

Eulogy for the PPSA: Comment to the 2024 Power Plant Siting Public Hearing

PUC Docket Number (24-18); OAH Docket Number (22-2500-40414)

The PPSA was enacted as one of the cornerstones of Minnesota's environmental legislation as Chapter 591, passed the same year as MEPA -- cited in John Helland's historic overview: <https://www.lrl.mn.gov/docs/pre2003/other/950629.pdf>.

For 50 years, the public participation provisions of the original PPSA legislation have allowed citizens, communities, advocacy groups and NGOs to participate meaningfully in energy infrastructure siting. Any number of citizen advocates, veterans of these proceedings and EQB/EERA Advisory Task Forces have gone on to public service in local government, state boards, founding organizations for environmental advocacy and education etc.

Lives have been changed for hundreds of Minnesotans who found it necessary to invoke their duties under the Minnesota Environmental Rights Act (MERA) to protect the state's environmental resources. As affirmed in the recent renewal of the state's constitutional funding amendment, nothing is more central to Minnesota's shared values than the quality of its natural resources.

MERA 116B.01. Purpose

The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof.

Why is public engagement so crucial to the review of Energy Infrastructure proposals?

- The high potential for environmental impacts of energy infrastructure – as established in the MN Supreme Court review of PEER [1] the granddaddy of fights to come including the 1980's coal transmission fight documented in Paul Wellstone's [Powerline: The First Battle of America's Energy War](#).
- The cost of investments in 'public utility' development of energy infrastructure, which also affects the affordability of the basic requirements of heat, electricity etc.
- The outsized potential social, economic, and environmental impacts (+ and—) of large energy facilities at the community and subregional level.
- Important matters of environmental and economic equity cannot be evaluated and acted upon without the direct involvement of affected groups and individuals.

From the original PPSA legislation –

1. Public Participation: Section 9, Subd. 2.

“OTHER PUBLIC PARTICIPATION. The council [Commission] shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to

public hearings and advisory committees and shall be consistent with the council's rules, regulations and guidelines as provided for in section 16 of this act.”

Of the scope of public engagement provisions, this section is one of two that is preserved in the new legislation. It is cited and discussed in the 2020 Legislative Auditor’s report “Public Utilities Commission’s Public Participation Processes”. [2]

But what does it mean? And how will the employment of this provision be affected by the many other changes in the 2024 legislation? Without adequate engagement opportunities, landmark cases like PEER [3] or the remarkable record of the 2007 Chisago County powerline task force [4], could not have been written. Examples are legion.

Pages 12-14 of the Auditor’s report lays out definitions, purposes, and the essential contribution of public participation to the development of the record upon which commission decisions are based.

Notably, communities and local citizen advocacy groups voice critical considerations for evaluating the social, economic, and environmental factors and potentially significant impacts of energy infrastructure proposals at the local and subregional level.

Current and former commissioners that we spoke with described public participation as vital to developing a full case record. For example, one said, “The role of the public is central and foundational.” Another said, “It is critically important for the commission to have robust public involvement.” Commissioners told us that participants in PUC proceedings help them determine how to balance the many criteria in law.

This is the present fate of public engagement provisions *with a long history* embedded in the PPSA/ and PUC statute with the transfer of powers [5]

REPEALED: 216E.08 Subdivision 1. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15] Subd. 2. [Renumbered 216I.16, subd 1] Subd. 3. [Renumbered 216I.16, subd 2] Subd. 4. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

2. 2005 PPSA Transfer -- Purpose: Ch. 97, Art. 3 Section 17 page 509

In a number of documents the Commission represents the 2005 transfer of the Power Plant Siting Act authorities and responsibilities from EQB to PUC as follows: “The transfer of jurisdiction from the MEQB to the Commission was made to enhance administrative efficiency.” This is not accurate. The purpose statement of the transfer reads as follows:

” Sec. 17. TRANSFERRING POWER PLANT SITING RESPONSIBILITIES. **To ensure greater public participation in energy infrastructure approval procedure and to better integrate and align energy and environmental policy goals with economic decisions involving large energy infrastructure, all**

responsibilities defined in Minnesota Statutes, section 15.039, subdivision 1, held by the Environmental Quality Board relating to power plant siting and routing under Minnesota Statutes, sections 116C.51 to 116C.69; wind energy conversion systems under Minnesota Statutes, sections 116C.691 to 116C.697; pipelines under Minnesota Statutes, chapter 116I; and rules associated with those sections are transferred to the Public Utilities Commission under Minnesota Statutes, section 15.039, except that the responsibilities of the Environmental Quality Board under Minnesota Statute section 116C.83, subdivision 6, and Minnesota Rules, parts 44001700, 44002750, and 4410.7010 to 4410.7070, are transferred to the commissioner of the Department of Commerce. The Existing staff of the Environmental Quality Board are transferred to the Department of Commerce. The department's budget shall be adjusted to reflect the transfer.”

Laws of Minnesota, 2005 - Chapter 97, Article 3 page 509 [6]

This fundamental accountability of the decisions of the Commission to the environmental policies of the state [7], in the original PPSA (1973) headline the 2024 legislation:

[216I.03] SITING AUTHORITY.

Subdivision 1.

Policy.

The legislature hereby declares it is the policy of the state to locate large electric power facilities in an orderly manner that is compatible with environmental preservation and the efficient use of resources. In accordance with the policy, the commission must choose locations that minimize adverse human and environmental impact while ensuring (1) continuing electric power system reliability and integrity, and (2) that electric energy needs are met and fulfilled in an orderly and timely fashion.

In the final line of the 2005 authority transfer, accountability of power plant siting to MEPA is embedded. It reads: “ **The Department of Commerce and the Public Utilities Commission shall carry out these duties accordance with the provisions of Minnesota Statutes, section 116D.03.”** [8]

While respecting the aspirations of the legislation, it remains to be seen how the new provisions in the new statute, e. g. [216E.04] applicant preparation of the Environmental Assessment and restrictions on consideration of alternatives, which is fundamental to the Commission's decision making responsibilities – will affect outcomes. [9]

The purpose of this comment is to reflect upon aspects of the environmental roots and legacy of the PPSA, as I have experienced them in my 25 years as a citizen advocate in the energy arena; my 20+ year participation in the PPSA annual hearings; and my 8 years as a Public Member of the MN Environmental Quality Board. I wish to lay before the ALJ, Commission and Legislature (via the ALJ report), the possibility that the expansive business plans of the industry and its stakeholders, still need to be adequately evaluated for their vulnerabilities and risks (more and higher, larger voltage lines criss-crossing the country,

wildfires triggered by transmission line failures) – with exponentially increased costs to be born by present and future generations. PUC has a primary responsibility for the protection of Minnesota’s ratepayers, and environment – upon which the shape of Minnesota’s future depends.

Thank you for your consideration,

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[1] See contributions of early citizen legal challenges in the overview of MERA created by MCEA for the state’s 50th anniversary of the environmental legislation that has played an important role. PEER is cited as an “Early Key Case” People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council, 266 N.W.2d 858 (1978)--Citizens intervene under MERA and then appeal decision on powerline. Court addresses MERA “overlay” on powerplant siting statute and holds that both apply; remand for findings regarding pollution, impairment, etc., and noted alternative route was available.<https://www.ag.state.mn.us/Office/CLE/20240313/Slides.pdf>

[2] Auditor’s report on public participation: <https://www.lrl.mn.gov/docs/2020/other/200755.pdf>

[3] 7.” PEER Conclusion. After carefully reviewing Minnesota’s statutory scheme for protecting the environment, it is our conclusion that the principles of MERA apply to MEQC decisions made pursuant to the PPSA and that all regulations governing the routing of HVTLs must be consistent with it and other relevant environmental legislation. Implicit in the operation of MERA is the principle that environmentally damaging action cannot be taken if there is another, less damaging way to achieve the desired result. In order to protect Minnesota’s noncompensable resources, whose impairment appears to harm no one directly, MERA makes a prima facie showing of environmental damage by any concerned citizen or group sufficient to shift the burden *874 to the proponents of the action to establish that there is no prudent and feasible alternative which will be less destructive to the environment”

[4] Chisago Task Force: <https://legalelectric.org/f/2008/10/chisagotaskforcerecommendations.pdf>

[5] Public Participation: <https://www.revisor.mn.gov/statutes/2015/cite/216E.08> Statutory History: [1973 c 591 s 9](#); [1975 c 271 s 6](#); [1977 c 439 s 12, 13](#); [1985 c 248 s 70](#); [1988 c 629 s 19-21](#); [2001 c 212 art 7 s 18, 19](#); [2005 c 97 art 3 s 19](#)

[6] Transfer language: <https://www.revisor.mn.gov/laws/2005/0/Session+Law/Chapter/97/2005-05-23%2000:00:00+00:00:00/pdf>

[7] MEPA: <https://www.revisor.mn.gov/statutes/cite/116D.02>

[8] *ibid* Transfer language; 116D.03: <https://www.revisor.mn.gov/statutes/cite/116d.03>

[9]https://www.revisor.mn.gov/bills/text.php?number=HF4975&type=bill&version=2&session=ls93&session_year=2024&session_number=0

1973 PPSA: <https://www.revisor.mn.gov/laws/1973/0/Session+Law/Chapter/591/pdf/>