

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application for a High  
Voltage Transmission Line Route Permit  
for the Hiawatha Transmission Project

**ORDER ON AFFIDAVIT  
OF PREJUDICE**

The above-entitled matter was submitted for review before Chief Administrative Law Judge Raymond R. Krause on April 1, 2010.

Carol A. Overland, Attorney at Law, submitted an affidavit of prejudice in the above-entitled matter. The affidavit alleged that Administrative Law Judge Beverly J. Heydinger (ALJ), who was assigned to this matter, is prejudiced and should be disqualified.

Attorney Overland moves that ALJ Heydinger should be removed from this matter pursuant to Minn. R. Judicial Conduct and Minn. R. 1405.1000. Ms. Overland alleges that ALJ Heydinger has demonstrated prejudicial bias in the handling of this matter to date by “her presumption of need for the line” and by restricting public participation.

Minn. Stat. ch. 14 provides for the procedures in hearings before the Office of Administrative Hearings. Minn. R. 1405.1000 deals specifically with the procedure for disqualification of an administrative law judge in this type of proceeding. Minn. R. 1405.1400 deals with the ALJ’s conduct of a hearing in this type of proceeding.

With respect to the allegation that ALJ Heydinger has restricted public participation in this hearing, the Chief Administrative Law Judge finds that Ms. Overland has not demonstrated bias. Minn. R. 1405.1400 states that “the administrative law judge shall indicate the procedural rules for the hearing.” In her prehearing orders, ALJ Heydinger has indicated the procedural rules and has not restricted any member of the public from presenting evidence or argument, nor has she prevented any person from being represented by counsel. What she has done is provide for procedures that will allow a complex, multi-party hearing to be held in an orderly and timely manner.

Specifically, ALJ Heydinger has set rules for **parties** to this action with respect to cross-examination at the hearing. Minn. R. 1405.1400 allows the ALJ to determine the sequence of cross-examination. The ALJ has in no way limited the right of the public to appear or present testimony. In attempting to set orderly and timely procedural rules for

testimony and cross-examination by **parties**, the ALJ is not “raising the bar” for the **public**.

All parties in every case are expected to be present during the entire hearing. This is a reasonable and very standard requirement. This requirement is for the protection of the rights of the parties. In order for them to follow the proceeding and have the opportunity for cross-examination, they must be present. Nevertheless, ALJ Heydinger has recognized that since there are so many parties to this matter some may not be able to be present at all times. She has, therefore, allowed the parties to request a leave to be absent if necessary.

Ms. Overland also directs the Chief Administrative Law Judge’s attention to rulings by ALJ Heydinger in other cases. A review of those citations does not lead to the conclusion that there is any pattern of bias as alleged.

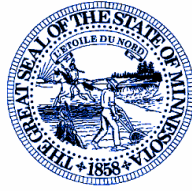
The other claim of bias is based in the alleged “determination of need” for the transmission project by ALJ Heydinger. As pointed out in Ms. Overland’s affidavit, this is not a Certificate of Need Hearing. The Notice and Order for Hearing issued by the Public Utilities Commission on June 2, 2009, identified the issues in this matter as whether the proposed high voltage transmission line met the routing criteria set out in Minn. Stat. § 216E.03. ALJ Heydinger has not made any determinations or recommendations with respect to any aspect of the substance of this case at this point. She has, as is proper in a route case, asked parties to indicate in their pre-filed testimony what their preferred route is. Requesting this information does not constitute a determination of need by the ALJ. Nothing in the pre-hearing orders prevents the public or the parties from expressing their views on the need for this transmission project.

The motion for disqualification is, therefore, denied.

Dated: April 1, 2010

s/Raymond R. Krause  
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RAYMOND R. KRAUSE  
Chief Administrative Law Judge

cc: Judge Beverly J. Heydinger  
Assistant Chief Judge Bruce Johnson



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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April 1, 2010

See Attached Service List

**Re: *In the Matter of the Application for a High Voltage Transmission Line Route Permit for the Hiawatha Transmission Project***

**OAH 15-2500-20599-2; PUC E-002/TL-09-38**

Dear Parties:

Enclosed herewith and served upon you is the Administrative Law Judge's **ORDER ON AFFIDAVIT OF PREJUDICE** in the above-entitled matter

Sincerely,

s/Raymond R. Krause

RAYMOND R. KRAUSE  
Chief Administrative Law Judge

Telephone: (651) 361-7900

RRK:dsc  
Enclosures

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**CERTIFICATE OF SERVICE**

In the Matter of the Application for a High Voltage Transmission Line Route Permit for the Hiawatha Transmission Project	OAH 15-2500-20599-2 PUC E-002/TL-09-38
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Denise Collins, certifies that on the 1<sup>st</sup> day of April, 2010, she served a true and correct copy of the attached the **ORDER ON AFFIDAVIT OF PREJUDICE** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

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Done Internet 100%