permit Federal environmental review (CORPS, Forest Service, BIA, State Depart.)	CN/Route apps Q1 '07
Nashwauk PublicUtility Natural gas Pipeline PL,E280/GP-06-1461	22 miles of 24" pipeline in Itasca County for city and steel mill	PUC Route Permit	Route apps Q1 '07
Wind			
Wolf Wind	60 MW project in Nobles County	PUC Site Permit	Q2 '07
Other possible wind: Projects totaling from 350 to 500 MW expected			

2005 Update to 2004 MAPP Regional Planning Map
 (Plus Some Long Term Facilities Beyond 2013, and Some Facilities Outside the MAPP Region)
 Revised 12/2005

Scale: 1" = 100 miles

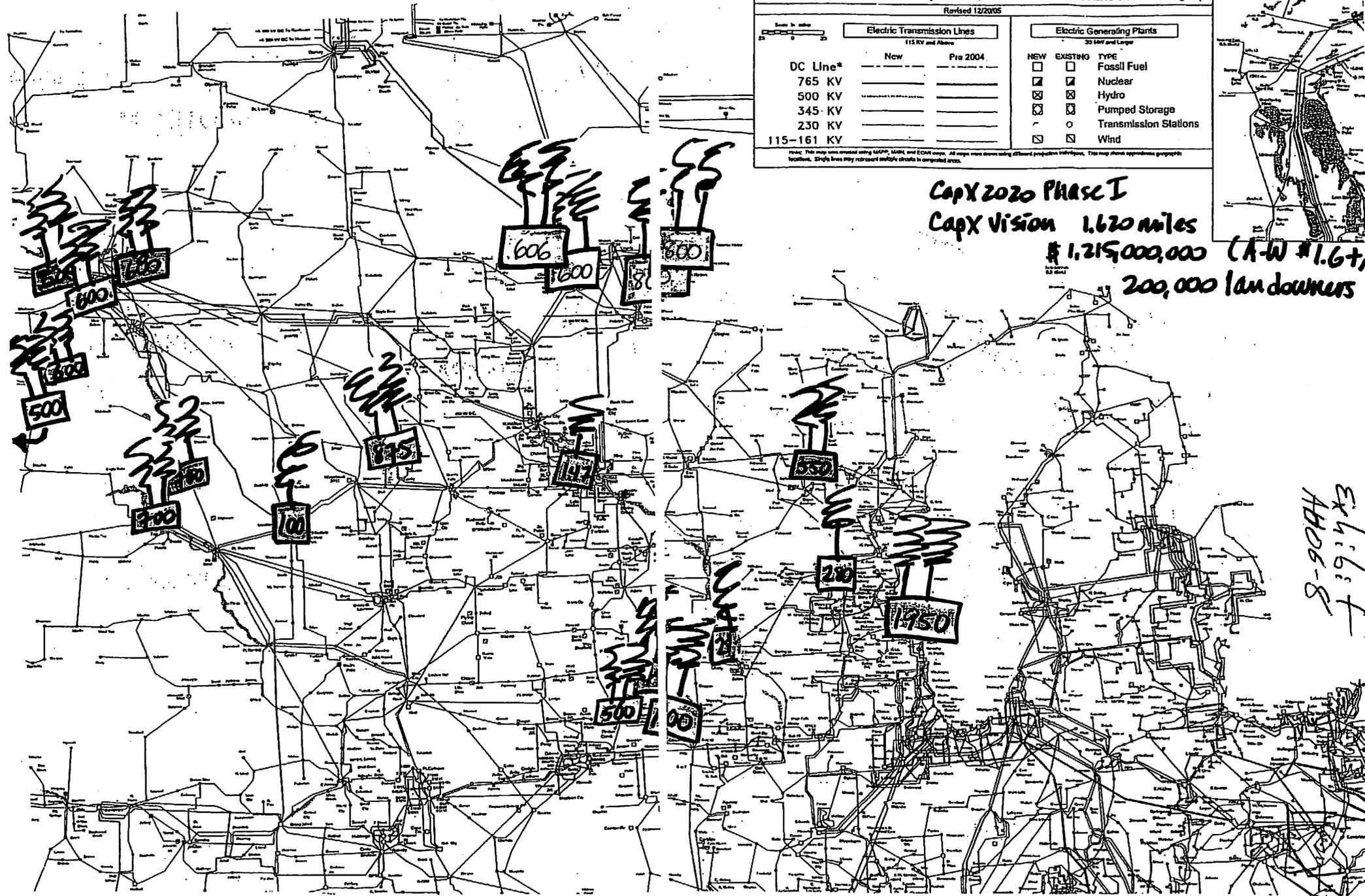
DC Line*	Electric Transmission Lines 115 KV and Above	
	New	Pre 2004
765 KV	_____	_____
500 KV	_____	_____
345 KV	_____	_____
230 KV	_____	_____
115-161 KV	_____	_____

Electric Generating Plants 30 MW and Larger		
NEW	EXISTING	TYPE
<input type="checkbox"/>	<input type="checkbox"/>	Fossil Fuel
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Nuclear
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Hydro
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Pumped Storage
<input type="checkbox"/>	<input type="checkbox"/>	Transmission Stations
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Wind

NOTE: This map was created using MAPP, MAPP, and ECAH maps. All maps were drawn using different projection techniques. This map shows approximate geographic locations. Style lines may represent multiple styles in computerized areas.



CapX 2020 Phase I
 CapX Vision 1,620 miles
 \$1,215,000,000 (A-W \$1.6T,
 200,000 landowners)



EXL:63
 AH05-8

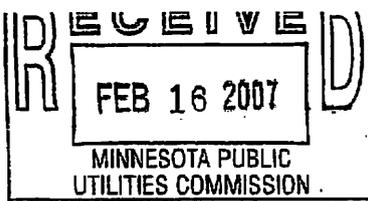


Exhibit
AH06-9

In re: Docket No. E999/M-06-1733 - Annual Hearing

February 16, 2007

Dear Dr. Haar,

In times of rapid change, it is the express function of the regulatory and administrative branches of government to provide for rational and orderly procedure, and to guide and channel societal investments towards greater public goods. To this end, PUC provides for planning and permitting that balances market forces with the long term economic, environmental and social "public interest"; and regulates, monitors and compensates for market forces which might undermine these interests.

It may become necessary, in such times, to revisit the foundations of the policy, procedural frameworks and practices by which the public interest, and other interests designated by the state, are executed. The recent flurry of statutory changes to accomodate the planning and permitting of a new generation of electrical infrastructure for the 21st century -- has created a number of challenges unseen in 30 years.

The pressure of this change has obscured essential connections between policy and procedure across the 3 interdependent elements of facility permitting: Certificate of Need, Routing and Siting, and Environmental Review. I have attempted to revisit these foundations and relationships in my comments and recommendations. In addition I have asked for particular actions from the Commission, in the form of a petition, that seem essential to maintaining the procedural integrity, due process and public participation rights and responsibilities of interested and affected members of the public. With its new combined authorities for planning, certification and routing and siting of energy facilities, the Commission bears the burdens and benefits of an expanded 'public' constituency.

As part of a remnant constituency of the old Power Plant Siting program at EQB, and a veteran of 12 years, I offer these comments to the Commission, and to its 'public' -- with the intention of creating a bridge of understanding and good will. I hope for your 'new public' the advantages and priviledges I have enjoyed in my working relationship with the Commission, even as I aspire to move into a new role as professional public servant. Special thanks to Ken Wolf, Bob Cupit, David Jacobson, Bret Eknes and Deborah Pile for assisting me in my understanding and helping me to sustain my good will.

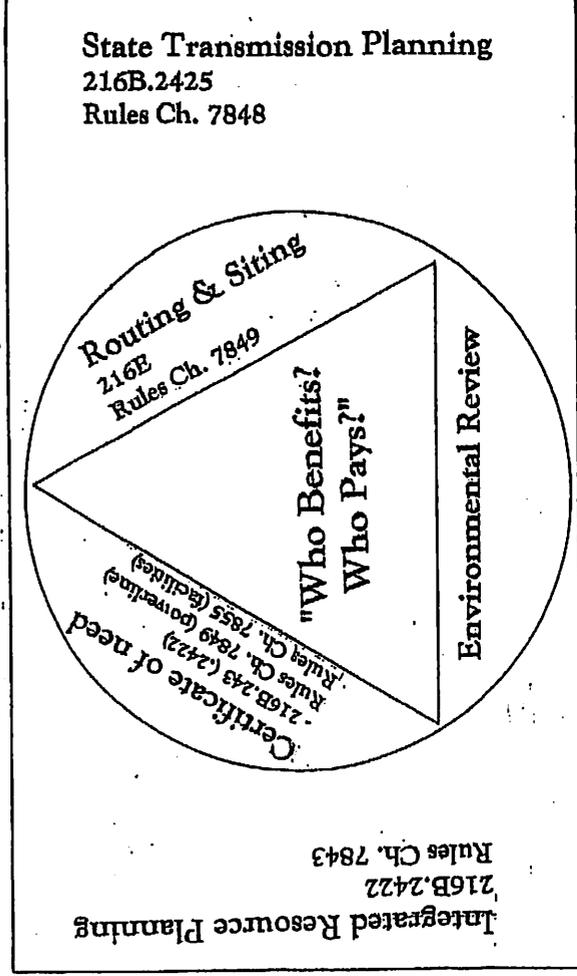
Most respectfully yours,
Kristen Eide

Kristen Eide-Tollefson
HealingSystems@earthlink.net
612-331-1430
P.O. Box 130, Frontenac, MN 55026

Comm
AG
Carol
Burl
Bret
Ken W.
Bob C.

Administrative Procedures Act

Ch. 14
Rules Ch. 1400



116D Environmental Policy
Rules Ch. 4400 (Lines/Plants)
Rules Ch. 4410 (Environmental Review)

Environmental Review in Certificate of Need. Looks at relative impacts of alternatives to size (e.g. megawatt, voltage etc) type (fuel and technology) and timing of the proposed project. Also at cumulative impacts and the other requirements of rule and statute. The Environmental Review contributes information towards the goal of balancing economic, social and environmental costs and benefits - in establishing the 'need' for and the 'public purpose' of the project - which is the foundation of the exercise of eminent domain.

Alternatives: Certain alternatives must be addressed by the proposer, according to the requirements of the Certificate of Need, including conservation and renewables. Parties to the proceeding bear the burden of developing and defending alternatives. But members of the affected and interested public may also participate in the CoN proceeding, including hearings, without becoming a party.

Environmental Review of sites and routes considers where and how the project will be located, with the goal of minimizing or mitigating the impacts as much as possible in both proposed and alternative locations. See also: 'Alternative Review' provision in rules 4410.

Alternatives: Members of the public may propose and defend consideration of alternative sites or routes.

Public Advisor: A public advisor is assigned to assist the public with participation and procedural questions for both Certificate of Need and Siting and Routing proceedings.

The Golden Triangle of Facility Permitting

Other references of interest:

- 116B Environmental Rights (MERA)
- 216E.08 Public Participation in Routing & Siting Rules 4401.0550
- 1405.0800 Public Participation in Certificate of Need
- Annual Hearing: 216E.07 Rules 4400.6050
- 216C Energy Planning and Conservation (basis of Certificate of Need)
- 116D.10 Energy and Environmental Strategy Report (biennial)
- 117 Eminent Domain
- 216A Public Utilities Regulators; 216B Public Utilities
- 116D.03 Action by State Agencies
- 13D.01 Open Meeting Law
- 216C.053 Renewable Energy Development
- 216B.2411 & 216B.2426 Distributed Energy Resources

PEER: People for Environmental Enlightenment and Responsibility, Inc. v. Minnesota Environmental Quality Council, 266 N.W.2d 858, 868 (Minn. 1978). This Supreme Court decision established the state policy of nonproliferation and use of existing rights of way.

See also: http://ros.leg.mn/data/revisor/statutes_index/current/E/EN/energy.html
http://ros.leg.mn/data/revisor/statutes_index/current/E/EL/electricity.html

Policy Basis for Commission Authority

Among the policy bases for Commission Authority are the following:

216E.02 SITING AUTHORITY. Subdivision 1. Policy. The legislature hereby declares it to be the policy of the state to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy the commission shall choose locations that minimize adverse human and environmental impact while insuring continuing electric power system reliability and integrity and insuring that electric energy needs are met and fulfilled in an orderly and timely fashion.

216B.01 [REGULATORY AUTHORITY]. It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminish efficiency in service to the consumers

216C.05 FINDINGS AND PURPOSE (Policy basis for Certificate of Need) The legislature finds and declares that continued growth in demand for energy will cause severe social and economic dislocations, and that the state has a vital interest in providing for: increased efficiency in energy consumption, the development and use of renewable energy resources wherever possible, and the creation of an effective energy forecasting, planning, and education program. The legislature further finds and declares that the protection of life, safety, and financial security for citizens during an energy crisis is of paramount importance. Therefore, the legislature finds that it is in the public interest to review, analyze, and encourage those energy programs that will minimize the need for annual increases in fossil fuel consumption by 1990 and the need for additional electrical generating plants, and provide for an optimum combination of energy sources consistent with environmental protection and the protection of citizens. The legislature intends to monitor, through energy policy planning and implementation, the transition from historic growth in energy demand to a period when demand for traditional fuels becomes stable and the supply of renewable energy resources is readily available and adequately utilized.

"Who Benefits? Who Pays?"

This timeless question ties the interests of all interested and affected persons to the work and duties of the Commission. It ties the agencies' analyses of 'costs and benefits' to larger questions of fairness, equity, and quality of life. It is the rallying cry of every community affected by a proposed energy facility.

There is a common misunderstanding, that "people are not interested in certificates of need". This is not true. In fact, the justification of 'need' is a foundation of the determination of 'public purpose' which, in turn, supports the exercise of the right of eminent domain. Once a project is determined to be 'needed' by the Commission, the 'no build' option is no longer on the table, and siting and routing proceed. People will not bear the degradation of their landscapes, the health, safety or well-being of themselves and their communities without 'proof' that a proposed facility is either needed, or advances society's goals sufficiently to warrant their sacrifice*. Affected persons are particularly sensitive to...

The Golden Triangle of Facility Permitting:

Due process and public participation rights for Certificate of Need and routing and siting are therefore two interdependent legs of the 'golden triangle' or the 'three legged stool' of facility permitting (see diagram).

The third leg, *which is also its foundation*, is environmental review. Environmental review for Certificates of Need evaluates the relative merits and impacts of alternatives to size, type and timing of a facility. Environmental Review at the routing and siting stage focuses on choosing the best site or route.

In both cases, the Commission, and all state agencies are bound by the environmental policies of the state, and according to 116D.03, subd. 2 must: (2) "utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts...and (3) identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations". This is an expectation of affected communities that is rarely realized. Nevertheless, as fewer and fewer places remain unaffected by environmental degradation, the stakes continue to rise, and with them the public sense of urgency for action and protection.

The broad public recognition of the reality of Global Climate Change, makes virtually all Minnesotans 'interested parties' in proceedings and decisions affecting the state's energy future.

*People, Power and Process: The Need for Efficiency and Equity in Minnesota's Energy Future. The Report of the 1980-81 Ppower Plant Siting Advisory Committee.

Defining and supporting Public Participation:

116B.01 PURPOSE. The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that *each person has the responsibility* to contribute to the protection, preservation, and enhancement thereof...

The Minnesota Environmental Rights Act charges all Minnesotans with the responsibility to act to protect the states essential natural resources. In addition, each local government is charged by the state with the protection of the health, safety and general welfare of its community. These responsibilities are a shared foundation for the participation of interested and affected persons in administrative decision making.

Administrative Rule defines "public participation" as the intent/ability to influence decision-making. Notice requirements include explanation of how a person noticed may be affected by an action or decision. This is what is meant by "meaningful participation", that is, the ability to influence a decision that affects one's interests, rights or responsibilities. It is the duty of all state agencies, in their processes and procedures, to support this capacity by timely notice, transparency and timely access to procedural opportunity, information, record -- and other requirements of rule and statute. Public Participation is key, but is not limited, to those whose property or due process rights are directly affected by a proceeding.

In addition, it is an assumption of administrative and regulatory decision-making, that the state and public interest benefit from the contributions of interested members of the public to these proceedings. For this reason, agencies are given broad authorities and a variety of tools -- including but not limited to task forces, advisory committees, and forums -- for gathering and utilizing information from all sectors of the public: business, industry, non-governmental, and scientific communities as well as members of the public.

216E.08, Subdivision 2, in addition to advisory task forces and public advisor, provides a statement of policy:

The Commission shall adopt broad spectrum citizen participation as a principle of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the Commissions rules and guidelines as provided for in this section.

[See attached paper from The Western Power Association on its use of the IAP2 Public Participation Spectrum, from the International Association of Public Participation at IAP2.org.]

Findings:

In light of these reflections, 12 years of experience on the 'public side' of the equation, and 3 years formal study, I would like to bring three items before the Commission for immediate attention. We provide the following comment in the form of a petition to the Commission for action.

Annual Hearing for the Power Plant Siting Program

Dear Dr. Haar: After considered analysis and conversation with interested parties, we hereby petition the Commission for action on the following three items. We define the issues, provide brief analysis and ask for specific actions. In these three cases immediate Commission action is needed to preserve due process and public participation rights, as well as utility and commission schedules, timelines, and goals. We hope that the Commission will consider our petition and, among its options, our suggested remedies.

Item #1. Providing Public Participation Plan and Information Access

a) Problem: There are a large number of variables currently at play in the Commission's proceedings. These include: combined proceedings and tightened timelines; changes in regulatory venues, authorities and functions; multi-facility applications; numerous exemption requests and rules flux. This situation creates multiple barriers for meaningful and timely public engagement.

In addition, there are no general guidance documents at the facilities permitting site which explain the certificate of need process and its relationship to the other facets of facility permitting.

b) Analysis: In order to support due public process and meaningful participation it is essential that interested and affected persons have timely notice of, and a full understanding of the purposes and practical details of the Commission's CoN and siting and routing processes. The most effective way to ensure these public goods, is to i. require consistency in public participation design plans; and ii. to ensure their availability at the very beginning of the process – iii. in visual as well as written format. The BSII participation plan chart provides an excellent model (attached), as does Mr. Jacobson's written explanation for the Monticello and Big Stone proceeding.

c) Remedies: We suggest the following requirements be written into an order - at the Commission's *earliest convenience*.

1. The Commission to require the following of all *pending and future* applications for certificate of need, and siting / routing permits

a. that a public participation plan be submitted to the Commission for review, comment and approval (coordinated with notice plan and application acceptance).

b. Where multiple lines are included in one certification proceeding, the Commission shall consider and invite comments on whether the lines should have individual coordinated, or a single participation plan.

c. *Diagrammatic and written forms* of the participation plan shall be made available to all persons requiring notice and in all public meeting venues. The diagram should include in a single page, insofar as is possible:

- i. The governing rules and statutes (see BSII diagram)
- ii. Public meetings (with time and/or location)
- iii. Comment opportunities and timeline/deadlines
- iv. Timeline
- v. Web and hardcopy document access information, (including exemption request filings, and decisions);
- vi. How to sign up for service, project, standing, and annual public hearing notice lists (see item 2);
- vii. How to submit comments by mail and e-mail.
- viii. Agency, public advisor, utility, and local government contact information, if relevant.

2. An approved public participation plan will be:

- a) posted immediately on PUC and DOC websites;
- b) included in hardcopy, with web citation, in all required notice formats;
- c) available at all hearings and public informational meetings.
- d) The plan shall be accompanied by and linked with general explication of CoN routing/siting processes, rules; the rights of the public to participate in contested and non-contested proceedings, and the interests of the public in participation.

This petition assumes that, as the Commission so decides, the Commission will use its experience in establishing notice plan requirements to integrate a requirement for public participation plans. Authority for these requirements is already in statute under the Commission's duties and powers. This petition assumes that such a requirement can, and must, be implemented without delay.

Item #2: Lists.

a) Problem: The coordination of lists between the agencies, and the agencies and utilities is a long standing thorny issues. After conversation with pertinent parties, we conclude that this issue will NOT be resolved in a timely fashion. Conflicts have again arisen over notice and lists. This time the stakes are quite high for all parties, including the Commission.

b) Analysis: PUC, DOC and the utilities all use different lists. As we understand it, DOC lists are 'project lists' assembled during the siting and routing process. There is easy access to sign up on line for this list at the facilities planning site. It is an exemplary process, which has no parallel yet on the PUC side, for Certificate of Need proceedings. The elaborate service list rituals at PUC are still conducted in hard copy, and sometimes require the burden of notification of other parties of changes to the service list. The list changes continually and it is quite easy to have been involved for years in a specific proceeding, and miss notification due to the opening or assignment of a new docket number, which begins the service list anew.

The 'general lists' held by both PUC and DOC, and used by the utilities suffer fewer of these hazards. But it is the proper scope and service of lists for project dockets that

is most critical – and at greatest risk of controversy. While failure of notice cannot, if the serving party is judged to be acting in good faith, halt or reverse a process – it can still invite law suits and other opposition which are unnecessary burdens on the proceeding – for ALL parties.

c) **Remedy:** After discussions with staff and parties, we conclude that the ONLY way to alleviate this problem is to create a parallel opportunity for members of the public to sign up on-line to be on the service list at PUC. The service list may include a password, if desired. But it must be possible for people to view the list. This would be desirable for the project list too. Some have suggested that the utility notice list should also be made available. But this does not seem realistic and could result in people who have not requested to be on lists, being contacted by other members of the public.

This dimension of the remedy should be implemented immediately. At some time in the near future, an explanation of service list practices should be listed on the website. This effort will result in a much needed clarification of practices. Parties and other interested public will then know what to expect; and who and how to serve the lists.

Item #3: Exemptions and transparency in Pre-Certification Phase

a) **Problem:** Decisions are made in the pre-application phase which substantially affect the information development and procedural requirements of the proceeding. Transparency is essential. Completeness review and application acceptance phases involve significant development of information, parameters and assumptions. There is 'trouble' when these assumptions are established outside of public view.

b) **Analysis:** The consequences of this for meaningful public engagement are apparent. The public may find itself operating by different rules, information standards, and procedures than are clearly provided for by rule or statute. This creates confusion, distrust, contention – and numerous other ill-effects. Piecemeal 'adjustment' of the process (especially when rules are not in place or refreshed) happens through exemption/process requests and other filings before the public process has begun. This means that despite whatever procedural pieces are in place via rule and statute -- which is what the public expects will frame the process -- practice becomes increasingly variable and is continually being refined towards the needs of the utility. The affected public views the results as arbitrary, and out of compliance with the intentions of rule and/or statute. This, in turn, undermines the public trust and confidence -- in the project, process and record -- that is essential to actually putting new infrastructure into the ground.

c) **Remedies:** The Commission needs to protect public participants from the hazards of unofficial 'rulemaking' activities or process 'drift', that is not in compliance with the expectations for accountability and involvement of the public in rulemaking Administrative law. The Commission needs to insist upon an 'even playing field' for public participants, or provide comment opportunity. Several remedies are possible:

1. Pre-Application Conference. The ALJ holds a pre-hearing conference that serves to get the parties on the 'same page' regarding process, information development parameters etc. The Commission could hold a pre-application conference that serves the same function as the pre-hearing conference, at the pre-application phase. This would be a meeting that is open to the public, but would not require formal notice. It could become part of the public participation plan or serve as a platform for discussion and agreement on public participation and other matters that impact the development of the record, and public process.

2. At minimum: Notice should include a list and links to all exemption and other documents that are public record from the pre-application phase. Notice should explain the rationale for the exemptions granted, how they vary the rule and/or affect information development, process and participation.

3. No application should be approved until the applicant and agencies have provided timely access to all the relevant documents filed with the Commission in pre-application phase. These documents do not seem to be available at this phase, yet their content is critical to governing rule, information development, due process and meaningful participation. Links should include the application itself, exemption requests, notice plan and comments, and (we hope); public participation plan and comments.

4. Alternative Review. We respectfully recommend that the Commission, in keeping with the spirit and intent of Administrative law for public accountability and involvement in rulemaking, that a stakeholder or task group be involved in discussion of alternative procedures under consideration by the Commission and DOC. This could help anticipate and alleviate problems in implementation.

14.02 DEFINITIONS. Subd. 4. Rule. "Rule" means every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure.

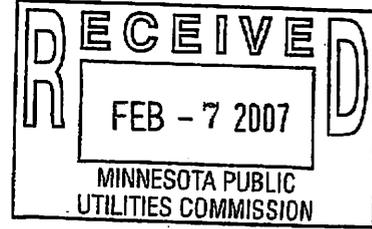
See also: 14.055 RULE VARIANCES; STANDARDS. Subd. 2. General terms. The following general terms apply to variances granted pursuant to this section:

- (1) the agency may attach any conditions to the granting of a variance that the agency determines are needed to protect public health, safety, or the environment;
- (2) a variance has prospective effect only;
- (3) conditions attached to the granting of a variance are an enforceable part of the rule to which the variance applies; and
- (4) the agency may not grant a variance from a statute or court order.

Bob Cupit

From: Bev or Lee Topp [bevorleetopp@FRONTIERNET.NET]
Sent: Wednesday, February 07, 2007 12:33 AM
To: Bob Cupit
Cc: bookhous@pro-ns.net
Subject: Letter re: Minnelectrans Meeting Nov. 1, 2006

Attachments: Letter to the PUC RE Minnelectrans Mtg.rtf



Letter to the
C RE Minnelectrans

Dear Bob: I am sending my letter which was recently read into the record of the PPSA Annual Hearing. Please let me know if there are any problems with the text - I have a new Apple computer and am just learning to use it after years of working on a PC. If you have any questions, I would be happy to answer them. I'm sorry I couldn't personally get to the PPSA Annual Hearing.
Bev Topp

*Comm
AG
Carol
Burl
Bret
Ken W.
Bob C.*

I am writing this letter to the Public Utilities Commission in an effort to register my input in a timely way before, not after, upcoming Certificate of Need and Route Certification processes to be initiated, in 2007.

I first learned of the 345kv proposed high-voltage transmission line when, as a member of the Dakota County Planning Commission, we were studying an unrelated matter. One of the maps distributed at this meeting showed an arrow pointing to Eureka Township with a caption something like "proposed transmission line". If I were not a part of this county commission, I would not have known about this proposal. Through checking with various township citizens and officials, I found that others also did not know of this transmission line.

It was difficult to find information about the transmission line project, but with effort and knowing a couple of people who were somewhat familiar, I was able to learn more, including the existence of the November 1, 2006 Minnelectrans Biennial Planning Meeting in Plymouth, which I attended.

I understand that, as required by law, letters to announce this meeting are sent to various state and local government offices. Dakota County received the letter but it was their understanding that it also went out to township governments. Even though townships in Dakota County have zoning authority, they did not receive this letter. Nor did it go to the Dakota County Township Officers Association. The PUC rules for transmission projects state, under 7848.0900: "Securing the input of public, local and tribal governments: Jointly or individually utilities shall seek the assistance and input of local government officials, tribal government officials and interested members of the public in identifying transmission inadequacies and alternative means of addressing them. And under 7848.1000: "OUTREACH EFFORTS FOR TRANSMISSION PLANNING MEETINGS, Notice to Interested Persons: Utilities shall conduct outreach efforts to inform local government officials about the transmission planning meetings required in this part." The rules go on to say that a minimum, county governments should be notified. However, because townships may be the local zoning authority, I believe these letters should also be sent to townships in the affected area. Even if they do not have this authority, notification would serve to inform many more potentially affected landowners, which would result in more public input, something I believe the PUC is trying to achieve.

The utilities make the case that proposed routes are very wide and vague at this stage because of the need for more detailed study, and individual letters are only sent for the Certificate of Needs and the Routing Processes after the route area has been more closely defined. However, the timing of this notification, coming long after the required Minnelectrans public process, appears to be too late for an important part of the energy planning for Minnesota.

I understand Minnelectrans is a group independent from, but consisting of members of the utility community. I also understand it was charged by the legislature in 2001 to hold public meetings to inform Minnesota of future energy needs and to get input into solutions to meeting these needs. Was this the meeting for the above stated purpose? When I got to the meeting, needs were already linked to a Cap-X 2020 solution. Was there a prior public meeting to discuss needs and alternatives?

The people conducting the open house/"meeting" were very positive and offered a lot of information during the open house. But contrary to my understanding that a 5:30 presentation was scheduled, when I arrived at 4:30, there was a question raised by the staff at the reception table about whether a presentation/meeting would occur. Then later, I was told there had been a meeting earlier (than 4:30?) and they would be willing to "do the presentation again" for us. Again, those representatives of both Minnelectrans and the Cap-X 2020 lines were pleasant and willing to share information required from the many questions asked. But when they were asked why Cap-X 2020 was posed as a solution, at a meeting which, to my understanding, was supposed to receive public comment and answer questions PRIOR to creating solutions, there was really not a clear answer.

Finally, citizens at the meeting suggested local energy alternative production as a means to satisfying concerns about Minnesota's economic participation in the many super lines transmitting energy from resources in South Dakota. National security advantages for local production were also pointed out. The response by Minnelectrans and other utility officials was that local energy production by smaller co-ops has been proven to be too expensive and inefficient and that they have been in the process of being dismantled. Again, in the interest of Minnesota's sharing in the economic advantages of participation in the production of its own energy needs, and in the interest of security issues, it seems that more than just cost efficiency should be used in the study of alternatives.

There was a member of the Public Utilities Commission present at the meeting on Nov. 1, but either because an earlier-than-announced-on-the-agenda meeting had occurred or for whatever reason, he did not sit in on the citizen meeting. Thus, he was not availed of the issues or questions that were raised. Perhaps I misunderstand, but it seems this is the citizens' opportunity to be heard by a state oversight group appointed to represent the citizens of the state of Minnesota in such matters. And there was no tape made of the proceedings of our meeting or, as far as I could see, no one taking minutes on it. Was Minnelectrans able to comply with 7848.1100 FOLLOW-UP ON TRANSMISSION PLANNING MEETINGS: following each transmission planning meeting the utility shall prepare a synopsis of its presentation, public input received, and how the public input has influenced its decision-making process.

I want to be clear that I am not against the production and dissemination of adequate electric power for Minnesota. What I find frustrating is the process by which these decisions have been or are being made, the apparent lack of or inadequate coverage

for public notification that exists, and, consequently, the shortage of public discussion of alternatives to 345 kV lines that could supply needed energy for Minnesota.

I appreciate your consideration of the comments I have made and any communication you may want to undertake as a response to my observations. I have entered the arena for these transmission line plans later than I believe citizen participation should be occurring and therefore, if I have misconceptions about the process, I would be happy to learn about them.

Sincerely, Beverly Topp,
Eureka Township

Exhibit
AH 06-11

February 19, 2007

Bob Cupit
Minnesota Public Utilities Commission
Suite 350
121 7th Place East
St. Paul, MN. 55101



Comm
AG
Carol
Burl
Bret
Ken W.
Bob C.

RE: Power Plant Siting & Transmission Line Routing Annual Hearing
Docket E-999/M-06-1733

Dear Mr. Cupit,

Enclosed please find the comments of the North American Water Office (NAWO) in the above docket matter. Thank you for allowing flexibility in the timing of submission of these comments.

Sincerely,

Mike Michaud

For:
The North American Water Office
PO Box 174
Lake Elmo, MN 55042

**COMMENTS OF THE NORTH AMERICAN WATER OFFICE
2006 ANNUAL POWER PLANT SITING HEARING**

Fundamental flaw created by transfer of environmental review

The changes to statute that were made in 2005, transferring the responsibilities for the environmental review portion of power plant siting and Certificate of Need process to the Department of Commerce, has placed the Commissioner of the Department in an untenable position.

On the one hand he is charged in Minn. Stat. § 216E.03 "The commissioner shall not consider whether or not the project is needed," in other words to not have a position on the value of the project to Minnesota citizens and ratepayers. In another portion of statute, in Minn. Stat. § 216C.10 (a)(9), he is charged to advocate or oppose projects, to "intervene in certificate of need proceedings before the Public Utilities Commission." Also, in Minn. Stat. § 216C.09 (b) he is charged to take a position on the rates and other impacts issues of whether projects are needed:

"Further, the commissioner may participate fully in hearings before the Public Utilities Commission on matters pertaining to rate design, cost allocation, efficient resource utilization, utility conservation investments, small power production, cogeneration, and other rate issues."

(Minn. Stat. § 216C.09 (b), in part)

The tension here is between responsibilities to analyze the environmental issues and the ratepayer's interests. The environmental review process requires an independence of analysis that considers the environmental issues surrounding a project without a bias towards need:

"The environmental impact statement shall be an analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement shall also analyze those economic, employment and sociological effects that cannot be avoided should the action be implemented."

(Minn. Stat. § 116D.04 Subd. 2a in part)

At the same time the Commissioner of the Department of Commerce is charged by the Minn. Stat. 216C provisions to analyze and advocate among other things the financial interests of the ratepayers. **The financial interests of the ratepayers are not necessarily always aligned with the best interests of the environment.** This can create conflicts of interest for the Commissioner that can result in a potential bias of analysis in the environmental review.

The statute and rule provisions for determining the adequacy of an EIS (Minn. Rule Ch. 4410.2800) further complicate this potentially conflicting situation. The entity that is charged to review any appeal to the adequacy is also the Commissioner of the Department of Commerce, who, simply due to human nature, is not guaranteed to have an unbiased approach to an adequacy review given his other responsibilities and duties to the financial interests of the ratepayers.

Timing of Environmental Review

There has been a tendency in the past, when only six months of time was allowed for Commission to make decisions in Certificate of Need proceedings, for the Final Environmental Impact statement to be available late in the administrative process. This has led to questions at times regarding whether the EIS is even part of the record that an administrative law judge must consider when making his decision on a project. Environmental law spells out specifically the intent that the EIS be available early in the process.

“To ensure its use in the decision-making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action.”
(Minn. Stat. § 116D.04, subd. 2(a), in part)

The law also describes specifically that the Final EIS be a part of the administrative proceeding record.

“The final detailed environmental impact statement and the comments received thereon shall precede final decisions on the proposed action and shall accompany the proposal through an administrative review process.”
(Minn. Stat. § 116D.04 Subd. 6(a), in part)

Because the conflicted Commissioner of the Department of Commerce to a large measure controls the timing of the preparation of the Final EIS and the determination of its adequacy, the Commission has a special responsibility to ensure that the environmental review schedule in its proceedings is such that the final environmental analysis is available in a timely manner for use in the administrative proceedings. The Commission has the responsibility under Minn. Stat. § 116D for implementing state environmental policy, since it is the agency making decisions on proposed projects

This potentially conflicting situation regarding environmental review is particularly problematic because the existing environmental statutes require that the Commission, and all other agencies, consider that environmental quality issues and the potential for environmental degradation should be the paramount concern in all state agency actions. Environmental law even requires that economic issues should take “second place” to environmental degradation in state agency decisions:

“No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.”
(Minn. Stat. § 116D.04 Subd. 6)

These comments are not theoretical or hypothetical conjecture. The recent experience with the quality and timing of the EIS developed for the Monticello Dry Cask Storage Facility offers evidence of how this conflict can express itself in a particular proceeding. (See a copy of the North American Water Office comments on the adequacy of that EIS attached.)

Socioeconomic factors in decision making - need for enhanced consideration

A major component of the Commissions' responsibilities includes determining reasonable rates charged to ratepayers. The environmental policy laws of the state require that Commission decisions consider factors other than the just the direct economic impacts in its decisions. In Power Plant Siting and Transmission Line routing, a broad societal based cost-benefit analysis is required.

"The environmental impact statement shall be an analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement shall also analyze those economic, employment and sociological effects that cannot be avoided should the action be implemented."
(Minn. Stat. § 116D.04 Subd. 2a), in part)

This has also been recognized in Power Plant Siting Rules:

"Environmental, economic, employment, and sociological impacts: for the proposed project and each major alternative there shall be a thorough but succinct discussion of potentially significant direct or indirect, adverse, or beneficial effects generated."
(Minn. Rules Ch. 4410.2300(h), in part)

In the past there have been attempts to quantify some environmental air emission impacts for the Commission to consider in its decisions. These have been helpful in providing structure to this particular environmental attribute of proposed projects. But it is by no means an inclusive list of the types of factors that the Commission must consider in its decisions under environmental policy law. As shown by the above references, environmental and socio-economic factors play a key role in the required level of review in its decision process.

The changing circumstances of the understanding of the risks from impending global climate change and the rise of the desire for community owned energy projects, has elevated the need for the Commission to reconsider how it will evaluate these "non direct cost to ratepayer" factors in its decisions. Economic factors cannot be given precedence in decisions over these other vital societal interest factors.

Summary Statement

Not fixing the inherent problems created by the recent changes in the law has consequences. It is only a matter of time until a court will overturn a Commission decision based on issues related to environmental review, either on conflicts of interest related matters, or on an inadequate consideration of the environmental and socio-economic factors required by Minn. Stat. § 116D. Continuing on with business as usual will bias the decision making process to reinforce and entrench the status quo, and the privileges and abuses attached to conventional energy development.

**NORTH AMERICAN WATER OFFICE
PO BOX 174
LAKE ELMO, MN 55042**

April 10, 2006

Ms. Sharon Ferguson
Department of Commerce
87 7th Place Suite 500
St. Paul, MN 55101-2198

RE: Comment on the Adequacy of the Final EIS
Docket No. E002/CN-05-123

Dear Ms. Ferguson:

The Final Environmental Impact Statement (EIS) in the above captioned matter is not adequate because it fails to meet, even under the most lax and casual of all possible interpretations, the most rudimentary and basic requirements set forth in Minnesota Rule 4410.2300, Items G and H, as required by Minnesota Rule 4410.2800. Subd.4 Item A. It also fails to meet the provisions of Minn. Rule 4410.2500 regarding incomplete or unavailable information.

First, the Scoping Decision for this EIS puts great emphasis on producing a thorough and detailed analysis of alternatives as provided by Minnesota Rule 4410.2300, Item G. As delineated and documented below, the required thorough and detailed analysis of the alternatives was not done.

Second, we recognize that the Scoping Decision defers to federal authority regarding radiation release standards, security protocol and requirements, and management procedures for the prevention of nuclear accidents. The setting of these standards, requirements and procedures by federal authorities, however, is not the same as their environmental, economic, employment, and sociological impacts *and related costs*. The setting of standards and procedures does not eliminate impacts and costs. Rather, federal standards and procedures merely set limits and establish probabilities for impacts and costs. Actual and potential impacts and costs still exist, and the RGU as defined by state law is still required to examine those actual and potential impacts and costs to determine if they are acceptable in Minnesota. While the RGU can specify areas for particular scrutiny in its Scoping Decision, as it has done in this case, neither those specifications

not its lack of authority to set certain standards and procedures diminishes its responsibility to evaluate acknowledged actual or potential environmental, economic, employment and sociological impacts pursuant to Minnesota Rule 4410.2300, Item H.

In this EIS, any possible environmental, economic, employment, and sociological impacts and costs of routine radiation releases that will result from the operation of the proposed facility are simply denied without evaluation. There is no evaluation of the probability that security protocol is adequate. There is no evaluation of the environmental, economic, employment, and sociological impacts and costs if it is not adequate to prevent an uncontrolled and catastrophic release of radionuclides. Likewise, there is no analysis of the probability that plant management procedures actually will prevent an uncontrolled catastrophic release of radionuclides, or of the environmental, economic, employment, and sociological impacts if those procedures are not sufficient to prevent such a release.

These flaws are fatal. They are not particularly difficult to understand. Information that allows the EIS to avoid these flaws is readily available on the record. If that information is rejected and this document is deemed adequate, it will only be because decision-makers are intent on substituting their opinions and the privileges of nuclear theology for common sense, common decency, verifiable substance, and the rule of law.

1. Adequacy Comments Regarding Generation Alternatives

The Minn. Rules 4410.2800 Subp. 4, "Determination of Adequacy" outlines a decision framework that encompasses three main parameters. The Rule states that an EIS shall be determined adequate if it:

A. addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed in conformance with part 4410.2300, items G and H;

B. provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and

C. was prepared in compliance with the procedures of the act and parts 4410.0200 to 4410.6500.

This document fails all three tests in the context of the examination of generation alternatives. This document does not analyze all significant generation alternative issues for which information can be reasonably obtained from the hearing record. It does not respond to all substantive generation alternative comments in the hearing record. It is

missing information on generation alternatives required to comply with the Environmental Policy Act and EQB Rules 4410.0200 to 4410.6500.

UNADDRESSED ISSUES

There are many issues surrounding characteristics and use of wind generation as part of a package of technologies that could replace Monticello generation that abound in the hearing record. One key wind technology issue is how much energy can be obtained from these types of resources going forward. Two major wind resource data bases developed over the course of time from the Department of Commerce Wind Resource Assessment Program are in the record.¹ The FEIS contains no analysis or discussion of which of these databases is the appropriate one to use to calculate energy from new wind turbines that would be installed in Minnesota as part of a generation alternative that includes wind resources.

Another unaddressed issue is the appropriate amount of biodiesel and ethanol fueled generation resources that could reasonably be expected in a distributed generation scenario.

Whether the use of DG resources should be constrained as Xcel has done in its analysis to just load serving and not energy export uses is another unaddressed issue. Implicit in this issue is whether an alternative including dispersed generation is viable.

We are not providing a comprehensive list of all unaddressed issues here but offer these as examples of topics that are not even mentioned in the FEIS as drafted.

The general need to comprehensively address generation alternative issues raised in the record is driven by Minn. Rule 4410.2300, items G and H. Part G specifically requires:

“The EIS must address one or more alternatives of each of the following types of alternatives or provide a concise explanation of why no alternative of a particular type is included in the EIS: alternative sites, alternative technologies, modified designs or layouts, modified scale or magnitude, and alternatives incorporating reasonable mitigation measures identified through comments received during the comment periods for EIS scoping or for the draft EIS.”

At the least the document must explain why certain options or issues are not included in the analysis.

UNADDRESSED COMMENTS

Comments have been raised by parties in this proceeding regarding how various ownership structures of generation resources affect the economics of generation projects. Ownership structures impact both economic impacts to ratepayers and economic

¹ See Rebuttal Testimony of Jeff Haase

development opportunities for communities.² These comments, as well as many other socio-economic comments have not been addressed in this draft.

The Need to address these comments is spelled out in Minn. Rule 4410.2700, Subpart 1.

“The final EIS shall respond to the timely substantive comments on the draft EIS consistent with the scoping decision. The RGU shall discuss at appropriate points in the final EIS any responsible opposing views relating to scoped issues which were not adequately discussed in the draft EIS and shall indicate the RGU's response to the views.”

Particularly missing from the draft is an itemization of opposing views and a response to these views.

COMPLIANCE WITH STATUTE AND RULE

Both Minn. Stat. § 116D.04, Subd. 2a. and Minn. Rule 4410.2300, item H require an analysis of economic and social impacts. Minn. Rule 4410.2300, item H specifically mentions the need to address this matter for the generation alternatives:

“Environmental, economic, employment, and sociological impacts: for the proposed project and each major alternative there shall be a thorough but succinct discussion of potentially significant direct or indirect, adverse, or beneficial effects generated.”

This type of analysis is completely missing from this draft. This analysis is particularly germane to this matter since the opportunity for, and benefits of, Community Based Energy Development is developed throughout the hearing record.

In addition to providing an analysis of socio-economic and employment issues, Minn. Rule 4410.2300, item H indicates the FEIS must:

“identify and briefly discuss any major differences of opinion concerning significant impacts of the proposed project on the environment.”

There is no discussion or comment in this draft of the various parties' positions on generation alternative quantitative or qualitative impacts on the socio-economic or employment environment.

SCOPING DECISION REQUIREMENTS

Minn. Rules 4410.2100 Subp 6a indicates that the EIS must address issues identified in the Scoping Decision document. There are specific and substantive directives in the Scoping Decision regarding the analysis of generation alternatives.

² See Direct Testimony of Mike Michaud.

The EQB Scoping Decision document, dated June 16, 2005, called out a special standing for the analysis of generation alternatives. The decision summary points this out:

“Therefore, most relevant technical and environmental issues—other than an analysis of generation alternatives—are either (1) addressed in detail in the CON Application or in subsequent supplements, (2) preempted by federal regulations, (3) subject to detailed review in the federal EIS, or (4) a combination of the above. For these topics, the EIS will verify, summarize, supplement and incorporate by reference available information as outlined in the attached Scoping EAW. Finally, the EIS will include a new study that will define and analyze the feasibility and impacts of generation alternatives to continued operation of the Monticello Generating Plant until 2030.”³

Unlike some issues preempted by federal jurisdiction, the FEIS content regarding generation alternatives is required to be a “new study that will define and analyze the feasibility and impacts of generation alternatives.” The intent was clear that the information in the application and in supplements provided by Xcel Energy would not be sufficient to fulfill the EIS requirements. There is a burden placed on the preparation of the EIS for the development of new and therefore independent analysis of the generation alternatives. This point is emphasized further on in the scoping decision where the EQB required that

“The EIS will include a study and analysis of new data regarding the feasibility and environmental impacts of reasonable alternatives to continued operation of the Monticello Generating Plant.”⁴

The requirement here is to develop *new data* regarding *reasonable* alternatives. This requirement has not been met in the FEIS as drafted. The only new data and analysis in the document is in the limited area of development of one new renewable DG option.

The only presentation in the document of other feasible generation alternatives is that of information provided by one party to the proceeding, the Department of Commerce. There is neither a discussion of the information or analysis of generation alternatives presented by other parties in the proceeding, nor independently developed information the other generation options provided by the Energy Facility Siting staff. This is also contrary to the intent of Minn. Stat. § 116D.04 that requires the environmental impact statement to “be an analytical rather than an encyclopedic document.”

The scoping decision contained specific requirements for analysis regarding the use of the Strategist computer model. The requirement is detailed as follows:

³ See summary section of Scoping Decision, p.2.

⁴ See Scoping Decision, section III D, p7.

“In addition, the CON Application alternatives analysis is based largely on a proprietary computer model called “Strategist” developed by New Energy Associates, Inc. The Strategist model will be evaluated for possible use for the state EIS, and if used, all algorithms will be reviewed and input assumptions will be evaluated and described in detail.

Alternatively, if Strategist model details and assumptions are not adequate, a different method of evaluating alternatives will be used.”⁵

This requirement of the EQB Scoping Decision has not been met. The document does state that it incorporates by reference “the economic analysis by the Minnesota Department of Commerce and other parties to the Certificate of Need proceeding at the PUC.”⁶ There is however no review, discussion, or independent analyses of the various issues that have surfaced in hearing regarding the strategist model and its input assumptions. The strategist modeling input assumptions have been a key issue in this proceeding, yet no evaluation as required by the EQB Scoping Decision is provided in this document.

Another requirement of the Scoping Decision is that:

“Information required by Minnesota Rules chapter 7855 for any DG alternative will be supplied within the EIS if the information is not already included within Xcel’s Petition or Xcel’s June 15, 2005 Supplement.”⁷

There is no section of the FEIS as drafted that specifically addresses this requirement. There should be a discussion in the document of whether or not Xcel’s Petition or Xcel’s June 15, 2005 Supplement satisfies these requirements and a development of these informational requirements for at least the renewable DG alternative.

The Scoping Decision also requires that the No Build Alternative will be addressed in a certain way:

“The consequences of shutting down the Monticello Generation plant with no replacement generation will be briefly described, including the description of the ISFSI capacity likely required for decommissioning whether or not the plant continues to operate past 2010.”⁸

The FEIS document does address the latter part of this requirement regarding ISFSI capacity, but there is no discussion of the consequences of shutting down the Monticello Generation plant with no replacement generation. Since there is a MISO market available for purchase of energy, at least this attribute of the no build alternative should be addressed to comply with the Scoping Decision requirements.

⁵ See Scoping decision section III D, p. 7.

⁶ Draft FEIS p. 57.

⁷ See Scoping Decision section III D, p. 7.

⁸ Ibid.

A significant deficiency exists in this draft regarding another Scoping Decision requirement, discussion of the economic feasibility of alternatives:

“The analysis of the economic feasibility will cover the same alternatives for which environmental impacts are evaluated, but will incorporate by reference the analysis of the Department of Commerce in the CON proceeding.”⁹

This requirement has not been met since the information added to Tables 7-4 and 7-5 contains only information from Dr. Rakows' Direct Testimony and does not consider data provided in subsequent written or oral testimony of Department of Commerce witnesses. Additionally, this requirement by the EQB should be considered a necessary but not sufficient condition for the scope of economic analysis required by Statute and Rule. As we have stated earlier, the statute and rule requires discussion and analysis of various differing positions on this topic as developed in the record.

2. Adequacy Comments Regarding Routine Radiological Releases

The EIS and the record of this proceeding affirm without controversy that Monticello routinely releases ionizing radiation. The amount of ionizing radiation that Monticello routinely releases on an annual basis, as reported by the Nuclear Regulatory Commission, is contained in Exhibit #16. In the early years of plant operation, annual releases approached and even exceeded a million Curies. Since then, several tens, if not hundreds or thousands of Curies have been released annually. Whether or not these releases are within standards is not at issue. What is at issue is whether the releases, within standards or not, cause environmental, economic, employment and sociological impacts, and if so, what are the costs of those impacts.

The EIS clearly states that no radionuclides associated with plant operations have ever been found. Monitoring protocol is described, but the monitoring program has never detected any of the radiation that is officially reported to have been released (EIS p. 33). The obvious questions therefore become: where does radiation go after it has been released? What is the environmental fate of the various radionuclides? How does each of them move through the ecosystem during the period of many years in which the radioactive decay process occurs?

The monitoring program fails to answer these questions. The EIS fails to ask these questions or to even recognize that they exist.

Nevertheless, the radionuclides are released, and that is the end of our actual knowledge about where they go and what they do for the remainder of their radioactive life. There is monitoring data that documents where the radionuclides are not, and based on that lack of information there are computer models that show no significant concentrations. But

⁹ See Scoping Decision section III E, p. 8

there is no information at all, in the EIS or on the record, to justify any conclusion about where they go, or if they concentrate, or whether human receptors abide within concentration zones, or how any individual radionuclide may happen to be ingested or inhaled. Without information that defines where reported releases go, as opposed to monitoring and modeling that fails to detect them, there is no factual basis for conclusions regarding their environmental, economic, employment and sociological impacts. Yet, the EIS simply presumes that the failure of monitoring and modeling to detect releases means that there is no reason for concern.

The argument that radiation concentrations near the plant are similar to those in Minneapolis (page 43) is irrelevant because background radiation levels are irrelevant if the issue is determining the fate of radionuclides released at Monticello. In addition, because Minneapolis is also within the 50 mile radius of Prairie Island, routine releases from Prairie Island have the ability to mask Monticello release.

The groundless presumption that failure to detect releases eliminates concern about them supports the flawed conclusion in the EIS regarding impacts of routine releases, which is that they have no impacts. This conclusion is presented as an article of faith, without analytical foundation.

Nuclear theology holds that these routine releases are without biological or public health consequences, and the EIS incantation of this theology, faithfully rendered on page 33, places all life in "a sea of radiation" in which all "...tissues are constantly awash with radioactivity from the sun, the earth and products of human technology." In the best of theological tradition, this is true but irrelevant.

The BIER VII Report of the National Academies of Science (referenced with key findings in Public Exhibit #16) on the biological effects of ionizing radiation concludes that there is no safe level or threshold of ionizing radiation exposure; that exposure to background levels causes biological damage; and that additional exposures cause additional risks.

The BEIR VII Report reaffirms the Linear-No-Threshold model for predicting health effects from radiation, meaning that every exposure causes some risk and that risks are generally proportional to dose. Further, the Dose and Dose-Rate Effectiveness Factor has been reduced, meaning that the projected number of health effects at low doses are greater than previously thought. In addition, new mechanism for radiation damage were recognized and recommended for further study, but not included in the risk estimates in the report.

Testimony submitted by Diane Rother (St. Paul Public Hearing, 2/16/06, TR p.51 Public Exhibit 15) provides evidence of the new mechanisms in which background radiation levels lose significance when compared to the exposure caused by radionuclides that have been ingested or inhaled an absorbed into body tissues. Once internalized, each ionizing emission becomes extremely efficient at destroying cell membranes, thereby opening the door to mutations, cancers and other diseases.

There is no discussion of any of this in the EIS. It's as if the National Academies of Science doesn't exist. It's as if testimony on the record gets to be selectively ignored. It's as if Minn Rule 4410.2300 Item H doesn't exist, which requires that, "The EIS shall identify and briefly discuss any major differences of opinion concerning significant impacts of the proposed project on the environment." It's as if the provisions of the Environmental Rights Act (Minn. Stat. §116B) and the Environmental Policy Act (Minn. Stat. § 116D) don't exist, and the provisions of Minn. Rules 4410.2500 dealing with incomplete or unavailable information are irrelevant.

The depth of the failure of the FEIS to even consider the potential for impacts due to routine releases that will occur for an additional 20 years as a result of the proposed facility is illustrated by the "Cumulative Impact Matrix" on back of the first page 31. It says these impacts will be "very low" between 2010 and 2060 because "plant ceases operation in 2030" and because the "plant's past record accurately predicts future." To the first point, the 20 year period of concern when controlled releases will occur is summarily dismissed. The period of concern doesn't even count. To the second point, monitoring data that allows for a rational understanding of the plant's past record regarding environmental pathways of controlled releases does not exist, and there is no examination at all of scientifically established factors that cause those releases to be of concern environmentally and socio-economically. The "very low" is something that somebody just made up.

Specifically to the four factors identified on page 30, the likelihood of repeated occurrence of controlled releases between 2010 and 2030 if the proposed facility is authorized is 100%. There will never be any warning to the public regarding any of the occurrences. The damage caused by the occurrences is unexamined, and conclusions in the FEIS about that damage are nothing more than unsubstantiated opinion. The potentially exposed population within a 50 mile radius includes millions of people. Translating these factors into a conclusion of "very low" impact requires a deep regression into nuclear theology and ignorance of EIS criteria cited above.

3. Adequacy Comments Regarding Security

The security issue is certainly within the scope of this proceeding, as evidenced by portions of the Application, by testimony of Applicant witnesses, and by a hollow, unquestioning regurgitation of the Applicant's position regarding security issues in the EIS. The fact that federal authorities are responsible for setting and enforcing security requirements does not diminish the responsibility of the EIS to analyze the probability that established security requirements are adequate, and to identify potential impacts and costs if they are not.

While there is evidence on the record regarding the impacts and costs of a terrorist occurrence, there is no such analysis in the EIS, and without it, the EIS is not adequate.

The "Cumulative Impact Matrix" on the back of the first page 31 identifies "terrorism" as an issue of concern and lists the four factors to gauge its level or degree of impact. While these may be appropriate things to consider, there is no presentation about the criteria used to evaluate or score them, or about the weight each was given. For example, what factors were included in the analysis that the EIS used to determine that the likelihood of a terrorist occurrence is low? What was the process to evaluate those factors? Who made that determination? What does "low" mean? What is the probability that "low" is the correct conclusion? What are the confidence-bounds surrounding the probability that "low" is the correct conclusion? Without answers to each of these questions, the conclusion is nothing more than someone's arbitrary opinion.

With regard to "potential severity or extent," what percentage of available radionuclides was presumed to be released by the occurrence? What were the meteorological and other factors that would affect public exposure presumed to be? Over what period of time did the release occur? What were the dispersion mechanisms?

Presuming that there was a warning that made a difference, what assumptions were made regarding the effectiveness and efficiency of evacuation procedures? What presumptions were made regarding the availability and ability of medical personnel to treat victims? How many victims were presumed? Over what period of time would adverse health impacts be counted that were caused by exposure to released radionuclides? What evacuation zone was presumed? How long would the evacuation zone have to be abandoned? What would clean-up costs be? What would be the effect of clean-up costs on the economy of the state? Without answers to these questions, and no doubt many more, the "low" conclusion is nothing more than someone's arbitrary and subjective opinion, and there is no way to analyze it from any sort of objective perspective. Such conjecture has no legitimate place in an EIS.

This failure is compounded by the assumptions that were acknowledged for the analysis, as found on the bottom of page 30. What was the baseline assumption regarding the preparedness of response capabilities? How do you know that the baseline is appropriate? What was used to measure and evaluate improvements? What is the probability that appropriate federal authority will adequate oversight and regulatory functions until 2230? What is the probability that local, state and federal governing structures will remain intact and stable during this time period? What criteria and process was used to determine this probability? What degree of certainty bounds the probability assessment? What a bunch of tripe.

4. Adequacy Comments Regarding Degradation and the Potential for Accidents

The EIS "analysis" of plant maintenance, the potential for accidents and their environmental, economic employment and sociological impacts and costs, has the same set of issues that are discussed above regarding security. The fact that federal authority establishes and enforces degradation management in no way diminishes the responsibility of state authorities to analyze potential impacts and costs if degradation management

proves to be inadequate. What is the probability that plant maintenance procedures will prevent a major release of radionuclides? How was this probability arrived at and what degree of confidence bounds it? Rather than repeat all the questions that were posed regarding security, suffice it to say that the EIS presentation of plant management issues that will result from authorizing the proposed facility are all subjective opinion. The EIS presents no criteria that can be evaluated.

Conclusion

The document is not an Environmental Impact Statement. It is a course and crass regurgitation of the Application, driven by unsubstantiated opinion, groundless belief, and wishful thinking. Lack of independent analysis is rampant throughout the document. Even giving the document every possible benefit of doubt regarding controversial, incomplete or unavailable information fails to salvage it. If differences of opinion occur regarding significant issues, Minnesota Rule 4410.2300 Item H still requires that the differences be identified and briefly discussed. They were not. Where there is incomplete or unavailable information, Minn. Rule 4410.2500 requires an explanation of what information is lacking and why, why it is relevant and what its potential significance is regarding reasoned choices among alternatives, a summary of existing credible scientific evidence that is relevant to evaluating potential impacts, and an evaluation of such impacts of the project and its alternatives based on theoretical approaches to research methods generally accepted in the scientific community. None of this was done, or even attempted.

If this document is deemed to be adequate by the Commissioner of the Department of Commerce, the process of public intervention and citizen participation is farce and charade. If the consequences of this document weren't so destructive, it would be just plain silly.

George Crocker, Executive Director
North American Water Office

Exhibit
AH06-12



Laura and John Reinhardt
3552 26th Avenue South
Minneapolis, MN 55406
612.724.0740

February 15, 2007

HAND DELIVERED

Bob Cupit
Minnesota Public Utilities Commission
121 East 7th Place, Suite 350
St. Paul, MN 55101-2147

Re: **In the Matter of the Annual Hearing for the Power Plant Siting Program**
Docket No. E999/M-06-1733

Citizen Comment

Dear Mr. Cupit:

The State's zeal to set up a "one stop shop" for issuing regulatory permits for large energy facilities has resulted in a broken process for regulatory review of applications for these facilities. The Department of Commerce has taken over environmental review of project applications from the Minnesota Environmental Quality Board and public interest review from the Minnesota Department of Public Service. The end result, as most recently and appallingly illustrated in the MinnCan Pipeline application process, is that the public protections embedded in our state's energy laws were cast aside, and affected landowners were denied their legal due process rights.

PROJECT ADVOCACY BY THE DEPARTMENT OF COMMERCE UNFAIRLY PREJUDICES REGULATORY REVIEW

The Department frequently files formal written testimony in energy facility proceedings declaring that a project should be approved—"based on a preponderance of the evidence in the record"—before any record has been established, before any public hearings have been held and before any opposition to the project has had time to emerge.¹ This closed approach announces publicly that the Department has no intention of considering issues raised in the hearing record. Such predetermination signals to the public, to the administrative law judge who conducts the contested case proceeding, and to the decision makers at the Public Utilities Commission that "the fix is in" on a project before the process is even underway. The preapproval approach

¹ See, e.g., MinnCan's Pipeline record and Xcel's Southwest Minnesota 345 kV transmission line records.

overwhelmingly prejudices any analysis (or even consideration) of the public's input into the record. For example, in the MinnCan Pipeline proceeding, the Department refused to comparatively analyze whether the system alternative overwhelmingly recommended by the public—replacing and enlarging aging pipes in the company's existing right-of-way rather than building a new pipeline on unspoiled land—was a feasible and prudent alternative to the company's preferred project.

This approach does not serve the public interest, nor does it satisfy the legal requirements of the Department in these proceedings:

Subd. 11. Department of Commerce to provide technical expertise and other assistance. The commissioner of the Department of Commerce shall consult with other state agencies and provide technical expertise and other assistance to the commission or to individual members of the commission for activities and proceedings under this chapter.

Minn. Stat. 216E.03, subd. 11. The Department's own website explains its mission as being the "state's chief regulator for the energy industry" and "providing a fair and consistent regulatory environment." The Department has strayed from its regulatory duties to become a company shill. By doing so, it fails its duties to the Public Utilities Commission and to the citizens of our state. There is nothing even remotely fair about this approach.

The project advocate cannot also serve as the regulatory analyst, the environmental reviewer, and the public advisor. The Department's early advocacy in favor of applications for energy facilities sets up an immediate conflict of interest and eliminates the neutral analysis necessary to assist decision makers.

THE STATE'S PUBLIC ADVISOR PROGRAM DOES NOT ASSIST AFFECTED CITIZENS IN UNDERSTANDING OR PARTICIPATING IN REGULATORY PROCEEDINGS

The State's laws for reviewing applications for power lines and pipelines call for the appointment of a "Public Advisor" who will assist affected citizens in understanding and effectively participating in the regulatory proceedings. The Department is quick to point out that the Public Advisor cannot act as an "advocate" in this role. Then how can the Department act as an "advocate" for the company who applies for authorization to take citizens' lands?

The Public Advisor Program has made no effort to explain Minnesota's regulatory processes to the citizens. The Public Advisor Program has not generated a single document to assist the public in understanding the complex regulatory processes that are foisted on ordinary citizens as soon as a company files an application seeking permission to build large energy facilities on private lands. The Public Advisor Program has never worked to ensure that landowner notification is properly implemented. The Public Advisor Program has never intervened as a formal party in a regulatory proceeding to bring landowner issues forward, to ensure that landowner questions are answered by the applicant, or to assist the public in developing a record that would promote fair consideration of feasible system or route alternatives.

In the MinnCan Pipeline Project, the State appointed two Public Advisors (one for need and one for routing) who not only did not help landowners effectively participate in the proceedings, but who yelled at and confronted people for raising legitimate issues at public meetings that were designed to address the issues! The Public Advisors did not question the company when issues of improper landowner notification were repeatedly raised, did not ask for notice to the new landowners who were impacted in the middle of the process by new route alternatives, did not make the company answer the public's questions in the hearing record, did not insist that citizens be allowed to participate in the Certificate of Need contested case hearing, and did not protect landowners from abuse and intimidation at the hands of the applicant (which is well documented in the ALJ Report and Record):

At the Public Utility Commission's hearing on MinnCan (February 13, 2007), many landowners testified yet again about the abusive treatment they had been subjected to by the company's land agents. Commission Chair LeRoy Koppendrayer claimed that land acquisition tactics were not in the "scope" of the Commission's application review process, so he thought the Commission didn't have to deal with those problems. **Mr. Koppendrayer is terribly mistaken.** Unless and until permits are issued for the construction of large energy facilities, there is no eminent domain process—there is only an application process, which is under the absolute jurisdiction of the Public Utilities Commission. The company cannot claim eminent domain authority until after regulatory permits are in hand, which means that MinnCan defrauded the landowners by its actions. The Commission is fully responsible for what happens throughout its application process.



Commenters at the January 23, 2007 Annual Power Plant Siting Act hearing agreed that the system is broken and it needs to be fixed. We offer some suggestions.

1. The Department of Commerce Must Stop Advocating for Approval of Facilities in the Application Process. The Department likes to justify its project advocacy approach by claiming that it's not advocating for the project or the applicant, but instead for the ratepayers of our state. This is hogwash, and merely a thin disguise for its true mission: enhancing Minnesota's business environment. It's true that the success of our state's businesses is an important consideration, and may be reasonable justification for promoting a particular project. However, the agency that is charged with analytical responsibilities in the application process—including issues of need, environmental review and public input—cannot also be a project booster. The Department is encumbered by its regulatory duties in reviewing applications, which precludes it from appearing as anything other than a neutral analyst. In the MinnCan hearing process, the Department justified approval of the project on the basis that "The Company would not take this step if it did not expect to use the facility at levels that were profitable." Analysis of profit is not analysis of need, and the Department cannot issue recommendations in advance of the hearing record. If the Department of Commerce wants to advocate for the business community, then it must be relieved of all

analytical duties and responsibilities, including environmental review, regulatory review and appointment as a public advisor and facilitator.

The public is entitled to a state agency that will carefully analyze all the data in the record. For example, if an energy company applies for authority to construct a new power line through Minnesota to deliver energy to another state, we must analyze how much electricity is used in our state, how much is being exported through our state already, and how much is needed. The question (and analysis) must be whether it would serve the interests of Minnesota citizens to build export powerlines on their lands.² Same thing for pipelines. If most of the product being shipped in the pipeline leaves our state, the reviewing agency must bring that data forward to the hearing record. The Department has consistently suppressed this type of information from the public record while it advocates for the construction of large energy facilities in our state.

2. If the Company Enjoys the Benefit of State Agency Advocacy, Then the Public is Entitled to That Representation Too. The public is entitled to equal treatment under law. That's an inviolable Constitutional Right. If the company applicant gets its own state agency advocate for a project, then the public is entitled to its advocacy agency as well. The deck is so stacked in favor of the applicant and against affected citizens in these proceedings that it's totally ridiculous—and patently unjust. The company takes all the time it needs to prepare its application, seek exemptions from the laws that govern proceedings, meet with agency staffers to sell them on the project, and time its application for maximum benefit to the company³—all before the landowners know anything about it.

The citizens, on the other hand, have to try to figure out what is happening and what they can do about it in a very short period of time. Intervention deadlines, environmental scoping deadlines, route or system alternative deadlines, and testimony deadlines are all loaded into the early stages of the application process. Before the citizens can even look through the application or figure out the laws, they're supposed to be able to propose a route alternative that is equal in its presentation to what the company spent months and years preparing. (All with no help from the State agency, who claims it is not allowed to advocate on the public's behalf!) This approach is wrong and must be changed to give citizens a fair chance to effectively participate in state proceedings that impact their lands.

² Applications are now in the works to build gigantic export transmission lines across our entire state.

³ The approach favored by company applicants is to use the busy period between Thanksgiving and Christmas to foist a project or hearings on citizens and hope they're too overwhelmed to participate.

3. Explain the Energy Facility Permitting Processes to the Public in Language They Can Understand. The Federal Energy Regulatory Commission (FERC) has authority for siting interstate pipelines, hydroelectric projects and, more recently, interstate transmission lines. FERC's processes include landowner notification requirements whereby all affected landowners receive direct mailed notice similar to that required in our state transmission laws, PLUS a FERC-prepared pamphlet that explains FERC's certification process and that "addresses the basic concerns of landowners." When a citizen goes to FERC's web site home page, there is a conspicuous tab called "For Citizens." By clicking on this tab, citizens are offered a wide array of information, pamphlets, instructions, schematics and links to help them understand the regulatory processes that affect them, and to help them understand how they can effectively participate in those processes. We are attaching a small portion of the documents available to citizens when they visit FERC's website in a binder with this comment:

- A. **Home Page** Has tabs to learn about FERC, the industries it regulates, contact information, eLibrary, a prominent "For Citizens" section, and a tab linking to open projects, citizens' guides, etc. The "For Citizens" tab appears at the top of every page that is opened—not just the home page.
- B. **For Citizens Page** Contains sections entitled "Projects Near You," "About FERC," "Getting Involved," "Citizen's Guides" and "Contact Information." Shows who to call to find docket numbers or to get help.
- C. **Projects Near You Page** Allows citizens to locate projects on a map, which opens into information available about particular projects under review.
- D. **About FERC Page** Explains how FERC Commissioners are appointed and what the agency does and does not do.
- E. **Getting Involved** Explains participatory rights in projects that affect citizens. Contains sub-tabs "Should I Get Involved," "How to Get Involved" and "The Process" at the beginning and end of the page.
- F. **Should I Get Involved?** Links to comprehensive schematic of how to decide whether to intervene in a proceeding.
- G. **How to Get Involved** Explains opportunities for landowner and citizen participation. Links to explanations of Alternative Dispute Resolution, Petition for Rehearing, using eFiling, using eSubscription, using Calendar of Events and using eLibrary.
- H. **The Process** Provides overviews (via easy to understand schematics) of the pre-filing process, the application filing process, and the construction process. Provides a link to "Ideas for Better Stakeholder Involvement" document.

- I. **Ideas for Better Stakeholder Involvement** A comprehensive discussion of the processes and citizens' options for obtaining information and participating in the processes. Discusses stakeholder input, environmental review, applicant options, agency options, and citizen action options. Links within document to laws, rules, industry organizations and companies. This is an excellent document and tool for citizens.
- J. **Citizen Guides** Contains links to citizens guides and websites that explain the processes for electric transmission, liquefied natural gas, natural gas, hydropower, and oil pipeline facilities permitting processes.
- K. **A Guide to the FERC Electric Transmission Facilities Permit Process** Even though FERC just completed its rulemaking on new authority granted by Congress to site certain interstate transmission lines, the agency has already created citizen guides and schematics to explain a process it hasn't even used yet. (In stark contrast, Minnesota regulators have done absolutely nothing to assist the public, though they've been operating under virtually the same certificate of need and routing laws for 30 years.)
- L. **An Interstate Natural Gas Facility on My Land? What Do I Need to Know?** This is the brochure that FERC requires applicants to send to landowners with notice for natural gas pipeline facilities. It is an easy to understand guide with the most asked questions and references to other available documents and information.
- M. **Frequently Asked Questions** This page lists numerous questions that citizens might ask about energy facility permitting. Each question is itself a link to a discussion. We have attached pages showing the questions, but we have not printed the page that opens under each question.
- N. **Help – How To** Contains numerous links explaining how to obtain information, how to intervene, how to file documents, how to be added to mailing lists and service lists, how to file complaints, correct information, etc. Note on the left side of the page additional tabs for Public Reference Room, Processes, Glossary, Acronyms, Staff Reports, Court Cases, Administrative Litigation, Orders & Regulations, and on and on.

Citizens can work through FERC's website, study what is happening to them, and learn how to effectively participate. The State of Minnesota offers nothing like this to citizens who are impacted by applications for large energy facilities on their land. For example, the PUC website's link to the laws that govern it merely dumps the viewer onto the Minnesota Legislature's web page, with no explanation of how to look up any of the laws. There is no aid, no information, no explanation—nothing—to help citizens understand these processes.

We request that State Agencies responsible for energy facility permitting immediately undertake the preparation of comprehensive, plain-language guides for citizens concerning the regulatory processes that affect them and explain how to participate effectively. We further request that these materials be prepared through an

open comment process. Public Advisors must be able to explain the processes to citizens and to place this information in citizens' hands; this information must be put in prominent locations at public meetings and hearings on project applications; it must be easily accessible on the state government's web sites; and applicants must be required to send it with initial landowner notifications.

4. Explain that the Applicant is Asking for the State's Power of Eminent Domain in Language the Public Can Understand, and Explain Exactly How That Process Works. Administrative Law Judge Beverly Jones Heydinger reached the following Findings concerning land acquisition tactics in the MinnCan Pipeline Project (and remember, the company had no authority whatsoever over anybody's land when it committed this fraud on the citizens):

Finding No. 318. It is apparent that MPL land agents have led many landowners to believe that they had no choice but to accept MPL's payment or their land would be "taken" through eminent domain. From this, landowners incorrectly inferred that they would receive nothing if they did not accept MPL's offer. The landowners did not receive any information that explained to them that they could seek an independent appraisal, and only those landowners who appeared at some of the public hearings were offered an outline of the eminent domain process. **Kenneth Posusta and others requested that, in the future, information about the eminent domain process and how it works should be sent to all landowners along the proposed route.**

Finding No. 322. Over the course of the public hearings, landowners complained about the one-sided terms of the right-of-way agreement, and MPL revealed that certain provisions could be negotiated. * * * [I]t was apparent from the public comments that the land agents may have led the landowners to believe that the terms were not negotiable.

Finding No. 331. Similarly, landowners complained that the land agents representing MPL intimidated landowners and were unwilling to negotiate any terms of the right-of-way agreement. Many different landowners raised the same concern at the hearing, that the land agents were directed by their supervisors to remain firm and to impress upon the landowners that MPL would have the right to take their land through eminent domain if any agreement was not reached. Since eminent domain is not well understood, and many of the landowners could not afford to retain a lawyer, this was an intimidating practice. MPL's witnesses apologized for offending landowners, but acknowledged that its goal is to obtain signed agreements.

Memorandum, pp. 76-77: Many complaints arose because MPL began to negotiate right-of-way agreements before the applications for the CON and Routing Permit were granted. This confused landowners, and some were given the mistaken impression that they had no alternative to signing the right-of-way agreement. It became apparent during the public hearings that some land agents intimidated the landowners. * * * It is likely that many landowners signed the agreements without fully understanding what rights they may have, and without obtaining protections or compensation that MPL might have been willing to give them. * * * Had the right-of-way agreements been negotiated after the permitting process, permit conditions could have been included.

Based on the landowner abuse that is documented in the MinnCan record, we want regulators to prepare a separate brochure explaining Minnesota's eminent domain process. Explain that companies are allowed to approach citizens during the application process, but that landowners don't have to talk to them, don't have to sign anything, and don't have to allow surveys or other access to private lands unless and until permits are issued for the project. Citizens should be encouraged in this brochure to participate in the public hearing process that will decide the outcome of the application. Applicants should be expressly prohibited from claiming to possess any type of legal authority to "take" citizens' lands during the application process, and this should be included in the brochure. The brochure should also explain that the term "taking" does not mean that landowners won't be paid anything for an easement right if they do not accept the company's offer. And people should be informed that they are entitled to just compensation for lands they are being asked to sacrifice *for the good of the state*. The brochure should explain that easement terms are negotiable by both parties, and that landowners may want to obtain legal advice before they sign anything. The ALJ made a similar recommendation in her Report on the MinnCan Pipeline (pp. 77-78):

Although there was a Public Advisor appointed for the proceeding, that person offered information about the routing process, and not about landowners' rights or negotiation options. * * * In this instance, as with other provisions of the right-of-way grant, landowners believed that they were at a distinct disadvantage **because they did not know their rights**, did not have the capacity to research and negotiate with MPL, and **were fearful that they would lose their land without compensation**. It would be helpful in future proceedings to provide landowners along the route with some basic information about the negotiation process and their rights in eminent domain proceedings should no agreement be reached.

5. Due Process Requires that Moving the Project onto New Landowners Moves the Process Back to the Starting Line. The Notice Rules governing high voltage transmission line applications require "supplementary notice to persons reasonably likely to be affected by system alternatives developed in the course of certification proceedings if it appears that those system alternatives are as likely to be certified." This requirement is also contained in the Commission's draft Pipeline Notice Rules (that have been languishing who knows where for the last year). In the MinnCan Pipeline process, two reroutes outside the original 1.25 mile wide route were added mid-way through the process—after the time for intervention as a formal party had expired, after the environmental scoping process was complete, and after the deadline for proposing route alternatives and system alternatives had expired. In her MinnCan Report (pp. 75-76), the ALJ cautioned regulators that—

Some thought should be given to a method to assure that these landowners are aware that there are proposals that could affect their property. One option would be to require written notice to those landowners after the PUC approves the route alternative for consideration, and allow an extension of the deadline for that affected group to intervene.

Moving the route onto unsuspecting landowners without notice and without dialing the proceeding back to the point where they have an identical opportunity to influence the outcome creates a process called "bait and switch." This type of unequal treatment under law (discrimination) cannot be tolerated. All affected citizens must be provided with the same opportunity to participate in the record before decisions are made that affect them. As soon as project proposers come to realize they will have to start over if the location of the proposed project changes significantly, they will quickly adjust their approach to make sure that no changes are necessary.

6. Notice Rules for Pipeline Projects Must be Finalized. At our request, the Commission initiated a rulemaking process to standardize landowner notification rules for pipelines to match those already in place for transmission lines. The Commission issued draft rules almost a year ago and then dropped the ball. There is no excuse for the Commission's failure to complete rulemaking on notice to pipeline landowners. The Commission is spending plenty of time shuffling applications through the process, but no time working on landowner issues. Let's get this rulemaking done.

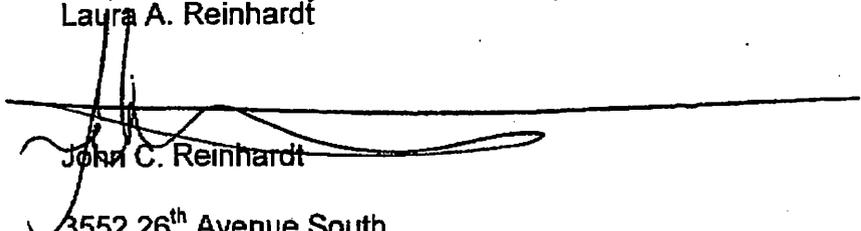
Conclusion

The MinnCan Pipeline proceeding painfully uncovered the abuse of process that is built into our State's energy facility permitting process. Regulators must finally embrace the rights of citizens and level the playing field for everyone.

Sincerely,



Laura A. Reinhardt



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FERC materials enclosed

