STATE OF MINNESOTA
IN COURT OF APPEALS
C8-00-1143

Power Line Task Force, Inc.,
Relator,

vs.

Public Utilities Commission,
Respondent.

Filed May 8, 2001
Affirmed
Crippen, Judge

Public Utilities Commission
File No. E-002/C-99-902

Carol A. Overland, 402 Washington Street South, Northfield, MN 55057 (for relator)

Mike Hatch, Attorney General, James S. Alexander, Assistant Attorney General, Suite 1100, 445 Minnesota Street, St. Paul, MN 55101-2128 (for respondent)

¬¬¬¬¬¬¬¬¬¬¬¬ Considered and decided by Harten, Presiding Judge, Crippen, Judge, and Schumacher, Judge.

U N P U B L I S H E D¬¬ O P I N I O N

CRIPPEN, Judge

¬¬¬¬¬¬¬¬¬¬¬¬ Pointing to the statutory obligation of respondent Minnesota Public Utilities Commission to ensure the safety of electrical services,[1] and claiming that the southeast metro powerline of Northern States Power Company (NSP) created a safety hazard for persons living nearby, relator Power Line Task Force, Inc., sought from the commission an order instructing NSP to ¬immediately shut down the lines and promptly and permanently remove the lines and all

associated [poles] and equipment from locations within 300 feet of any residence.�� Relator, on behalf of residents of Sunfish Lake and South St. Paul who live near the southeast metro line, disputes the commission's denial of its complaint, contending that the commission could not make a decision without conducting a more extensive investigation to determine the safety hazard posed by the line.[2] Because we find merit in the commission's conclusion that, given the lack of resources at hand and the current state of scientific knowledge, neither the present record nor any record that could feasibly be developed at this time would justify shutting down the line, we affirm.

FACTS

The southeast metro powerline runs through the cities of South St. Paul, Inver Grove Heights, Sunfish Lake, and Mendota Heights. Sixty-four residents, speaking through relator Power Line Task Force, Inc., were concerned with the frequency of electromagnetic fields (EMF) associated with such power lines. Their complaint attributed cancer and other diseases to EMF exposure. Relator requested that the Minnesota Public Utilities Commission order Northern States Power Company to shut down the line and remove all lines, poles, and equipment located within 300 feet of any residence.

The commission cited four reasons for its conclusion that it could not justify a shutdown of the line. First, the commission reasoned that because the National Institute of Environmental Health Sciences had conducted a six-year, $60.5 million study of the issue, the commission could not "reasonably second-guess" the NIEHS conclusion that presently there was cause only for "passive" and "inexpensive" regulatory measures to reduce EMF exposure.

Second, the commission found that the Northern States Power proposal to reconfigure "the line in a way that is expected to cut EMF in half" was consistent with the NIEHS recommendations. A concurring member of the commission also observed that a further investigation regarding the safety of the line could not occur until after the upgrading occurred.

Third, the commission noted that its decision does not leave concerned residents without a

remedy because public investigatory powers exist outside the commission.[illegible] The commission explained that [illegible]the Department of Commerce has stated an interest in investigating the issues raised by complainants, including electrical code compliance issues.[illegible]

Finally, the commission explained further that its denial would not prejudice concerned residents, noting its recognition

> that EMF research is in a dynamic state.[illegible] Future discoveries could alleviate all EMF concerns, require a major change in current approaches to delivering and using electricity, or anything in between.

DECISION

[illegible] This court has the discretion to review a final decision by an administrative agency.[illegible] *Minnesota Pub. Interest Research Group v. Northern States Power Co.*, 360 N.W.2d 654, 656 (Minn. App. 1985).[illegible] But administrative-agency decisions are accorded deference and are presumed correct.[illegible] *In re Fritz Trucking, Inc.*, 407 N.W.2d 447, 450 (Minn. App. 1987), *review denied* (Minn. July 31, 1987).[illegible] The agency[illegible]s decision will be sustained on appeal [illegible]unless it [illegible]reflects an error of law, the determinations are arbitrary and capricious, or the findings are unsupported by the evidence.[illegible] *Glazier v. Independent Sch. Dist. No. 876*, 558 N.W.2d 763, 766 (Minn. App. 1997) (quoting *County of Scott v. Public Employment Relations Bd.*, 461 N.W.2d 503, 504 (Minn. App. 1990) (citation omitted), *reviewdenied* (Minn. Dec. 20, 1990)).

[illegible] [illegible]An agency[illegible]s decision is arbitrary or capricious if it represents the agency[illegible]s will and not its judgment.[illegible] *In re Northern States Power Gas Util.*, 519 N.W.2d 921, 924 (Minn. App. 1994) (citation omitted).[illegible] An agency ruling is arbitrary and capricious if (a) the agency relied on factors not intended by the legislature; (b) it entirely failed to consider an important part of the problem; (c) it offered an explanation that is contrary to the evidence; or (d) the decision is so implausible that it cannot be explained as a difference in view or the result of the agency[illegible]s expertise.[illegible] *In re Space Ctr. Transp.*, 444 N.W.2d 575, 581 (Minn. App. 1989).

In reviewing the record, we conclude that relator has failed to rebut the commission[illegible]s rationale for not shutting down the power line.[illegible] Relator gives us no cause to question the commission[illegible]s position that because of limited resources and the current state of scientific

knowledge neither relator's record nor any record that could be developed at the present time could justify shutting down the line. The commission's reliance on the $60.5 million NIEHS study, which recommended inexpensive regulatory measures rather than a full shutdown of the lines, was sound.

Moreover, the commission's conclusion that it was particularly inappropriate to require a more intensive investigation before reconfiguring the line was reasonable. As the commission observes, at least three regulatory agencies with experience in environmental law, the Minnesota Pollution Control Agency, the Minnesota Department of Natural Resources, and the United States Army Corps of Engineers, plus the municipalities through which the line runs, all have a role in approving reconfiguration. At the same time, the commission observed that the Department of Commerce, which has full investigatory powers, has expressed interest in investigating relator's concerns.

Relator's principal objection is that the commission dismissed its complaint without considering "the results of [the commission's] own study into the subject matter." Therefore, relator contends, even if the study eventually concludes that EMF exposure is a health hazard, relator will be precluded from submitting a petition for the relief that has now been denied. But because the continuing jurisdiction of the commission over the subject matter is indisputable, there is no merit to this claim. *See* Minn. Stat. § 216B.25 (2000) (providing that the commission, inter alia, may at any time reopen any case for the taking of further evidence).

Finally, relator relies heavily on the testimony of an engineer from the Department of Commerce, who recommended further investigation before a decision on the merits of the complaint. Specifically, the engineer testified that the commission should first determine the number of people living in close proximity to the line and assess the correlation between incidence of illness and the place of residence. But we defer to the commission's conclusion that information of this kind, without further empirical evidence linking certain levels of EMF exposure to the occurrence of disease, would not be determinative on closure of the line. *See Fritz Trucking*, 407 N.W.2d at 450 (stating that the commission's decision receives deference and is presumed

correct).&#65533; In addition, the commission acted within its discretion in concluding that access to such empirical evidence was not reasonably available in light of the commission&#65533;s resources and the NIEHS study.&#65533; *See id.* at 451 (providing that a board&#65533;s factual findings are accorded substantial judicial deference).

&#65533;&#65533;&#65533;&#65533;&#65533;&#65533;&#65533;&#65533;&#65533;&#65533;&#65533;&#65533; In light of the record, and the broad discretion afforded to the commission in its decision making, we conclude that the commission&#65533;s decision was not arbitrary or capricious.&#65533;

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[1] Minn. Stat. &#65533; 216B.04 (2000) provides as follows:

> Every public utility shall furnish safe, adequate, efficient, and reasonable service; provided that service shall be deemed adequate if made so within 90 days after a person requests service. Upon application by a public utility, and for good cause shown, the commission may extend the period for [sic] not to exceed another 90 days.

[2] The commission brought a motion to strike portions of relator&#65533;s brief and reply brief on the ground that the matters were not presented to the commission and are outside the record on appeal.&#65533; Because this evidence was immaterial to our decision, we deny the motion.