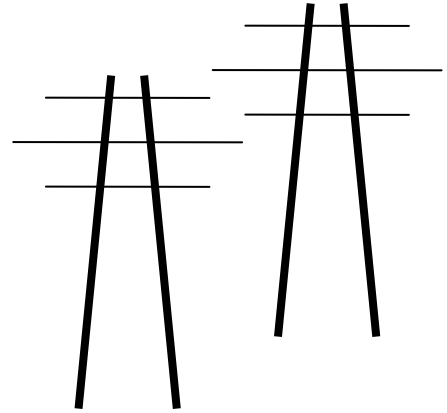


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March 18, 2014

Kate Kahlert
Public Utilities Commission
121 East 7th Place
St. Paul, MN 55101

via email & eFiling: kate.kahlert@state.mn.us

RE: Comments of No CapX2020, U-CAN & CETF – Rulemaking Generally

Dear Ms. Kahlert:

Attached please find two blurbs from the Governor’s Office, posted on the web page.

It’s come to my attention that Gov. Dayton has issued some “unsession” proposals¹ that directly relate to what we’re doing, or trying to do, over the last year or more. For the most part, I find these pronouncements appalling, particularly if I read between the lines. In the interest of open process, these “fact sheets” should be in our rulemaking record as an example of this administration’s goals, tactics and likely pressure.

“Permitting Reform” -- Applicable primary to DNR and MPCA but ???

This “fact sheet” has a mantra of “unnecessary delays,” and while I believe the focus is on the DNR and the MPCA, we’ve heard in this rulemaking committee about deadlines and adhering to the law. The evidence shows another picture -- that the majority of permits are issued promptly, and the ones that are delayed are ones with problems, ones where the Applicants do not provide necessary information, ones where the project is a house-of-cards and not feasible, ones where the record shows that there will be unacceptable impacts – one point of regulation is to not permit projects that are not in compliance with the law. There is also the matter of funding, the MPCA is overwhelmed. There are air permits that have expired and the agency is not working on renewal because it is struggling to keep up with new permits. For example, the permit for the Xcel garbage burner in Red Wing expired in June, 2009. This is 2014.

“Rulemaking Reform” – Public Participation

¹ See <http://mn.gov/governor/blog/the-office-of-the-governor-blog-entry-detail.jsp?id=102-116892>; see also [What is Gov. Dayton thinking?](#)

This next one really sticks in my craw. We all know that in rulemaking, the opportunity for meaningful participation and comment is through an Advisory Committee. And as we also know, “public participation” is the foundation of the Power Plant Siting Act. It states:

Protecting Public Participation

- **Including the Public in the Process.** Streamlining government bureaucracy should not come at the cost of public participation. That is why Governor Dayton’s plan to reform the rulemaking process ensures the public has the opportunity to weigh-in and improve the rules written by state agencies.

But then these “reforms” are proposed, which limits the public process and moves the “participation” to points where it is too late, where the draft rule is completed, and all the public comment in the world won’t make any difference because a rule substantially different than that proposed can’t be adopted. The “Finding the Right Time for the Public to Weigh-In” is particularly offensive because that is the Advisory Committee stop:

Four Significant Rulemaking Reforms

- **Putting Citizens in the Driver’s Seat.** During the rulemaking process, the Office of Administrative Hearings (OAH) reviews a completed rule to determine whether each individual piece of that rule is needed and reasonable. The Governor’s plan would streamline the process, only requiring the OAH to review the pieces of the rule that received public comment. This allows the public to decide where there is need for more discussion and independent review.
- **Finding the Right Time for the Public to Weigh-In.** Right now, state agencies sometimes ask for the first round of input from the public too early – slowing down the process. Making this first round of public comments optional for less controversial matters will streamline the process and help ensure the public is weighing-in on specific proposals, not just an undefined concept or idea.
- **Making Rulemaking Explanations Simpler and Easier to Understand.** Before a state agency writes a new rule, they have to explain what it does and why it is needed in a document called a Statement of Need and Reasonableness (SONAR). The Governor’s plan would simplify the SONAR, making it shorter, easier to read, and more relevant to the specific rule that is being proposed.
- **Reforming the Hearings Process.** Sometimes, public hearings are a necessary and productive part of the rulemaking process. But the current threshold for requesting these hearings is too low, requiring only 25 signatures. That low threshold sometimes causes hearings to become a roadblock for common sense rulemaking reforms. The Governor’s plan would require a minimum of 100 citizens petitioning for a hearing – the same threshold that is required for environmental review.

It is not acceptable to propose to shut the public out of rulemaking in “the first round of input” which is NOT “too early.” It is the right time. Also, requiring 100 “citizens” to petition for a hearing, where a hearing on a rule should be a matter of course, is absurd. This increase is what was used to cut down the number of EAWs for feedlots, and look where that got us – those of us living in hog heaven are too well aware.

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

Very truly yours,



Carol A. Overland
Attorney at Law

cc: Office of Governor Mark Dayton

FACT SHEET | Permitting Reform

Better Government for a Better Minnesota

Governor Dayton has made streamlining environmental permitting a top priority. His administration has already made permitting faster and more predictable for Minnesota businesses, while ensuring strong environmental protections remain in place. As part of the Unsession, the Governor is proposing new reforms that would ensure that 11,000 of the 15,000 permit requests each year are completed in 90 days or less. Many of the remaining permits would be completed in less than 150 days.

Major Progress, More Room for Improvement

- **Minnesota Has Made Major Progress.** Before the Governor overhauled the permitting process in 2011, businesses were often forced to wait months, and sometimes even years, to have their permits approved. Long, unnecessary delays cost businesses time and money, and stifled job creation. Now, most permits are issued in 150 days or less – but the Governor thinks our state can do even better.
- **Unnecessary Delays for Low-Risk, Non-Controversial Permits Remain.** A number of small, non-federal permits present a low risk to the environment and human health. But businesses are still required to re-apply for these permits every five years, costing time and money.
- **More Process Improvements Needed.** State agencies have made tremendous progress in the last three years, overhauling their processes for issuing permits and dramatically improving turnaround times. But more changes are needed to make the permitting process more flexible and efficient.

Specific Changes to Improve Permitting Efficiency

- **Ten-Year Permits for Low-Risk Projects.** Rather than asking businesses to re-apply for non-controversial permits every five years, the Governor has proposed a new ten-year permit for non-federal permits that present a low risk to our environment and human health.
- **A Two-Tiered Strategy for Streamlining Permit Review.** The Pollution Control Agency and the Department of Natural Resources review and issue a wide variety of complex permits every year. To ensure these permits are reviewed responsibly and efficiently, the Governor has proposed creating a new two-tiered system that will streamline the permitting process.
 - **90-Day Goal.** A projected 11,000 permits every year – including the most general and registration permits for air, water, and land – would be issued in 90 days or less.
 - **150-Day Goal.** Complex air, water, and land construction permits that require public comment periods and more detailed review would be issued in 150 days.
- **Making the Permitting Process More Flexible.** If a business wants to expedite their project, they can help pay for private consultants and staff overtime at state agencies after a permit application has been submitted for approval. To make the process even more flexible, the Governor's plan would allow businesses to speed up the permit process before it starts – creating a fee-for-service model that would involve state agencies earlier in the process to eliminate confusion and ensure the business and state regulators have clear expectations and a shared understanding of the project.

FACT SHEET | Rulemaking Reform

Better Government for a Better Minnesota

State agencies are responsible for writing the rules that implement and enforce new laws. Currently, the process for writing those rules is slow and complex, sometimes taking up to two years to complete. Governor Dayton is proposing reforms to the rulemaking process that will make the process faster and easier to understand, while protecting the public's right to participate and providing the opportunity for independent legal review.

Streamlining Government Bureaucracy

- **Speeding Up the Process.** Right now, rulemaking takes anywhere from 9 to 24 months to complete, depending on the law. Under the Governor's proposal, routine and non-controversial rules will be completed in half that time.
- **Providing Certainty for Citizens, Businesses, and Communities.** Speeding up the rulemaking process – especially for routine and non-controversial rules – will eliminate unnecessary delays that cause confusion and frustration for Minnesotans. It will give citizens, communities, and businesses the certainty they need to plan for the future, and adjust to new laws.

Protecting Public Participation

- **Including the Public in the Process.** Streamlining government bureaucracy should not come at the cost of public participation. That is why Governor Dayton's plan to reform the rulemaking process ensures the public has the opportunity to weigh-in and improve the rules written by state agencies.

Four Significant Rulemaking Reforms

- **Putting Citizens in the Driver's Seat.** During the rulemaking process, the Office of Administrative Hearings (OAH) reviews a completed rule to determine whether each individual piece of that rule is needed and reasonable. The Governor's plan would streamline the process, only requiring the OAH to review the pieces of the rule that received public comment. This allows the public to decide where there is need for more discussion and independent review.
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