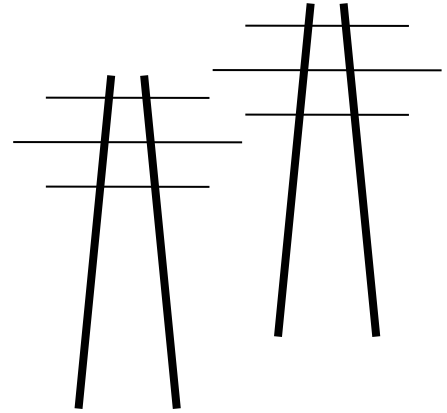


Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617
Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalelectric.org

1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638



March 7, 2023

House Climate and Energy Finance and Policy
c./o Mike Molzahn
Committee Administrator
593 State Office Bldg.
St. Paul, MN 55155

via email: Mike.Molzahn@house.mn.gov

RE: **HF 2439 – Participant Compensation at PUC**
Some History of Participation over 28 years

All –

Attached please find an Op-Ed by David Morris from 2009 that explains exactly what the people of Minnesota encounter when faced with utility infrastructure and weighing in at the Public Utilities Commission.

HF 2439, providing a measure of compensation, is sorely needed. I've been advocating for intervenor compensation for participants in utility dockets for decades, and it heartening to see this bill, and I strongly urge you to move it forward.

Over the last 28 years, I've represented and participated in more proceedings before the Public Utilities Commission than I can count, some lasting 2-5 years. I've represented individuals, small organizations, and local governments, and have successfully helped assure that there is no nuclear waste in Florence Township on the Mississippi; that a coal gasification plant was not built near Grand Rapids, and that transmission lines did not mow down clients forests or go through the back yards of Dodge Center. On the other hand, CapX 2020's \$2 billion of transmission criss-crossing Minnesota was built, though we were able to get some beneficial minor alterations.

During these proceedings, my clients, working to address the impacts of infrastructure in their yards, their community, and in the public interest struggled navigate the arcane Public Utilities Commission administrative process and to pay the costs of my legal fees and for expert witnesses. My rates have always been deeply discounted, often to my detriment, sometimes on spec, because I recognize that they had to show up, had to participate, or they'd be steamrolled. In proceedings prior to adoption of electronic filing, just the copying costs and postage were in the thousands of dollars. To cover costs, they're holding bake sales, phone-bank begging and

mass mailings, benefit concerts, silent auctions, even putting grain into a legal fund account at the local elevator. Some people needing to participate throw up their hands, unable to take the dive without resources, or quit in exhaustion when the proceeding drags on year after year, or through multiple iterations. A review of Power Plant Siting Act annual hearing reports will document the trouble people have paying for help to navigate the PUC's system.

The conditions laid out in this bill are well-considered, assuring that the participation is helpful, meaningful, actively developing the record, and particularly helpful is the requirement of promotion of a public purpose or policy. Another good provision is the ceiling on compensation, which will prevent a "Wisconsin" situation where non-profits have made intervenor compensation a cottage industry, and waste valuable time and money on expert witnesses to testify about tussocks or the like, and nothing about erosion and storm drainage from 3,500 acre solar projects, or wind turbine noise violating the state standard.

The requirement that "the proceeding resulted in a commission order that adopted, in whole or in part, a position advocated by the participant" should be an optional finding, not a "must," because often the Commission disregards material issues raised, or works around a crucial issue acknowledged in Findings and Recommendation of an Administrative Law Judge in a way that is contrary to evidence and allows permitting of a project despite unaddressed issues and impacts.

Overall, this bill is reasonable and oh-so-welcome. Again, I ask that you pass this out of committee and on to the next legislative step.

.
Very truly yours,



Carol A. Overland
Attorney at Law

cc: All Members - House Climate and Energy Finance and Policy

David Morris: If it's citizens vs. utilities, utilities win

DAVID MORRIS

A few days ago, the Minnesota Public Utilities Commission (PUC) approved a massive high-voltage transmission project known as CapX that will cost Minnesotans an amount equal to the projected biennial state budget deficit and four times the total bill to taxpayers for the Twins and Gophers stadiums.

With respect to the stadiums, Minnesotans were able to actively participate in the decisions, both directly and indirectly through elected representatives. Both those in favor and those opposed to using tax dollars to pay for the stadiums engaged in a spirited public debate. The Legislature is currently just as vigorously debating ways it can eliminate the budget deficit.

The PUC process, on the other hand, is much more hostile to citizen participation and influence. Indeed, the deck is stacked against the average citizen. Utilities have a virtually unlimited budget to argue their positions -- a budget they raise from their ratepayers. Citizens, on the other hand, must raise their own money, and lots of it, to participate effectively.

The rules under which the PUC operates are established by the Legislature. Utility lobbyists are powerful there. But they're not all-powerful. Thus, over the years, Minnesotans have been able to enact rules to help level the playing field for citizens. For example, the law requires the PUC to reject an application to build a large power plant or a high-voltage transmission line unless the utility proves it is needed to improve reliability or meet increased demand or achieve renewable-energy goals. As part of the application, the utility is expected to thoroughly and completely explore alternatives to its proposal, including no-build options. The burden of proof on whether a project is needed rests with the utilities.

The PUC, regrettably, has interpreted this rule so as to turn it on its head. At the PUC, the burden of proof rests with those opposed to a new power plant or high-voltage transmission line. It is up to the people whose homes and farms may be seized by utilities if a project is approved to make the case for alternatives. Doing so requires an extremely high level of technical expertise. A serious technical and economic examination of alternatives can cost \$100,000 to \$200,000 or more.

Even if citizens are able to raise that kind of money, they face other hurdles. To analyze alternatives, they must access data that only utilities possess. In many cases, the utilities call that data proprietary and argue that to make the information public is to give a possible advantage to a competitor. One would think that this would be a hard argument to make. After all, Minnesota utilities have a monopoly on the sale of electricity. Apparently, however, it is not a hard argument to make at the PUC.

A formal proceeding, such as a judicial proceeding, involves the cross-examination of witnesses. In many proceedings, utilities again tax their customers by using ratepayer money to acquire a transcript. One would think that since the transcript is in electronic form, the PUC would post it and make it freely available to the public. Astonishingly, the PUC rules state that court reporters own the transcript! Citizens and other

intervenors must pay for their own copies of transcripts, which, for controversial projects, could mean \$5,000 to \$10,000 per copy.

In the recent CapX transmission case, the PUC went one step further in denying citizens. The need for the transmission lines was based in large part on a projection of significantly increasing demand. That projection was largely made in forecasts completed in 2004. It has already proven to be vastly overstated. Moreover, the current economic collapse is translating into shrinking, not growing, electricity demand. Hundreds of citizens asked the PUC to take this new information into account and keep the proceeding open. The PUC decided the current economic free fall doesn't make a difference.

Utilities are gearing up to ask the PUC to spend billions more for even higher-voltage transmission lines. These will be built to send electricity from the Dakotas to Chicago and New York while running right through Minnesota. If these lines are approved, Minnesotans will probably pay most of the costs, while receiving little if any benefit.

Imagine if legislators proposed taxing us to build a sports stadium in Chicago. The proposal would be dead on arrival. Citizens have influence and even power in the Legislature. The process and rules at the PUC must be redesigned to allow them similar access and influence over energy decisions.

David Morris is vice president of the Institute for Local Self-Reliance, based in Minneapolis and Washington, D.C.