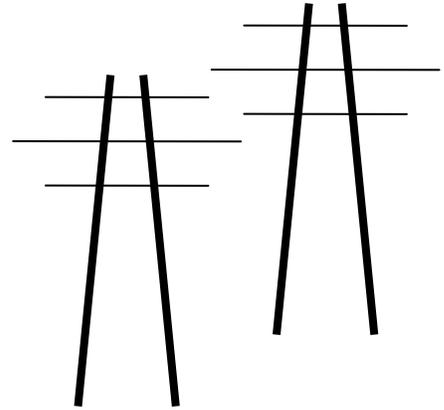


# Legalelectric, Inc.

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March 24, 2011

Burl Haar, Executive Secretary  
Public Utilities Commission  
121 – 7<sup>th</sup> Place East, Suite 350  
St.Paul, MN 55101

RE: Petition for Rulemaking based on 2010 PPSA Annual Hearing Comments  
Minn. R. Chapter 7829.0700, 7829.0800, 7829.1000, 7829.1100, 7829.2600, 7829.2700

Dear Dr. Haar:

Enclosed for filing please find **Petition for Rulemaking**.

I am making this Petition as an individual, and not in the course of representation of any specific party, although for the last 15 years I have been representing local governments, activist groups and individuals in utility regulatory and Power Plant Siting Act dockets, ranging from nuclear waste, transmission, coal gasification, wind, and natural gas, and have gleaned these comments from that extensive experience.

For most of that 15 years, I've been participating in the Annual Power Plant Siting Act hearing. To avoid reinventing the wheel, I am incorporating prior Annual Power Plant Siting Act records into my Comment to insure inclusion. As anyone who has testified at the PPSA hearing before would know, the same issues are raised year after year after year after year, and the problems continue. Legislative changes have been made to suit utility desires that exacerbate these problems. Parties raising issues are often regarded as "impediments" and the public interest has been mowed down as so much Right of Way vegetation. It is my hope that the **Petition for Rulemaking** can bring some of these issues into focus.

I've set out the proposed amendments below based on 15 years of working within the Power Plant Siting Act constraints, problems observed over the years, and am using the outline for my oral comments at the hearing as the basis for the Petition, incorporated within.

If you have any questions or require anything further, please let me know.

Very truly yours,

Carol A. Overland  
Attorney at Law

**AMENDED PETITION FOR RULEMAKING**  
**TO THE**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**And the**  
**MINNESOTA PUBLIC UTILITIES COMMISSION**

OAH Docket No. OAH Docket 8-2500-21746-2  
PUC Docket No.10-222

**Name:** Carol A. Overland

**Group Represented or Title:** Petition made as an individual

**Address:** Legalectric, P.O. Box 176, Red Wing, MN 55066

I request that the Public Utilities Commission amend Minnesota Rules, parts:

Minn. R. Chapter 7829,0700, .0800, .1000, .1100, .2600, .2700;

The need or reasons for the rulemaking are detailed in my testimony at the 2010 Annual Power Plant Siting Act hearing outlined below, with specific proposals in track changes below that.

**Statutes & Rules have holes**

There are areas not specifically covered by the PPSA that should be because some matters are “open to interpretation.” Worse, sometimes staff or ALJ interpretation is contrary to rule, against public interest, or thwarts public participation, which is a large part of the purpose of the PPSA.

- Task Force formation should be presumed, without resistance from Commerce
- Task Force implementation – need “CITIZENS” on the Task Force (see rule)
- Notices are sent late, particularly for those routes added in scoping, and sometimes notice is not sent at all
- Scoping is broadening inquiry rather than funnel down – facilitators of task force have this exactly backwards
- Shifting burden of proof requires project opponents to function beyond means
- Definition of “adequacy” of environmental review is too narrow

**Intervenor funding is necessary to facilitate public participation**

Intervenors are at an extreme disadvantage in utility infrastructure proceedings, and need direct and indirect support. All the public participation opportunities in the world are useless if the public cannot navigate the system or maintain the investment necessary to be present. It is very difficult for the public learn of their options, the system is arcane and cumbersome, and the process is necessarily long, but long enough to try anyone's patience. For members of the public, presented with so many hurdles, the question is "Why bother? It's a done deal."

Direct or indirect funding is needed for expert witnesses, transcripts, and intervenor compensation. Often transcripts are available at local libraries, but not always, and as in other states, they should be provided to parties as a matter of course.

Minnesota needs a Dept. of Public Advocate/Public Intervenor, as is found in New Jersey, Delaware, Iowa, Wisconsin and California. The "Public Advisor" must at least provide inquiring persons with public participation statutes and rules!

Participation as a party by the Residential Utilities Division of the AG's office should be mandatory in all dockets affecting ratepayers.

### **PPSA Specific issues addressed in rule amendments proposed**

Notice must be required, and flawed notice should at some point be fatal flaw to application

- facilitate local gov't participation, gov't's need notice to show up (CATF, Intervene)
- as route changes, notice landowners immediately
  - o Brookings – scoping routes, didn't get notice until 2-3 months later
  - o Myrick didn't get notice until after hearings had ended!!!

Environmental review- routes not reviewed are not within universe of routes to select from, yet applicants propose them and they are regarded as options for routing.

Adequacy of environmental review is based only on whether it covers what's raised in scoping decision, and not scope or quality of treatment of issues raised

FEIS for many projects are typically not released until AFTER the hearing. This means that at the time of the hearing, parties have no way to know whether there are deficiencies in the FEIS and/or in the content of responses to Comments to be able to raise them in a timely manner.

Agency participation – Agencies must participate in dockets in which they have a stake. I am tired of filing subpoena requests, but will continue to do so until participation is a matter of course. Rules change to require state agencies to appear.

The Commission must adopt a policy to ENCOURAGE state and federal agencies to appear.

- Mesaba – took PUC directive to get MPCA to weigh in, PUC could specifically request participation by state and Federal agencies.
- Brookings – took subpoena request x 2

- Fargo – they were getting used to it

Agency comments – must be put into routing/siting record **immediately upon receipt**, labeled as agency comments, and posted on eDockets for that docket, and not hidden in EFP site or withheld until release of FEIS.

Incomplete applications should be rejected, with project not moving forward until information required is provided

- CapX failure to disclose ultimate owner, at same time Xcel is transferring transmission assets to ITC

Advisory Task Forces – interpretation of rules has been skewed

- Citizen Advisory Task Force is the name of rule, yet citizens excluded from participation
- Necessity of petitioning because Commerce resists forming Task Forces – Chisago, Mesaba, CapX Brookings & LaX
- Task Forces increase load for staff, and require commitment of resources – funding needed.
- No opportunity for public comments at Task Force meetings, takes the “citizen” out of the process, limits broad public participation.
- Failure to provide basic, essential information (I was told to leave meeting when I responded to Task Force member question re: why only one site for Mississippi River crossing was proposed and RUS environmental review addresses three crossings)
- Membership – CapX CATF membership limited to local governments “Land Use Professionals”
- Everything framed from “Land Use” perspective
- Members told to narrow issues, not brainstorm
- Members told to make recommendation, revolted and refused

Local Review

- Local gov’t generally not equipped for local review of energy projects
- May not admit it, i.e. Freeborn County’s review of Bent Tree
- No expertise or sense, i.e., Freeborn Co. cut and paste application as EA
- Local gov’t choosing route not reviewed in EA (likely, decision later today, Co. Atty. has been notified of issue and has not weighed in, it was farmed to outhouse attorney.
- Question of intervention – parties CAN intervene in county permitting, issue is whether it is a proceeding.
- Local permits denied with substantial record – Xcel started suing and they caved.
- Devo Agreement with local government before environmental review completed is a MEPA problem.

Funding of projects prior to completion of environmental review is MEPA problem.

...a governmental decision cannot be made to grant any related permit until the environmental impact statement has been determined to be adequate. Minn. Stat.

116D.04,

subdiv. 2b; Minn. R. 4410.3100, subp. 1. “Permit” is specifically defined to include “the

commitment to issue or the issuance of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, by a governmental unit.” Minn. R. 4410.0200, subp. 58.

How is administrative process working?

- Parties booted out where testimony not submitted – no basis for this.
- Non-party public not given adequate time or opportunity to question witnesses.
- Intervention – TWICE ordered by ALJ to be incorporated -- no basis for this
- Hurdles to participate
- Transcripts – how to participate without access to transcript

## **7829.0700 OFFICIAL SERVICE LIST.**

### **Subpart 1. Content.**

The official service list for each proceeding consists of the names of the parties and the names of participants who have filed a written request for inclusion on the service list with the executive secretary. The official service list shall be limited to one individual per party. Those on service lists must identify party represented. Access to officially filed documents shall be available through subscription to eDockets or viewing the website for a particular docket.

### **Subp. 2. Establishment and updating.**

The commission shall establish the official service list at the conclusion of the initial comment period and shall mail a copy of the list to the parties and to participants who have filed written requests for inclusion. A list established before commission action on a petition for intervention must include those persons whose intervention petitions are pending. The commission shall mail an updated official service list to the parties and participants if the official service list is later expanded or reduced. The commission need not mail the official service list in proceedings when the only parties are the department and a petitioner, complainant, or respondent.

### **Subp. 3. Limiting service list.**

The official service list shall be limited to one individual per party. Access to officially filed documents shall be available through subscription to eDockets or viewing the website for a particular docket. On its own motion or at the request of a party, the commission shall limit the service list to parties to the proceeding if it finds that requiring service on participants is unduly burdensome.

### **Subp. 4. Name and address change.**

A party or participant who wishes to change the name or address of a person receiving service on behalf of the party or participant shall provide written notice of the change to the executive secretary and to persons on the official service list.

#### **Subp. 5. Proceeding before administrative law judge.**

In proceedings before an administrative law judge in which the judge establishes a service list, the names on that service list must remain on the official service list for the remainder of the proceeding. The official service list in a contested case hearing shall be limited to one individual per party.

### **7829.0800 PETITION TO INTERVENE.**

#### **Subpart 1. Filing and service.**

A person who desires to become a party to a proceeding shall file a petition to intervene within the time set in this chapter. The petition must be served on known parties and those persons on the utility's general service list for the matter, if applicable. If during the contested case the scope of impacts is broadened, the intervention deadline shall be extended to allow intervention by newly affected parties. The administrative law judge, with the consent of all parties, may waive the requirement that the petition be in writing.

#### **Subp. 2. Grounds for intervention.**

The petition must allege the grounds for intervention and must be granted upon a showing that: the person is specifically considered by statute to be interested in the particular type of matter at issue; the person is specifically declared by statute to be an interested party; or the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general, or the person's interests are not adequately represented by one or more other parties participating in the case. Parties wishing to intervene jointly, and counsel representing more than one party, must specify distinct interests and demonstrate that distinct interests are not in conflict or duplicative. Where interests overlap or are duplicative, such petitioners shall petition to intervene as one party.

#### **Subp. 3. Intervention as of right.**

The department and the Office of the Attorney General, through its Residential Utilities Division, may intervene as of right in any proceeding before the commission. They become parties upon filing comments under this chapter and need not file petitions to intervene, except when the rules of the Office of Administrative Hearings require it.

#### **Subp. 4. Objection to intervention.**

An objection to intervention must be filed within ten days of service of the petition to intervene.

#### **Subp. 5. Disposition of petition.**

If there is no objection to intervention and a petition to intervene is not denied or suspended within 15 days of filing, the petition to intervene must be considered granted, unless the matter is referred to the Office of Administrative Hearings for contested case proceedings before the expiration of the 15-day period. Once granted party status, party intervenors are not required to submit testimony or maintain any level of participation to retain party status.

#### **Subp. 6. Proceeding before administrative law judge.**

During the time that a matter is before an administrative law judge, intervention procedures are governed by the rules of the Office of Administrative Hearings and by orders issued under those rules by the administrative law judge.

#### **7829.1000 REFERRAL FOR CONTESTED CASE PROCEEDING.**

If a proceeding involves contested material facts and there is a right to a hearing under statute or rule, upon petition, or if the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings, unless:

- A. all parties have expressly waived their rights to contested case proceedings and instead request informal or expedited proceedings, and the commission finds that informal or expedited proceedings would be in the public interest; or
- B. a different procedural treatment is required by statute.

#### **7829.1100 PUBLIC HEARING.**

When a public hearing is held in connection with a contested case proceeding, the commission shall, whenever possible, schedule the public hearing to be held before the evidentiary hearings in the area where the infrastructure in question would be located.

#### **7829.2600 STAFF COMMENTS.**

Written comments on a filing by commission staff must be made available to those persons on the service list at the same time they are provided to the commission. If commission staff

recommend action not advocated by any party, all interested and formal parties must be provided opportunity for written comment, and written commentors be granted oral comment at the request of any interested or formal party.

## **7829.2700 PROCEDURE AFTER ADMINISTRATIVE LAW JUDGE REPORT.**

### **Subpart 1. Exceptions to administrative law judge's report.**

Except in cases subject to statutory deadlines not waived by applicant, parties shall file and serve on the other parties any exceptions to an administrative law judge's report within 20 days of its filing. In cases subject to statutory deadlines, exceptions must be filed and served within 15 days of the filing of the report.

### **Subp. 2. Replies to exceptions.**

Except in cases subject to statutory deadlines not waived by applicant, a party shall file and serve on all other parties any replies to exceptions within ten days of the due date for exceptions. In cases subject to statutory deadlines not waived by applicant, replies are not permitted.

### **Subp. 3. Oral argument.**

Parties must be granted an opportunity for oral argument before the commission, when requested, as required under Minnesota Statutes, section [14.61](#).

The need or reasons for the rulemaking you request are detailed in my testimony at the 2010 Annual Power Plant Siting Act hearing and above in my comment letter.

This petition is being filed via email and posting to the PPSA Annual Hearing docket, 10-222, and is also filed as required by Minn. R. 1400.2020 and 1400.2500 with the Executive Secretary of the Minnesota Public Utilities Commission by United States mail.



Date: March 24, 2011

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Carol A. Overland, Petitioner