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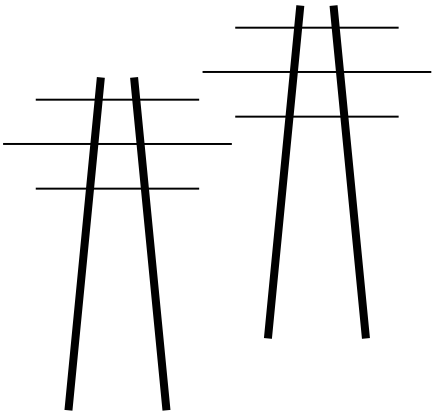

January 10, 2024

Christa Moseng
Administrative Law Judge
OAH
P.O. Box 64620
600 Robert St. North
St. Paul, MN 55164-0620

Will Seuffert
Executive Secretary
Public Utilities Commission
121 – 7th Place East, # 350
St. Paul, MN 55101

Mike Bull
Deputy Executive Secretary
Public Utilities Commission
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RE: Overland Comments
2024 Power Plant Siting Act Annual Hearing/Energy Infrastructure Permitting
PUC Docket: PR-24-18 OAH Docket: 22-2500-40414

To all:

Thanks for again hosting the Annual Power Plant Siting Act Annual Hearing. It's been a long THIRTY years. I sorely miss the PPSA pot-lucks, that at least made the PPSA hearing something to look forward to. Now the PPSA Annual Hearing is just a 30+ year old rehash of the tangles with the fewer and fewer options for meaningful public participation. It's damn depressing.

The Public Utilities Commission, Commerce, and staff, with the turnover and retirements, are missing much of the institutional history. Even worse, we've, the participating public, have been stripped of foundational PPSA provisions by the 2024 legislature. It's hard to imagine a positive result.

The most important point to make in this PPSA round is both simple and confusing:

THE POWER PLANT SITING ACT NO LONGER EXISTS!

Yes, I'm shouting, as public participation was an essential component of the PPSA. Impact? Check out People for Environmental Enlightenment and Responsibility (PEER) 266 NW2d 858 (1978). What does this mean to application of PEER, MEPA Minn. Stat. ch 116D and MERA Minn. Stat.ch 116B? Likely it's far beyond Commission and Commerce's failure to recognize that that MEPA requires environmental review to accompany a project!

Thanks to the Public Utilities Commission's streamlining/steamrolling effort, and it's "Strategic Plan," the Commission has enabled its focus of Chair Sieben and other Commissioners, who

repeatedly have asked the utilities and Commerce, “How can we make this easier,” “How can we speed up,” “How can we make this more efficient,” “How can we streamline this process.” The Commission sure found a way! See Attachment B, Strategic Plan, for a prelude to elimination of the PPSA. From Minn. Stat. Ch. 216E:

2023 Minnesota Statutes

This is an historical version of this statute chapter. Also view the most recent published version.

216E.001 CITATION.

This chapter shall be known as the "Minnesota Power Plant Siting Act."

History: *1973 c 591 s 1*

And now the Power Plant Siting Act is gone.

GONE? Yes, everything in 216E was repealed or renumbered, and what was saved, see Minn. Stat. Ch. 216I, f/k/a “Power Plant Siting Act.” In that chapter, it’s all been repealed or renumbered. Attachment C, Minn. Stat. Ch. 216E (2024), really…

See also Minnesota Statutes, chapter 216I. For most recently published versions of this chapter, see 2022 Minnesota Statutes and 2023 Minnesota Statutes Supplement, as applicable.

Section	Headnote
216E.001	MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]
216E.01	Subdivisions renumbered, repealed, or no longer in effect
216E.02	MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]
216E.021	MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]
216E.03	Subdivisions renumbered, repealed, or no longer in effect
216E.04	Subdivisions renumbered, repealed, or no longer in effect
216E.05	Subdivisions renumbered, repealed, or no longer in effect
216E.06	[Renumbered 216I.12]
216E.07	[Renumbered 216I.15]
216E.08	Subdivisions renumbered, repealed, or no longer in effect
216E.09	[Renumbered 216I.17]
216E.10	[Renumbered 216I.18]
216E.11	[Renumbered 216I.20]
216E.12	[Renumbered 216I.21]
216E.13	[Renumbered 216I.23]
216E.14	[Renumbered 216I.24]
216E.15	[Renumbered 216I.25]
216E.16	[Renumbered 216I.26]
216E.17	[Renumbered 216I.27]
216E.18	Subdivisions renumbered, repealed, or no longer in effect

See also Minn. Stat. Ch. 216I, “Energy Infrastructure Permitting,” attached as Exhibit D. This is where those Power Plant Siting Act statutory provisions landed, and check the citation. From Attachment D, Minn. Stat. Ch. 216I (2024):

216I.01 CITATION.

This chapter may be cited as the "Minnesota Energy Infrastructure Permitting Act."

History: *2024 c 126 art 7 s 1; 2024 c 127 art 43 s 1*

Some may say that much of the language remains, though now in a different chapter. If it's the same, why the name change for 216E and why move statutes over to the new 216I rather than incorporate into the Power Plant Siting Act?

And although it was problematic that Chapter 216F for wind (with no siting rules, only guidelines for SMALL wind, despite several Rulemaking Petitions) was initially separated out from 216E so not covered by PPSA, it's also moved over to 216I, under the new name.

Once more with feeling -- there is no Power Plant Siting Act. Again, from Minn. Stat. 216I.

> **2024 Minnesota Statutes**
>
> **216I.01 CITATION.**
>
> This chapter may be cited as the "Minnesota Energy Infrastructure Permitting Act."
>
> **History:** *2024 c 126 art 7 s 1; 2024 c 127 art 43 s 1*
>
> **NOTE:** This chapter, as added by Laws 2024, chapter 126, articles 7 and 9, and Laws 2024, chapter 127, articles 43 and 45, is effective July 1, 2025. Laws 2024, chapter 126, article 7, section 16; and Laws 2024, chapter 127, article 43, section 16.
>
> Before July 1, 2025, see also 2022 Minnesota Statutes and 2023 Minnesota Statutes Supplement, chapters 216E and 216F, as applicable.

Caselaw regarding power plant and transmission siting directly ties to the Power Plant Siting Act. Now that it's gone, what does this mean for those challenging Commission permitting decisions? I don't know – we'll probably have to sue to find out. See, again, People for Environmental Enlightenment and Responsibility (PEER) 266 NW2d 858 (1978), Attachment A.

Public Participation

A major point of the Power Plant Siting Act, and a specific directive to the Commission, formerly the EQB, was:

> Sec. 7. Minnesota Statutes 2022, section 216E.08, subdivision 2, is amended to read:
>
> Subd. 2. **~~Other~~ Public participation.** The commission ~~shall~~ must adopt broad spectrum citizen participation as a principal of operation. The form of public participation ~~shall~~ must not be limited to public meetings and hearings ~~and advisory task forces~~ and ~~shall~~ must be consistent with the commission's rules and guidelines ~~as provided for in~~ under section ~~216E.16~~ 216I.24.

Advisory task forces have now been blatantly eliminated, though the rule authorizing task forces remains. Minn. R. 7850..2400.[1] That happened slowly in practice after the CapX 2020 transmission build-out was permitted and sited. Initially, going back 30+ years, advisory task forces included representatives of local government units, organizations, and individuals. During CapX 2020 routing, advisory task forces were facilitated by the Dept. of Administration on behalf of the Dept. of Commerce, and the statute offering advisory task forces was interpreted to

[1] This is another example of the Commission thwarting public participation and also correcting some of the obvious issues in Minn. R. 7849 and 7850. There was a LONG rulemaking process with a good representation of participants, utility, funded organizations, grassroots organizations, for the purpose of updating the Certificate of Need and PPSA rules in 2012 through 2022, A DECADE, and was summarily rejected by the Commission. See PUC Docket R-12-1246. Infuriating. **Minn. R. ch 7849 & 7850 Rulemaking? DEAD!** March 1st, 2022 at **https://legalectric.org/weblog/23080/**

mean governmental units only, and it was a fight to get local organizations appointed, even ones granted intervention status. Then it morphed again to be interpreted as ONLY applicable to local governments. Petition after Petition for advisory task forces that I have filed were rejected, over and over and over, with statements from Commissioners that it wasn't controversial, or that there weren't many interested, or that they just didn't see a need.

In 2024, with the Commission's streamlining agenda at the legislature, advisory task forces were eliminated. Keep in mind that advisory task forces have shaped routing and siting, and in some cases eliminated the project, with the project proponent withdrawing after legitimate issues were raised by advisory task forces that would prohibit the project going forward.

Intervention has also become more difficult, with "environmental organizations" interventions granted as a matter of course when they often have no dog in the fight, no direct relationship to the people or areas at issue, typically only intervening to support utility proposals "to increase renewable energy" or "transmission of renewable energy." Those on the ground are often refused intervention, and must participate as "participants," where participation is allowed or denied by the Administrative Law Judge.

Participating as a "participant" is also fraught with hurdles. The rules are clear:

1405.0800 PUBLIC PARTICIPATION.
At all hearings conducted pursuant to parts 1405.0200 to 1405.2800, all persons will be allowed and encouraged to participate without the necessity of intervening as parties. Such participation shall include, but not be limited to:

A. Offering direct testimony with or without benefit of oath or affirmation and without the necessity of prefiling as required by part 1405.1900.

B. Offering direct testimony or other material in written form at or following the hearing. However, testimony which is offered without benefit of oath or affirmation, or written testimony which is not subject to cross-examination, shall be given such weight as the administrative law judge deems appropriate.

C. Questioning all persons testifying. Any person who wishes to cross-examine a witness but who does not want to ask questions orally, may submit questions in writing to the administrative law judge, who will then ask the questions of the witness. Questions may be submitted before or during the hearings.

Despite this, I and my clients have been refused participation. I personally, as well as clients, have been unable to question all/any persons testifying because the ALJ has not required them to show up and refused to do so; in another case the ALJ rammed through 12 witnesses in one day's hearing and refused to allow any questioning at all. I have encountered Administrative Law Judges who refused to put participants under oath (in one case, I provided language and after ALJ refused, each of my client group members commented after their own swearing on oath), and there is no explanation of the meaning of the "benefit of oath." In public hearings or meetings, the "benefit of oath" is not offered, ever.

Another way that the Commission and 2024 legislature inhibited public participation was in its changes to provision of intervenor compensation, which has been only for those participating in rate case dockets. In Wisconsin intervenor compensation is available to those intervening in any Public Service Commission docket. For decades at Power Plant Siting Act Annual Hearings participants have been pushing for intervenor compensation in Commission dockets. In 2024, a wide range of Commission docket types were added as potential recipients of intervenor

compensation. Those consistently bemoaning Minnesota's lack of intervenor compensation were those unfunded local groups and organizations challenging utility siting under the Power Plant Siting Act. So what does the 2024 legislature do at the Commission's behest? The legislature allowed for potential intervenor compensation for many docket types but **SITING AND ROUTING DOCKETS ARE EXCLUDED, NOT EVEN ELIGIBLE TO APPLY!** Those most affected by the impossibility of financing representation and expert witnesses are excluded:

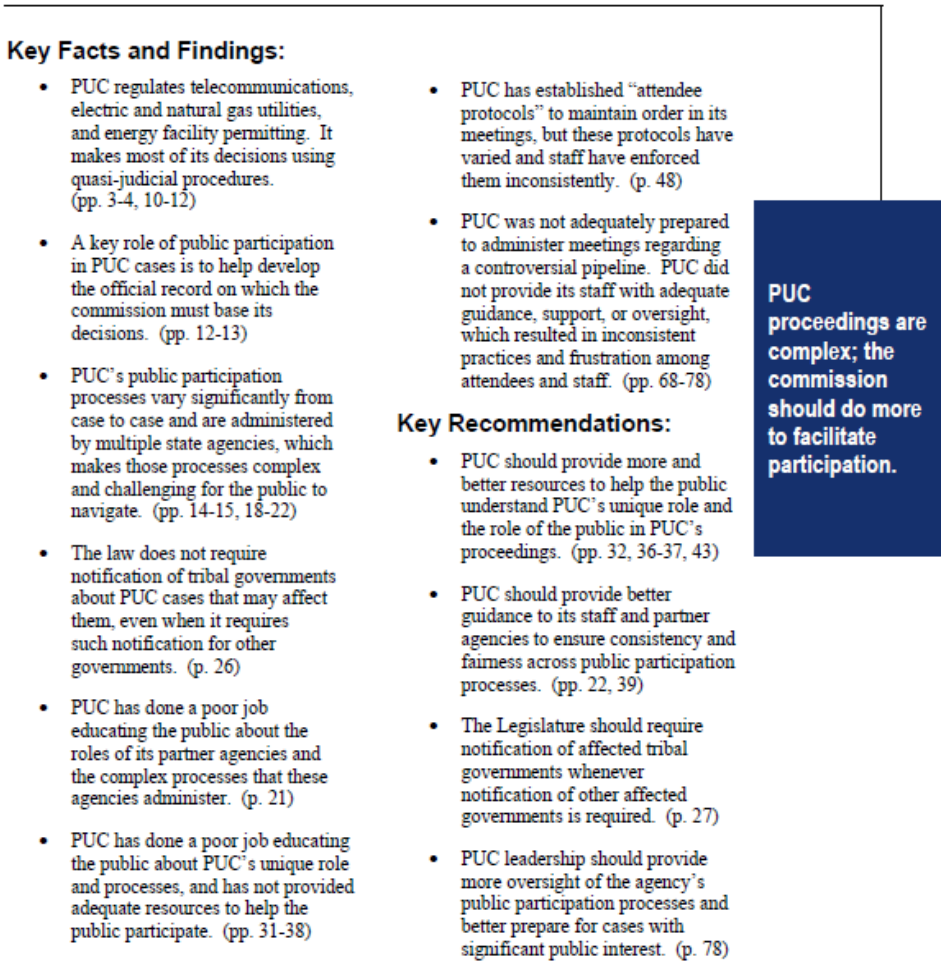
(d) "Proceeding" means:
(1) a rate change proceeding under section 216B.16, including a request to withdraw, defer, or modify a petition to change rates;
(2) a proceeding in which the commission considers a utility request for cost recovery through general rates or riders;
(3) a proceeding in which the commission considers a determination related to ratepayer protections, service quality, or disconnection policies and practices, including but not limited to utility compliance with the requirements of sections 216B.091 to 216B.0993;
(4) a proceeding in which the commission considers determinations directly related to low-income affordability programs, including but not limited to utility compliance with the requirements of section 216B.16, subdivisions 14, 15, and 19, paragraph (a), clause (3);
(5) a proceeding related to the design or approval of utility tariffs or rates;
(6) a proceeding related to utility performance measures or incentives, including but not limited to proceedings under sections 216B.16, subdivision 19, paragraph (h); 216B.167; and 216B.1675;
(7) proceedings related to distribution system planning and grid modernization, including but not limited to proceedings in compliance with the requirements in section 216B.2425, subdivision 2, paragraph (e);
(8) investigations or inquiries initiated by the commission or the Department of Commerce; or
(9) proceedings related to utility pilot programs in which the commission considers a proposal with a proposed cost of at least $5,000,000.

Attachment E, Intervenor Compensation, Minn. Stat. §216B.631. This legislative change is such an insult to those who have been working so hard to represent their communities when faced with utility infrastructure. Intervention in a routing or siting docket is at least a part time job, and most intervenor organizations, **UNFUNDED** intervenor organizations, are doing the work of intervention while working full time, or caring for children, or farming, or operating a business… in essence regular people struggling to have their voices heard, and spending years going through the permitting docket(s). By opening up funding to those participating in the list of docket types above, the Commission is giving the possibility of intervenor compensation to those organizations that have funding, those organizations that are receiving grants to participate, those that intervene in most every docket because they are paid to do so, have staff, experts, resources, and those intervening in routing and siting dockets are excluded. Thanks…

Adding insult to injury Final Environmental Impact Statements have often not been released until after an Evidentiary Hearing, Public Comment, and all Briefing has been completed!! MEPA states that "The final detailed environmental impact statement and the comments received thereon shall precede final decisions on the proposed action and shall accompany the proposal through an administrative review process." Minn. Stat. §116D.04, Subd. 6a. This has been corrected recently in some ongoing dockets, but only after raising the timing in scheduling conferences. There has been little or no acknowledgment that this is important, much less the law, and until recently, reminders are blown off. The public, and even parties, need to be able to comment specifically on the adequacy of an EIS, and that is not possible if the FEIS is released after all is said and done. It should not be the job of participants to assure environmental review is compliant with MEPA. Commission and Commerce staff and attorneys, and OAH attorneys

and judges, should all be aware of MEPA requirements.

Public participation was more accessible back when the EQB had jurisdiction, and now, with jurisdiction at the PUC for almost 20 years, it's so much more difficult. So difficult that not long ago there was an Office of the Legislative Auditor investigation and report – **Public Utilities Commission's Public Participation Processes – OLA-Report**. The key findings and recommendations were clear that the Commission was not facilitating public participation, much less adopting a broad spectrum of public participation as a principle of operation.



Key Facts and Findings:

- PUC regulates telecommunications, electric and natural gas utilities, and energy facility permitting. It makes most of its decisions using quasi-judicial procedures. (pp. 3-4, 10-12)
- A key role of public participation in PUC cases is to help develop the official record on which the commission must base its decisions. (pp. 12-13)
- PUC's public participation processes vary significantly from case to case and are administered by multiple state agencies, which makes those processes complex and challenging for the public to navigate. (pp. 14-15, 18-22)
- The law does not require notification of tribal governments about PUC cases that may affect them, even when it requires such notification for other governments. (p. 26)
- PUC has done a poor job educating the public about the roles of its partner agencies and the complex processes that these agencies administer. (p. 21)
- PUC has done a poor job educating the public about PUC's unique role and processes, and has not provided adequate resources to help the public participate. (pp. 31-38)
- PUC has established "attendee protocols" to maintain order in its meetings, but these protocols have varied and staff have enforced them inconsistently. (p. 48)
- PUC was not adequately prepared to administer meetings regarding a controversial pipeline. PUC did not provide its staff with adequate guidance, support, or oversight, which resulted in inconsistent practices and frustration among attendees and staff. (pp. 68-78)

Key Recommendations:

- PUC should provide more and better resources to help the public understand PUC's unique role and the role of the public in PUC's proceedings. (pp. 32, 36-37, 43)
- PUC should provide better guidance to its staff and partner agencies to ensure consistency and fairness across public participation processes. (pp. 22, 39)
- The Legislature should require notification of affected tribal governments whenever notification of other affected governments is required. (p. 27)
- PUC leadership should provide more oversight of the agency's public participation processes and better prepare for cases with significant public interest. (p. 78)

PUC proceedings are complex; the commission should do more to facilitate participation.

Exhibit F – OLA Report, Public Utilities Commission's Public Participation Processes, p. 5, Key Findings and Recommendations.

After this extensive review and detailed report, what did the Public Utilities Commission do? In its wanting to facilitate utility proposals, to streamline/steamroll, to continue to rubber stamp each and every project that could arguably be advancing "renewable energy," even openly asking at meetings "How can we make this easier," "How can we speed up," "How can we make this more efficient," "How can we streamline this process," the Commission, through its successful 2024 legislative agenda, limited public participation in important ways, and regrettably they've completely eliminated the Power Plant Siting Act!

Come September, I personally have been participating in Public Utilities Commission dockets representing clients and individually for three decades, and many of these dockets have extended for years. Over time, the Commission has been increasing the height of hurdles. The limitations to public participation increased with the transfer of jurisdiction of routing and siting from the Environmental Quality Board to the Public Utilities Commission with the 2005 legislative changes, and it's only gotten worse, even with, or maybe despite, the Office of Legislator's Report on "Public Utilities Commission's Public Participation Processes."

Color me disgusted, frustrated, incensed, and committed to showing up before the Public Utilities Commission until I drop dead someday in the large hearing room.

Very truly yours,

Carol A. Overland
Attorney at Law

No. 47911
Supreme Court of Minnesota

People for Environmental v. Minn. Environmental

266 N.W.2d 858
Decided May 10, 1978

No. 47911.

April 7, 1978. Rehearing Denied May 10, 1978.

Appeal from the District Court, Washington
85… County, Thomas G. Forsberg, J. *859860

Peter S. Popovich, St. Paul, Broeker, Hartfeldt, Hedges Grant, Will Hartfeldt, and Eleni P. Skevas, Minneapolis, for appellants.

Warren Spannaus, Atty. Gen., Richard B. Allyn, Sol. Gen., Stephen Shakman, William E. Dorigan and Donald A. Kannas, Sp. Asst. Attys. Gen., St. Paul, for Mn. Env. Qual. Council.

Ralph S. Towler, Minneapolis, for No. St. Power.

Popham, Haik, Schnobrich, Kaufman Doty, Raymond A. Haik, and Gary R. Macomber, Minneapolis, for NSP Mn. Power Light.

Considered and decided by the court en banc.

SHERAN, Chief Justice.

This appeal was taken from a district court judgment affirming the issuance by respondent Minnesota Environmental Quality Council (MEQC)[1] of a construction permit for a high voltage transmission line (HVTL) between the Twin Cities' metropolitan area and Forbes, Minnesota, pursuant to its authority under the Power Plant Siting Act (PPSA), Minn.St. 116C.51 to 116C.69, and rejecting appellants' challenge to a 5 1/2-mile segment of the proposed route from node 2 to node 8A in Washington County known as Route 7. We remand to the district court to refer
862 the case to the *862 MEQC for further proceedings consistent with this opinion.

[1] When created by statute in 1973, the agency was named the Minnesota Environmental Quality Council. L. 1973, c. 342, § 3. In 1975 the legislature changed its name to the Minnesota Environmental Quality Board. L. 1975, c. 271, § 3(7). The briefs refer to the agency by its original name, its title when the administrative hearings were held, and we will do likewise in this opinion.

The legislature created the MEQC because "problems related to the environment often encompass the responsibilities of several state agencies and * * * solutions to these environmental problems require the interaction of these agencies." Minn.St. 116C.01. Consequently, its membership includes the directors of the State Planning Agency, the Pollution Control Agency, and the Energy Agency; the commissioners of Natural Resources, Agriculture, Transportation and Health; a representative of the governor's office; and four members of the Citizens Advisory Committee. Minn.St. 116C.03.

Appellants are a number of individuals and a nonprofit corporation of approximately 65 members, most of whom live on or adjacent to proposed Route 7. At the time it intervened in the administrative proceeding,[2] People for Environmental Enlightenment and Responsibility (PEER) was an unincorporated association of

approximately 35 members, all of whom would be affected by the existence of an HVTL on proposed Route 7. Prior to its appeal to the district court, PEER became a nonprofit corporation with a membership of 65 whose purposes included protection of the Washington County environment from the proliferation of powerline routes.

[2] PEER claimed in its pleading in intervention that it was intervening pursuant to Minn.St. 116B.09, which permits natural persons and associations to intervene as a matter of right in a permit proceeding upon the filing of a verified pleading.

Respondents in this action include the MEQC, which issued the construction permit, and Northern States Power Company (NSP) and Minnesota Power Light Company (MPL),[3] two Minnesota corporations. NSP and MPL are investor-owned utilities. They jointly sought permission from the MEQC to construct this HVTL, and they will share in the ownership and responsibility for it and associated facilities.

[3] The respondents in the original appeal were only the MEQC and NSP. MPL sought, and was granted, permission to intervene.

On January 20, 1975, pursuant to § 116C.57, NSP and MPL jointly applied to the MEQC for a corridor designation and a certificate of corridor compatability for a single-circuit 500-kV HVTL from just south of Cromwell, in Carlton County, to a proposed substation in Chisago County and for a double-circuit 345-kV HVTL from the Chisago City substation to the Twin Cities' metropolitan area. The entire project planned by the applicants is greater than the requested HVTL and envisions the eventual construction of an HVTL system north to the Canadian border. The purpose of the larger project is to permit the sale of electricity between Manitoba Hydro, a Canadian utility, and NSP and between MPL and NSP. The MEQC appointed a hearing examiner who held four public hearings on the application, and on July 18, 1975, it accepted his findings of fact, conclusions and recommendations and issued a certificate of corridor compatability.

On February 10, 1976, pursuant to § 116C.57, subd. 2, the MEQC received an application from NSP and MPL for the selection of a specific route within the designated corridor and for the issuance of a construction permit. The MEQC then established a Citizen's Route Evaluation Committee and ordered its Power Plant Siting Staff to prepare a draft environmental impact statement (EIS).

In the southern portion of the corridor in which the 345-kV HVTL was to be constructed, the applicants expressed their preference for Route 3 and also suggested four alternative segments. They favored Route 3 because it contained an existing HVTL, on the theory that it is less environmentally damaging to construct transmission lines in close proximity than to spread them out over the entire landscape.

On the basis of their application, a draft EIS was written sometime prior to April 2, 1976. The review period for this draft was between April 2, 1976, and May 17, 1976, after which the EIS was evaluated in light of whatever citizen input had occurred. On June 10, 1976, the final EIS was sent to the MEQC.

Simultaneously with the drafting and review of the EIS, the Citizen's Route Evaluation Committee held hearings on proposed routes. On April 13, 1976, it reported to the MEQC and recommended the addition of Routes 6 and 7 for consideration at the public hearings to be conducted by the hearing examiner, William Seltzer. The MEQC added
863 Route 7 to the five proposed *863 by the utilities. The additional route, however, was not evaluated in the draft EIS.[4]

[4] Even the final EIS did not provide sufficient information on Route 7 to permit the decisionmaker to make an informed

choice. See, § 4, *infra*.

The public hearings on the candidate routes began on April 15, 1976. Six hearings were held in the 4 counties that would be affected by the double-circuit 345-kV HVTL. It quickly became apparent that three routes — Route 1, the freeway route; Route 3, the 230-kV route; and Route 7, the airport route — were the most viable alternatives, and the majority of the evidence submitted concerned them. Route 3 was the route preferred by the utilities and by PEER, the Siting Staff of the MEQC recommended Route 7, while the Citizen's Route Evaluation Committee made a split recommendation in which both Route 1 and Route 7 received 5 first-preference votes. The record of the public hearings was closed on June 23, 1976, and on July 12, 1976, the hearing examiner submitted his findings of fact, conclusions and recommendations. After stressing the subjective nature of the route-evaluation process and the need to balance "the interests of those directly impacted, the interest of the body politic in the protection and preservation of the environment and other natural resources, the efficient use of resources while * * * insuring that electric energy needs are met and fulfilled in an orderly and timely fashion," all of which was adopted verbatim by the MEQC,[5] the hearing examiner recommended the selection of Route 7 rather than the existing powerline corridor known as Route 1 or the existing powerline and transportation corridor known as Route 1.

[5] Except in the section concerning the specifics of the construction permit, to which the MEQC added nine paragraphs, no substantive differences exist between the findings of fact, conclusions and recommendations of the hearing examiner and those of the MEQC. PEER attempted to discover whether the members of the MEQC had read that report or the final EIS. It sent first requests for admission and then interrogatories to MEQC members asking whether they had read the EIS, the other exhibits, or the hearing examiner's transcripts of testimony. MEQC members refused to answer the interrogatories on the grounds that they were not relevant to any issues under consideration, that they sought to discover privileged matters, and that it was contrary to the public interest to probe the deliberative process of members of an administrative agency acting in a quasi-judicial capacity. Since the district court held that the MEQC decision was supported by substantial evidence, it did not find it necessary to discuss PEER's allegation. But see, § 9, *infra*.

On August 4, 1976, PEER served each MEQC member with a pleading in intervention alleging that construction of the proposed HVTL along Route 7 would impair, pollute, and destroy Long Lake, a 49-acre lake that is used by persons for recreation and by wild ducks and other waterfowl as a natural flyway and brood area, as well as a 130-acre virgin oak woods containing some trees thought to be over 100 years old, both of which are natural resources protected by the Minnesota Environmental Rights Act (MERA), Minn.St. c. 116B. At its meeting of the same date, the MEQC permitted representatives of citizens groups to give limited testimony concerning the routes under consideration. Although Messrs. Herbst, Marzitelli, and Ohman expressed their concern over the proliferation of routes which would result from the MEQC's acceptance of the hearing examiner's recommendation and suggested that such proliferation was inconsistent with long-term land use planning, the MEQC voted 7 to 3 to adopt the hearing examiner's report.

On October 1, 1976, PEER appealed the MEQC decision to district court pursuant to Minn.St. 116B.09, subd. 3, and 116C.65, alleging the same impairment, pollution, and destruction of natural resources that it had delineated in its pleading in intervention. After receiving written briefs and hearing oral arguments, the court affirmed the MEQC decision to permit construction along Route 7 on the following grounds:

(1) That substantial evidence supported the selection of Route 7 over Route 3 and Route 1;

864 *864

(2) That the effect of the HVTL on human settlement was not an improper criterion and was not overly weighted;

(3) That the findings of fact were sufficiently specific to permit judicial review;

(4) That the alleged procedural errors were either not demonstrated or not prejudicial;

(5) That it was unnecessary to inquire into the individual mental processes of the members of the MEQC; and

(6) That the balancing of social policies required by the PPSA was consistent with both MERA and the Environmental Policy Act (MEPA), Minn.St. c. 116D. It is from this judgment that PEER appeals.

After carefully considering the arguments of counsel and the reasoning advanced by the district court, we are of the opinion that the MEQC erred in its handling of the contested portion of route-selection process. For the reasons delineated below, we reverse in part, modify in part, and remand. Specifically, we hold as follows:

(1) Administrative decisions on the routing of HVTLs are subject to MERA as well as to other applicable environmental legislation.

(2) An HVTL routing that impairs, pollutes, or destroys protected natural resources cannot be approved if there is a prudent and feasible alternative route available.

(a) Constructing the HVTL along Route 7 will impair, pollute, or destroy the lake and the woods which are protected natural resources. Because no detailed findings were made by the hearing officer regarding the degree of impairment, pollution, or destruction, we cannot accurately assess the impact of Route 7 on these protected natural resources. In the absence of such findings, we must assume that the intrusion is substantial.

(b) Route 3 is an available, prudent, and feasible alternative to Route 7. Because Minnesota is committed to the principle of nonproliferation, the existence of a powerline along Route 3 would ordinarily have compelled the MEQC to choose Route 3 over Route 7. The fact that the utilization of Route 3 would require the condemnation of a number of homes is not, in and of itself, sufficient to overcome the law's preference for containment of powerlines.

(3) The balancing process mandated by the PPSA should only be utilized after more than one form of noncompensable intrusion has been identified.

(a) There is no evidence that the taking of some homes will create noncompensable loss within the meaning of "human impact" intended by the legislature. Nothing in the record before us supports the conclusion that the structures that will be condemned if Route 3 is utilized have unique characteristics which would make it difficult or impossible to assess adequately the damages to be paid for their taking. In the event of condemnation, there is no evidence that the homeowners could not acquire other equivalent accommodations. Many houses in the vicinity of Route 3 were built there after the powerline now in place was constructed which suggests that its presence was not unacceptably offensive to the residents. Therefore, were the case to be decided on the present record, the MEQC would be required, as a matter of law, to select Route 3.

(b) We feel, however, that it would be unfair for us to make this decision on the basis of the present record. We believe that it would be more equitable to give the residents along Route 3 an opportunity to demonstrate the unique characteristics of their homes for which money damages would not be adequate compensation. Therefore, a period of 30 days from the date of the district court's remand to the MEQC will be permitted for testimony of this

kind to be presented to the agency. Only if the affected residents are able to sustain their burden of demonstrating the noncompensable nature of their homes will the MEQC have to balance the impact of Route 3 upon "human settlement" against the impact of Route 7 on protected natural
865 *865 resources. Otherwise, the MEQC will be required, as a matter of law, to select Route 3.

(4) Under MEPA, an EIS must be available to guide the agency in its selection of a specific route. Although an EIS was prepared in this case, it did not provide the detailed information on all the routes that is necessary for it to serve its proper function in the decisionmaking process. Thus, if the MEQC decides that the evidence introduced on remand requires it to balance Route 3 against Route 7, it will not be able to do so until the EIS is sufficiently revised to permit it to be useful in the selection decision.

(5) As should be clear from the above, we do not believe that the findings of fact of the hearing examiner and the agency were sufficiently specific to permit judicial review.

(6) The district court erred in not permitting appellants to discover whether agency members had complied with their statutory duties.

1. *The Applicability of MERA*. MERA, c. 116B, which was passed by the legislature in 1971, was the first piece of environmental legislation in Minnesota. Its purpose, as stated in § 116B.01, reads as follows:

> "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. The legislature further declares its policy to create and maintain within the state conditions under which man and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction."

In 1973, the legislature enacted three other pieces of environmental legislation to complement MERA: (1) Section 116C.01, which created the MEQC to provide the interagency interaction necessary for the solution of complex environmental problems; (2) MEPA, c. 116D, which required all state agencies to consider environmental factors before making decisions that potentially have significant environmental effects; and (3) the PPSA, §§ 116C.51 to 116C.69, which, according to § 116C.55, subd. 1, would ensure the "sit[ing of] large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources."

Although the focus of each of these statutes is slightly different, together they are part of a coherent legislative policy, one of whose aims is to harmonize the need for electric power with the equally important goal of environmental protection. Recognizing that the MEQC constituted the best pool of environmentally skilled personnel, the legislature chose it to

administer the PPSA. To ensure that the MEQC would not sacrifice environmental protection in its attempt to site power plants and HVTLs as efficiently as possible, it required that "to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in [MEPA]." Section 116D.03. And, if the MEQC failed to comply with the mandates of MEPA and the PPSA, MERA existed to permit private citizens to bring a civil action to compel the agency to consider environmental factors. Recently, in *No Power Line, Inc. v. Minnesota* EQC, Minn., 262 N.W.2d 312, 323 (1977), we decided that the legislature did not intend the PPSA to preempt MEPA and make it superfluous. Today we reach a similar conclusion regarding MERA. Rather than intending the PPSA to supersede MERA, the legislature passed all these statutes to ensure that administrative agencies would discharge fully their environmental
866 responsibilities. *866

This conclusion is consistent with the general policy of statutory construction followed by this court of harmonizing statutes dealing with the same subject matter. *Lenz v. Coon Creek Watershed District*, 278 Minn. 1, 11, 153 N.W.2d 209, 217 (1967); *State ex rel. Carlton v. Weed*, 208 Minn. 342, 344, 294 N.W. 370, 371 (1940). We also presume that, in enacting a statute, the legislature acted with full knowledge of prior legislation on the same subject. *Erickson v. Sunset Memorial Park Assn.*, 259 Minn. 532, 543, 108 N.W.2d 434, 441 (1961); *Minneapolis Eastern Railway Co. v. City of Minneapolis*, 247 Minn. 413, 418, 77 N.W.2d 425, 428 (1956). The legislature, being aware of the existence of MERA when it passed the PPSA, cannot be assumed to have exempted PPSA proceedings from having to comply with MERA without express statutory language to that effect. Since such language is absent, the legislature must have intended to permit private citizens to bring or intervene in civil actions to protect the state's natural resources whenever they think the MEQC has not done so adequately.[6]

6 This conclusion is supported by another principle of statutory construction — that " 'a statute adopted from another state * * * is presumed to have been taken with the construction there placed upon it.' " *Hunt v. Nevada State Bank*, 285 Minn. 77, 98, 172 N.W.2d 292, 305 (1969), certiorari denied sub nom. *Burke v. Hunt*, 397 U.S. 1010, 90 S.Ct. 1239, 25 L.Ed.2d 423 (1970), (quoting *Teague v. Damascus*, 183 F. Supp. 446, 448 [E.D.Wash. 1960]). Professor Sax, author of the first draft of the Michigan act upon which MERA is based, noted that the Michigan act "was designed to reduce the range of discretion traditionally given to regulatory agencies and to enable citizens to challenge standards established by those agencies." Sax Connor, *Michigan's Environmental Protection Act of 1970: A Progress Report*, 70 Mich. L.Rev. 1004, 1064. This suggests that MERA, rather than being preempted by the PPSA, was seen by the legislature as an important mechanism which could be used by citizens to force an administrative agency to protect the state's natural resources. See, Haynes, *Michigan's Environmental Protection Act in its Sixth Year: Substantive Environmental Law from Citizen Suits*, 53 J.Urban L. 589, 610.

Following the lead of Michigan,[7] see, e. g., *Michigan State Highway Comm. v. Vanderkloot*, 392 Mich. 159, 220 N.W.2d 416 (1974); *Ray v. Mason County Drain Commissioner*, 393 Mich. 294, 224 N.W.2d 883 (1975), this court has recognized that MERA provides not only a procedural cause of action for protection of the state's natural resources, but also delineates the substantive environmental rights, duties, and functions of those subject to the Act. *County of Freeborn v. Bryson*, 309 Minn. 178, 243 N.W.2d 316 (1976); *Corwine v. Crow Wing County*, 309 Minn. 345, 244 N.W.2d 482 (1976); *MPIRG v.*

White Bear Rod Gun Club, Minn., 257 N.W.2d 762 (1977). Although respondents would limit this substantive cause of action to those situations in which no other environmental legislation exists,[8] their reasons for doing so are not persuasive. MERA is clearly broader than the PPSA because MERA recognizes a right in *each citizen* to bring a civil suit, while under § 116C.65 of the PPSA, only a utility, a party, or a person aggrieved can appeal a decision of the MEQC to the district court. Furthermore, respondents have not demonstrated any reason to so limit MERA in the absence of express legislative direction. The need for citizen vigilance exists whether or not specific environmental legislation applies, and MERA is clearly a proper mechanism to force an administrative agency, even the MEQC, to consider environmental values that it might have overlooked.[9] *867

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7 Michigan was the first state to enact a statute like MERA, and Minnesota's statute is modeled after it.

8 Since the administrative action attacked by PEER was taken pursuant to the PPSA, which not only includes environmental values in its balancing process but also provides an avenue of judicial review pursuant to § 116C.65, respondents contend that MERA has no independent role to play here.

9 This interpretation is also consistent with that taken by the Michigan courts. In an unreported decision in which the plaintiff challenged the Michigan Department of Natural Resources' grant of a permit for the construction of a dam under the Dam Act, which had become effective subsequent to its Environmental Protection Act, the court held that a citizen could maintain an action to ensure that regulatory agency decisions were environmentally defensible on their merits. Sax Connor, *Michigan's Environmental Protection Act of 1970: A Progress Report*, 70 Mich. L.Rev. 1004, 1061. Since "[l]aws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them," *Hunt v. Nevada State Bank*, 285 Minn. 77, 98, 172 N.W.2d 292, 305, certiorari denied sub nom. *Burke v. Hunt*, 397 U.S. 1010, 90 S.Ct. 1239, 25 L.Ed.2d 423 (quoting Minn.St. 645.22), a citizen in Minnesota should be permitted to maintain a civil action against the MEQC under MERA.

2. *The Methodology of MERA.* The principal provision of MERA that is of relevance here is § 116B.04,[10] which establishes the burdens of proof of the contending parties. It reads in pertinent part as follows:

10 PEER also stressed the importance of § 116B.09, which governs intervention in an administrative proceeding. It is unnecessary for us to decide whether the MEQC's refusal to accept PEER's petition in intervention violated MERA because it appears from the transcript of the route-selection hearings that members of PEER participated in those hearings as individuals.

> "* * * [W]henever the plaintiff shall have made a prima facie showing that the conduct of the defendant has, or is likely to cause the pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. *The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative* and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not constitute a defense hereunder." (Italics supplied.)

As we interpreted this section in *County of Freeborn v. Bryson*, 297 Minn. 218, 228, 210 N.W.2d 290, 297 (1973), in order to make "a prima facie showing" the plaintiff must prove the existence of "(1)[a] protectible natural resource, and (2) pollution, impairment or destruction of that resource." PEER alleged that Route 7 would impair, pollute, and destroy both a 130-acre virgin oak woods and Long Lake.[11] The virgin oak, whose existence was brought to the attention of the hearing officer, is a protectible natural resource, and all parties conceded that the construction of the HVTL would impair it.[12] No mention is made of Long Lake in the administrative proceedings, but its existence was asserted in PEER's complaint and arguments to the district court and was recognized in the MEQC's brief to this court. Because the district court found the provisions of MERA inapplicable to the proceeding and decided the appeal solely under the review provisions of the PPSA, however, it did not permit PEER to introduce evidence to support its allegations of impairment. Therefore, we must assume that the intrusion on Long Lake is substantial and that PEER sustained its initial burden under § 116B.04.

[11] As delineated in § 116B.02, subd. 4, natural resources include "all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources." In *Corwine v. Crow Wing County*, 309 Minn. 345, 361, note 3, 244 N.W.2d 482, 490 (1976), this court recognized that a lake is a protectible natural resource under c. 116B.

[12] In its brief, the MEQC conceded that the construction of a HVTL would cause environmental damage wherever it were located. This was also recognized by the drafters of the PPSA. Section 116C.55, subd. 1, states that the MEQC "shall choose sites that *minimize* adverse human and environmental impact * * *." (italics supplied.)

Once a person or a group has made a prima facie showing that an agency's action or inaction will materially adversely affect protectible natural resources, before it can take that action, the agency must either rebut plaintiff's prima facie case or demonstrate as an affirmative defense that no feasible and prudent alternative exists and that its conduct will promote the public health, safety, or welfare. *MPIRG v. White Bear Rod Gun Club*, Minn., 257 N.W.2d 762, 769. Since, by definition, the *868 siting of HVTLs will cause some impairment of the environment, the MEQC's selection of Route 7 would only comply with MERA if no prudent and feasible alternatives to Route 7 existed.[13]

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[13] Although the trial court found that MERA and the PPSA were compatible and held that there was substantial evidence to support the MEQC's choice of Route 7, as we stated in *Reserve Mining Company v. Herbst*, Minn., 256 N.W.2d 808, 824 (1977), and reiterated in *No Power Line, Inc. v. Minnesota EQC*, Minn., 262 N.W.2d

312, 320: "* * * [i]t is our function to make an independent examination of an administrative agency's record and decision and arrive at our own conclusions as to the propriety of that determination without according any special deference to the same review conducted by the trial court." Thus, it is necessary for the court to itself determine whether the agency's selection of Route 7 is legally supportable.

As interpreted by this court, the prudent and feasible alternative standard is analogous to the principle of nonproliferation in land use planning. In *County of Freeborn v. Bryson*, 309 Minn. 178, 188, 243 N.W.2d 316, 321, we noted that although the state's past encouragement of highway construction resulted in the elimination or impairment of natural resources, "remaining resources will not be destroyed so indiscriminately because the law has been drastically changed by [MERA]." Similarly, in *Reserve Mining Co. v. Herbst*, Minn., 256 N.W.2d 808, 827 (1977), we recognized the state's "strongly held commitment * * * to protecting the air, water, wildlife, and forests from further impairment and encroachment," which supported our choice of Mile Post 7 over Mile Post 20, (256 N.W.2d 832). The court had no trouble deciding that the Department of Natural Resources, which, like the MEQC, had a statutory duty to protect the environment, had failed to comply with this policy of nonproliferation in choosing between the alternative sites. See, also, *No Power Line, Inc. v. Minnesota EQC*, Minn., 262 N.W.2d 312, 331 (Yetka, J., concurring specially).

This policy of nonproliferation is also supported by legislative enactments. Minn. Reg. MEQC 74(d)(3)(ee), adopted pursuant to authority granted to the MEQC under the PPSA, requires the decisionmaker to consider as one factor in the selection process whether the proposed route will "maximize utilization of existing and proposed rights-of-way." The legislature explicitly expressed its commitment to the principle of nonproliferation in its 1977 revision of the PPSA. The MEQC is now required to consider the utilization of existing railroad and highway rights-of-way and the construction of structures capable of expansion in capacity through multiple circuiting in making its selection from among alternative HVTL routes. L. 1977, c. 439, § 10.

We therefore conclude that in order to make the route-selection process comport with Minnesota's commitment to the principle of nonproliferation, the MEQC must, as a matter of law, choose a pre-existing route unless there are extremely strong reasons not to do so. We reach this conclusion partly because the utilization of a preexisting route minimizes the impact of the new intrusion by limiting its effects to those who are already accustomed to living with an existing route. More importantly, however, the establishment of a new route today means that in the future, when the principle of nonproliferation is properly applied, residents living along this newly established route may have to suffer the burden of additional powerline easements.

Minn. Reg. MEQC 74(d),[14] the regulation which implements the PPSA and provides *869 guidelines to be followed in the route-selection process, however, does not adequately reflect this concern with the principle of nonproliferation.[15] The prudent and feasible alternative standard is applied only to avoidance areas, Minn. Reg. MEQC 74(d)(2), and, by failing to weigh the 12 factors to be balanced when dealing with land that is to be neither excluded nor avoided, Minn. Reg. MEQC 74(d)(3), the MEQC has made it possible for environmental considerations to be balanced out of the equation entirely.

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14 Minn. Reg. MEQC 74(d) provides for HVTL corridor and route selection as follows: "(d) Criteria for HVTL Corridor Selection. The following criteria and standards shall be used by the Council in the preparation of an inventory of HVTL corridors and to guide the Council in the

evaluation and selection of HVTL routes.

"(1) Exclusion Criteria.

"(aa) No HVTL shall be routed in violation of any federal or state agency regulations.

"(bb) No HVTL shall be routed through national wilderness areas, state wilderness areas or through any area designated a HVTL exclusion area by the Council.

"(2) Transmission Line Avoidance Areas. In addition to exclusion areas, the following land use areas shall not be approved for HVTL routes when feasible and prudent alternatives with lesser adverse human and environmental effects exist. Economic considerations alone shall not justify approval of avoidance areas. Any approval of such areas shall include all possible planning to minimize harm to these areas. HVTL avoidance areas are: national parks; national historic sites and districts and natural landmarks; national monuments; national wildlife refuge areas; national wild, scenic, and recreational riverways; state wild, scenic, and recreational rivers and their land use districts; state parks; state registered historic sites; state historic districts; Nature Conservancy preserves; state scientific and natural areas; county parks; metropolitan parks; designated state and federal recreational trails; designated state canoe and boating routes; and any other area designated a transmission line avoidance area by the Council.

"(3) Selection Criteria. The following criteria shall be applied in the selection of corridors:

"(aa) Preferred corridors and routes minimize disruption to existing urbanized land uses and human settlement.

"(bb) Preferred corridors and routes minimize disruption to existing and potential irrigated and non-irrigated agricultural land uses.

"(cc) Preferred corridors and routes minimize disruption to recreational and historical land uses.

"(dd) Preferred corridors and routes minimize disruption to natural systems including vegetation, wildlife, and water.

"(ee) Preferred corridors and routes maximize utilization of existing and proposed rights-of-way.

"(ff) Preferred corridors and routes minimize visual impact on urbanized land, recreational land and water, and transportation corridors.

"(gg) Preferred corridors and routes optimize cost of materials, labor, right-of-way acquisition, project schedules, and maintenance.

"(hh) Preferred corridors and routes minimize disruption to existing and potential forestry land uses.

"(ii) Preferred corridors and routes minimize impact upon projected human settlement.

"(jj) Preferred corridors and routes maximize reliability with respect to climate, soils, geology, and vandalism.

"(kk) Preferred corridors and routes maximize accessibility.

"(ll) Preferred corridors and routes minimize disruption to existing and potential extractive and storage resources."

15 Respondents contend that the MEQC has satisfied the requirements of MERA by including the prudent-and-feasible-alternative standard in its regulations adopted pursuant to authority granted it by it the legislature under the PPSA, Minn.St. 116C.66. The adoption of this standard, however, is only partial, and, although the district court accepted their argument, it does not accord with the legislative intent.

In fact, this is precisely what appears to have occurred in the proceedings being challenged in this appeal. Residents along Route 3 introduced no evidence that its utilization would impair or destroy the environment; rather, they argued that the choice of Route 7 was preferable because it

would require the condemnation of fewer homes than would the selection of Route 3. Although the hearing examiner, the MEQC, and the district court all accepted both their reasoning and their conclusion, condemnation of a number of homes does not, without more, overcome the law's preference for containment of powerlines as expressed in the policy of nonproliferation. Persons who lose their homes can be fully compensated in damages. The destruction of protectible environmental resources, however, is noncompensable and injurious to all present and future residents of Minnesota.[16] *870

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16 In MERA, the legislature stated "its policy to create and maintain within the state conditions under which man and nature can exist in productive harmony in order that present and future generations may enjoy * * * [the] natural resources with which this state has been endowed." Section 116B.01. This philosophy is also reflected in MEPA, § 116D.02, and in the PPSA which was enacted partly to ensure that the siting of HVTLs caused minimal damage to the environment which belongs to all the state's citizens, § 116C.55, subd. 1. The encouragement of citizen suits to protect the environment from impairment or pollution reflects the legislature's conviction that while individuals will be vigilant in their attempts to prevent the destruction of their homes and private property, since the environment belongs to no one, no one will protect it unless private attorneys-general are permitted to sue on behalf of the public interest.

Any other result would be contrary to *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 411, 91 S.Ct. 814, 821, 28 L.Ed.2d 136, 150 (1971), in which the United States Supreme Court rejected such wide ranging balancing of compensable with noncompensable impairment. In order to protect natural resources to the fullest extent possible, the court required that truly extraordinary disruption be demonstrated before a prudent and feasible alternative to an environmentally destructive action would be refused. Ibid. Since the taking of seven or eight homes is not extraordinary disruption, it cannot be used to justify the proliferation of HVTLs and the destruction of protectible natural resources. Thus, the MEQC erred in choosing Route 7 over Route 3 on the basis of the evidence before it.

3. *The Utilization of Balancing under the PPSA*. Section 116C.55 of the PPSA requires the MEQC to balance three separate criteria — human impact, environmental impact, and reliability and cost of electric power — in making HVTL routing decisions. Although the MEQC has interpreted this section to mandate balancing whenever no exclusion or avoidance areas are involved, Minn. Reg. MEQC 74(d)(3), such a position does not comport with MERA, which permits balancing only when one potential route will cause greater environmental and another greater human noncompensable damage. Therefore, the "human impact" discussed in the PPSA must refer to noncompensable impairment of human resources.[17]

17 Translated into practical terms, this means that Minn. Reg. MEQC 74(d) can only be sustained if the prudent and feasible alternative standard applies to the entire selection process. Thus, the balancing of the 12 factors delineated in Minn. Reg. MEQC 74(d)(3) only comes into play after the MEQC has found no prudent and feasible alternative to an environmentally damaging route.

Applying this standard to the facts before us, homeowners can argue against HVTL routes that will impair their residence only if they can demonstrate unique irreplaceable characteristics of their homes not reflected in market value which would make their taking noncompensable. Thus, for example, if a home were crafted in an unusual manner or constructed of rare materials, to the extent that such factors are not reflected in market value, its taking could be noncompensable.

Similarly, the establishment of some noncorporeal aspect of home ownership, such as proximity to a unique school system which could not be reproduced or converted to market value, could make the owner's interest in the property noncompensable. Although the owners along Route 3 introduced a great deal of evidence about the pleasant nature of their neighborhood, no testimony was presented on the possible noncompensable aspects of their residences. Weighing against them, moreover, are the presence of an HVTL along Route 3 and the fact that most persons bought or built their homes after it had been constructed.

An examination of the evidence now in the record compels the conclusion that Route 7 causes noncompensable damage and Route 3 only compensable damage,[18] making balancing under Minn. Reg. MEQC 74(d)(3) improper. Thus, we would be justified in reversing and designating Route 3. This, however, might be unfair to the residents along Route 3 who would not then have an opportunity to be heard on the human impact of choosing Route 3 under the standard we now enunciate. For these reasons, we believe that it is more equitable to remand the case to the MEQC to permit the affected homeowners along Route 3 to introduce evidence of noncompensable damage to
871 affected property interests. *871

18 Route 1 was eliminated because it included an avoidance area and Routes 3 and 7 were found to be prudent and feasible alternatives. See, Minn. Reg. MEQC 74(d)(2). Had the agency been acting in compliance with the nonproliferation principle, however, Route 7 would not have even been considered, since both Route 1 and Route 3 were existing rights-of-way. Because Route 1 traversed an avoidance area, however, Route 3 should have been chosen as a prudent and feasible alternative to Route 1.

4. *The Preparation of the EIS*. In its appeal to the district court, PEER alleged that the EIS was defective because it did not include an analysis of Route 7. Although PEER did not pursue this allegation of irregularity on appeal to this court, it is a very serious infraction, if true, and is clearly within the scope of our review as contemplated by Rule 103.04, Rules of Civil Appellate Procedure. See, also, *Witzig v. Philips*, 274 Minn. 406, 410, 144 N.W.2d 266, 269 (1966).

As this court recognized in *No Power Line, Inc. v. Minnesota EQC*, Minn., 262 N.W.2d 312, 325, the fact that "[a]n EIS was prepared and was available for the guidance of the agency prior to the selection of the specific route" satisfies the requirements of MEPA. If, however, the EIS that was prepared did not include Route 7, how could it have guided the agency in its decision of which route to select?

Although respondents contended in oral argument before this court that the EIS covered Route 7, an analysis of the document itself suggests otherwise. Route 7 was not part of the draft EIS because it was added to the list of potential routes after the EIS had already been commissioned, and it was covered only cursorily in the final EIS submitted to the MEQC. Since Route 7 was not analyzed in the same depth as the other routes,[19] the EIS, as written, could not have helped the decisionmaker to evaluate the relative damages to the three routes under consideration and to make a meaningful choice among them.[20]

19 Route 7 was not one of the routes proposed by NSP. Thus, it was not analyzed in the NSP materials presented to the MEQC. This might explain the cursory attention given to Route 7 in the final EIS, since there seems to be an unfortunate tendency by agencies to rely too heavily on the applicant's research when preparing an EIS. See, *No Power Line, Inc. v. Minnesota EQC*, Minn., 262 N.W.2d 312, 327, and cases cited therein.

20 In this regard, we should also reiterate that the prudent and feasible alternative standard requires much more specificity in the information included in the EIS than the MEQC appears presently to demand. The overly general nature of much of the EIS leaves it open to attack on the ground of inadequacy. See, e. g., *Lathan v. Brinegar*, 506 F.2d 677, 693 (9 Cir. 1974).

On remand, therefore, if Route 7 is still seriously considered, the MEQC will have to prepare a new EIS that treats all the routes comparably. If the MEQC decides that compliance with other parts of this opinion requires it to choose Route 3, then no new EIS need be produced. If, however, after more evidence is received, the MEQC decides that significant noncompensable damage will be caused by utilizing the existing right-of-way, before it can choose between Route 3 and Route 7, it will have to produce an adequate EIS that can play a meaningful role in helping it to reach its ultimate decision.

5. *The Impossibility of Judicial Review*. Whenever appellate review is sought, the reviewing court must decide whether the findings of fact below are sufficiently specific to permit it to exercise this function. According to *Bryan v. Community State Bank*, 285 Minn. 226, 233, 172 N.W.2d 771, 775 (1969), judicial review of decisionmaking is only possible if the agency states with clarity and completeness the facts and conclusions essential to its decision so that the reviewing court can determine whether the facts support the agency's action.

In its pleading in intervention and its appeal to the district court, PEER specifically argued that the MEQC failed to recognize the adverse environmental impact that utilization of Route 7 would have on Long Lake and the virgin forest of oaks. The district court disposed of this argument by holding:

> "* * * The Findings of Fact were sufficiently specific to adequately apprise this Court of the basis for the agency's decision. They complied with the requirements set out in *Bryan* * * * and therefore no reasons for the decision are necessary."

Contrary to the position taken by the trial court, the MEQC's findings of fact, conclusions and
872 recommendations do not *872 satisfy the test of Bryan outlined above. Finding # 13 states that "route 7 * * * minimizes disruption to recreational and historical land uses in comparison with proposed route 3 due to the fact that proposed route 3 does contain lakeshore area." In Finding # 16, another reference is made to the lakeshore area in Route 3. Nowhere, however, is there any reference to Long Lake and whether Route 7 would impact it at all. Thus, it is impossible to claim, as the MEQC does in its brief, that the hearing examiner "balanc[ed] out the relative impacts to Long Lake and Sunnybrook Lake" or that either he or the MEQC "found route 3's impact on Sunnybrook to be more severe than the impact of route 7 on Long Lake." Instead, it is much more plausible to assume from the complete failure to mention Long Lake in the findings of fact that both the hearing examiner and the MEQC never examined Route 7's impact on Long Lake. This conclusion is also supported by the failure of the MEQC to require in the construction permit that the edge of Long Lake be avoided. The hearing examiner's and the MEQC's findings of fact state that the HVTL be constructed around Northport Airport in Washington County but do not include a similar provision regarding Long Lake. Thus, it is impossible to conclude, as the MEQC contends in its brief, that the MEQC intended the HVTL to avoid the shore of Long Lake.

A similar conclusion is suggested with regard to the effect of Route 7 on the oak woodland. In its brief, the MEQC claims that it made a specific finding about the oak woodland, referring to

Finding # 14, which states that "proposed routes 3 and 7 are comparable in minimizing disruption to natural systems." Rather than supporting the MEQC's claim, however, Finding # 14 demonstrates that the MEQC was either unaware of or ignored the existence of the oak woodland in Route 7, especially since there is no indication of a similar woodland in Route 3 that would allow the hearing examiner and the MEQC to conclude that both routes are "comparable in minimizing disruption to natural systems."

Since it is impossible to discern from the findings of fact whether the hearing examiner and the MEQC even entered the existence of Long Lake and the oak woodland into their balancing process, a reviewing court cannot possibly decide whether substantial evidence exists to support the MEQC's conclusions. In order to satisfy the Bryan test in a case like this, the findings of fact would have to provide at least the following information to the reviewing court:

(1) the kind and character of the homes that would be condemned in each route;

(2) the kind of intrusion on Long Lake that would be caused by utilizing Route 7;

(3) the specific impact of the HVTL on Sunnybrook Lake so that a meaningful comparison between the two lakes could be made; and

(4) the specific characteristics of the oak forest, which requires more than merely a statement that it is composed of virgin oak. Only if information such as this is included in the findings of fact can a reviewing court properly perform its function.

Under most circumstances, the proper disposition of an appeal that challenges the specificity of the factfinding process would be a remand to the agency for more specific findings of fact. Such a disposition is unnecessary here since we are remanding the case to the agency for additional findings of fact concerning noncompensable damage to the homeowners along Route 3. In making these supplementary findings of fact, however, and in all future proceedings, the agency and hearing examiners should avoid issuing such overly general findings which make judicial review impossible.

6. *Interrogatories*. In its appeal from the MEQC decision to the district court, PEER alleged that the members of the MEQC were not all familiar with the transcript and other documents pertaining to the public hearings on the route selection. The district court held that it was not necessary to investigate the individual mental processes of the members of the MEQC *873 because its findings were supported by substantial evidence. Since we have concluded that the findings were not sufficiently specific to permit judicial review, PEER's allegation of administrative impropriety is revived.

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When a hearing examiner is utilized by an agency, Minn.St. 15.0418 of the Administrative Procedure Act (APA) requires that all evidence submitted to him be certified to the agency, and § 15.0421 mandates that the parties to the proceedings get an opportunity to file exceptions and present arguments to the agency, and that the final decision then be rendered by the *officials* of the agency. Any suggestion that route-selection hearings might not be "contested cases" within the meaning of the APA was laid to rest by the legislature in its 1977 revisions of the PPSA, L. 1977, c. 439, § 11, which appears to be merely a codification of existing MEQC practices. Thus, MEQC decisionmaking is governed by the APA, and it becomes extremely important for appellants to discover whether the officials themselves actually made the decision as the APA requires or whether they simply rubber-stamped the findings of fact, conclusions, and recommendations submitted to the MEQC by the hearing examiner.

The MEQC members refused to respond either to PEER's requests for admission or to the interrogatories on this issue on the ground that the information was privileged. While it is true that it

is generally not proper to permit discovery of the mental processes by which an administrative decision is made, *United States v. Morgan*, 313 U.S. 409, 61 S.Ct. 999, 85 L.Ed. 1429 (1941), in *Mampel v. Eastern Heights State Bank*, Minn., 254 N.W.2d 375, 378 (1977), we allowed persons seeking judicial review of agency decisionmaking to "make inquiry through discovery to determine whether the agency adhered to statutorily defined procedures or the rules and regulations promulgated by the agency itself which enter into the fundamental decisionmaking process." We reaffirm that holding today.

In order to insure that the statutory scheme is not thwarted and that the validity of administrative decisionmaking does not become suspect, it is necessary to permit limited discovery when a statute requires specified persons to make decisions. See, 50 Wn. L.Rev. 739, 744. Under the APA the agency must review the evidence and findings amassed by a hearing examiner and come to an independent decision. Thus, the legislature clearly intended agency members to read the material presented to it prior to reaching their decision. To ensure that agency actions comport with this legislative intent, parties must be permitted to elicit from agency members sufficient information to establish that the problem had been addressed and that agency functions have been performed properly. Thus, the district court erred in failing to require MEQC members to respond to PEER's interrogatories.

We must emphasize, however, that the discovery we sanction is limited to information concerning the *procedural steps* that may be *required by law* and does not extend to inquiries into the mental processes of an administrator which, being part of the judgmental process, are not discoverable under *United States v. Morgan, supra*. It should be clear that this rule would similarly protect from discovery the process of judicial decisionmaking which is judgmental rather than procedural in nature.

7. *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
874 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.

Since PEER made a prima facie showing under MERA that the choice of Route 7 would impair, pollute, or destroy protectible natural resources, before the MEQC could approve the hearing examiner's recommendation, the record would have to demonstrate that there were no prudent and feasible alternatives to proposed Route 7. Route 3, an existing HVTL right-of-way, would appear from the evidence to be such a prudent and feasible alternative whose choice would be consistent not only with MERA but also with the nonproliferation principles contained in the PPSA and MEPA. Thus, unless there were compelling evidence in the record of noncompensable damages which would result from the choice of Route 3, no basis existed for the MEQC's choice of Route 7. The fact that Route 7 would require the condemnation of fewer homes than Route 3 cannot in and of itself support the MEQC decision. The loss of some homes is not equivalent to the human impact which must be minimized under the PPSA unless it can first be established that the homes to be condemned are, because of their unique characteristics, not replaceable. The

burden of demonstrating the noncompensable aspects of the homes to be condemned is on the homeowners themselves, and failure to meet this burden should have resulted in the automatic choice of the existing right-of-way.

Had the MEQC properly carried out its statutory duty to avoid proliferation of rights-of-way, and had it weighed its selection criteria in favor of nonproliferation and the protection of its noncompensable natural resources, the hearing examiner and the agency itself would not have been able to choose Route 7 over Route 3. Although the record clearly mandates the selection of Route 3, principles of fairness require a remand in this case to permit affected homeowners to introduce evidence concerning the uniqueness of their residences.

Therefore, we remand to the district court for remand to the MEQC, with directions to conduct further hearings consistent with this opinion on the issue of noncompensable damages. The district court should direct the MEQC to give notice to affected residents along Route 3 that they will have 30 days within which to present such evidence. If, after receiving this new evidence, the MEQC decides that the homeowners have not sustained their burden of proof, Route 3 should he designated. If, however, they demonstrate that the homes to be condemned are noncompensable resources, the MEQC will then have to balance that damage against the environmental damage that would be caused by constructing the HVTL along Route 7. If the MEQC reaches this step, a new EIS will have to be produced which provides sufficient detailed and comparable information on all the routes then under consideration. Such balancing, however, cannot be conducted in a vacuum, and the MEQC decision must be consistent with the strong nonproliferation policy reflected in recent legislative and judicial pronouncements.

Reversed and remanded.

ADDENDUM

Petitioners, Environmentally Concerned Citizens Organization (ECCO), an unincorporated association: Charles Josephs; Ken Kurttila; and Wallace Oien, request permission to intervene in the appeal before this court, pursuant to the Minnesota Environmental Rights Act, Minn.St. 116B.09, and seek reconsideration by the court, pursuant to Rule 140, Rules of Appellate Procedure, of certain aspects of its decision in *PEER v. MEQC*, filed April 7, 1978. For the reasons discussed below, the petition for intervention and for rehearing is denied.

Initially, we deny the petition for rehearing because petitioners are not parties to the proceedings. Petitioners' failure to intervene in the district court action that culminated in this appeal precludes their invocation of the Rules of Civil Appellate Procedure which govern only the parties to an appeal. Thus, their petition for rehearing is
875 improper. *875

Petitioners seek to cure this fundamental defect by requesting permission to intervene. Their status as intervenors would then permit them to petition for reargument under Rule 140. Intervention at this late date, however, can serve no meaningful purpose, since the process of judicial review has already been completed. Moreover, we do not believe that the legislature intended § 116B.09 to permit intervention at this point in the litigation. Instead, § 116B.09 sanctions only intervention in the original administrative proceedings themselves or in their review in district court.

For this same reason intervention by ECCO in the proceedings before the MEQC pursuant to our remand would be improper. To the extent that individual members of ECCO or the named petitioners participated in the original proceedings, however, they are free, upon remand, to petition the MEQC to broaden the scope of inquiry to include such relevant issues as whether PEER's allegations of environmental damage to the oak forest and Long Lake have a factual basis and whether paralleling of the HVTL and the existing

230kV line would be inappropriate under the circumstances presented by this case.[1a] Because these issues were never before the MEQC or the district court, they would be proper subjects for consideration on remand.

[1a] ECCO raises four issues for consideration on remand on its petition for intervention. The last two of these are adequately covered in our decision and need no additional mention here.

Although the MEQC clearly has the authority to grant such a petition at the request of a proper party, in reaching its decision it must weigh the benefits that will accrue from the gathering of additional information against the detrimental effects of dragging out the course of this litigation. To the extent that, in its judgment, broadening the scope of the inquiry can be done without jeopardizing the public's need for electricity and the policy of the PPSA that "electric energy needs [be] met and fulfilled in an orderly and timely fashion," Minn.St. 116C.55, subd. 1 (1976), such a resolution would be proper. Our previously filed decision in this case merely defines the areas concerning which a hearing is required on remand, and it should not be interpreted as narrowing the MEQC's authority to hear evidence on issues that it determines are necessary to help it choose the route that best compiles with the principles of all applicable environmental legislation.

MINNESOTA
PUBLIC UTILITIES COMMISSION

Public Utilities Commission Strategic Plan

2024–2028

Introduction

The Public Utilities Commission (PUC or Commission) is a small but growing agency that regulates electric, gas, and landline telephone utility services. The PUC is made up of five commissioners who are appointed by the governor and approved by the Minnesota Senate. Commissioners come from a wide variety of political, geographic, and professional backgrounds, and bring a blend of different perspectives to their decisions. Under Minn. Stat. §216B.03, the Commission has a statutory duty to act in the public interest and ensure that utility rates are just and reasonable; not unreasonably preferential or prejudicial; not discriminatory; but sufficient, equitable, and consistent in application to a class of consumers.

Not unlike the telecommunication industry in the 1990s, the energy industry is currently in a transition period. This impacts replacement of aging assets and new generation, transmission, and distribution. In generation, utilities are moving away from coal and other fossil fuels toward wind, solar, hydro, and other carbon-free energy sources. This transition, along with the increasing pace of electrification in multiple sectors, affects all parts of the energy industry, including increased pressure on the transmission and distribution systems and additional need for energy storage and other innovative solutions to ensure that utility service continues to be reliable and affordable. Like the ongoing transition in the electric industry, natural gas and telecommunications are also areas of growing complexity, impacted by changing consumer choices, environmental concerns, local and state laws, and other considerations.

In recent years, major legislation has re-shaped the policy landscape. For example, in 2021, the Minnesota legislature passed the Natural Gas Innovation Act (NGIA), establishing a framework to allow natural gas utilities to meet greenhouse gas reduction and decarbonization goals using innovative resources. Also in 2021, the legislature passed the Minnesota Energy Conservation and Optimization Act (ECO Act), increasing energy conservation goals and modernizing utility and state energy efficiency programs. In 2023, the legislature passed the 100% by 2040 bill (Laws 2023, Chapter 7), setting a standard that electric utilities must generate or procure 100% carbon-free electricity by 2040—accelerating most utilities' decarbonization plans. In addition to these major legislative initiatives, statutes have been updated to increase public participation, consumer support, DEI efforts, support for host communities, and use of local labor in energy projects, to name a few. These issues have contributed to a rapid increase in the pace of regulatory work, including more dockets, more filings, and more contact with consumers.

The 2023 legislature also made a significant investment in our agency, enabling the PUC to hire new staff to begin to tackle these challenges. Meanwhile, the workplace is also evolving at a rapid pace. During the COVID-19 pandemic, PUC staff shifted largely from in-office work to telework. Now, the office and public meetings have all been configured to support a hybrid model. The agency is confronting new issues, in a new environment, with more hiring and staff turnover than at any time in recent history.

This strategic plan is intended to position the agency to meet emerging needs in energy and telecommunication regulation and ensure that we are entering this new regulatory environment with a clear vision and goals for the next four years.

The PUC went through a monthslong process to engage stakeholders, staff, commissioners, and the public on this strategic plan. Their input helped guide the development of priority areas, strategies, and action steps contained in this document. We have updated our mission and guiding principles to reflect the current and ongoing needs of the agency and have taken a holistic view of agency operations and goals, including workplace considerations, regulatory issues, technology and efficiency improvements, and more. Diversity, equity, and inclusion (DEI) principles are incorporated throughout the document and are intended to underpin every aspect of the agency's work. The strategic plan includes metrics and milestones that we will use to evaluate success throughout the four-year period.

PUC Strategic Plan

Building Blocks

Mission

Improve the lives of all Minnesotans by ensuring safe, reliable, and sustainable utility services at just and reasonable rates.

Guiding Principles

- Provide a professional, collaborative, innovative, and respectful work environment that attracts and retains high performing, dedicated public servants.
- Provide independent, consistent, efficient, and comprehensive oversight and regulation of utility service providers and project developers in rapidly changing industries.
- Balance the public and private interests affected in each docket and make decisions that are consistent with state policies and in the public interest.
- Prioritize and implement diversity, equity, and inclusion in our workplace and in the industries we regulate.
- Engage the public to build awareness and increase meaningful participation in Commission activities and increase utilization of consumer support programs.

Priority Areas

Public Trust and Engagement

Priority Area 1: Serve as a trusted, fair, and transparent resource on utility regulation

Strategy 1: Increase public awareness of, access to, and meaningful participation in the Commission's work.

- **What we want to accomplish with this strategy:**
  Make Commission activities accessible and understandable to the public. A thorough record, including meaningful public input, can improve the Commission's decision-making and build public confidence in the Commission's decisions.

Strategy 2: Educate legislators and the Administration to secure agency resources and policy changes necessary to serve the public interest.

- **What we want to accomplish with this strategy:**
  This strategy seeks to ensure that policymakers are well informed of the impacts of their work on Commission activities and utility customers, the agency is funded to meet its objectives, and the agency has lasting relationships with policymakers.

Strategy 3: Improve public awareness and utilization of the Consumer Affairs Office (CAO).

- **What we want to accomplish with this strategy:**
  The CAO plays a vital role in assisting utility consumers and is the face of many of the Commission's public interactions. This strategy seeks to maximize the usage of this small office.

Strategy 4: Advance Minnesota's interests on federal and regional issues.

- **What we want to accomplish with this strategy:**
  This strategy seeks to build the agency's capacity on federal and regional issues and ensure that Minnesota's interests are effectively represented on regional and federal matters of importance to the state.

Efficient Utility Regulation

Priority Area 2: Maximize efficiency in effective utility regulation and oversight.

Strategy 1: Gather the data necessary to evaluate efficiency and effectiveness of docketed proceedings.

- **What we want to accomplish with this strategy:**
  This strategy is designed to ensure internal processes are as streamlined as possible to improve the efficiency of the agency's regulatory work. Current data is inconsistent and labor-intensive to compile. This strategy will position the agency to tailor improvements where they are most impactful.

Strategy 2: Streamline and improve predictability of record development.

- **What we want to accomplish with this strategy:**
  This strategy is designed to increase predictability and efficiency of docketed work and reduce the volume of extensions or delayed decisions.

Strategy 3: Evaluate ongoing energy transition and ensure efficient and effective regulation consistent with our mission.

- **What we want to accomplish with this strategy:**
  This strategy seeks to align MN energy regulation and resource allocation with the changing requirements and technologies of the energy industry.

Strategy 4: Identify the agency's role in the changing telecom industry and ensure we are addressing all requirements.

- **What we want to accomplish with this strategy:**
  This strategy seeks to align MN telecommunications regulation and resource allocation with the changing requirements and technologies of the telecom industry.

Workplace Culture

Priority Area 3: Create a workplace culture that values, attracts, and retains dedicated, high-performing public servants.

Strategy 1: Enhance internal communication, understanding, and interconnectivity between units and throughout the agency.

- **What we want to accomplish with this strategy**:
  This strategy seeks to ensure all employees have ready access to all pertinent information and available resources, and to break down silos across organizational units, enabling increased

collaboration and efficiencies. This strategy also aims to increase agency-wide employee engagement.

Strategy 2: Modernize the workplace to improve the customer experience and staff satisfaction.

- **What we want to accomplish with this strategy:**
  This strategy seeks to ensure the workplace meets the needs of a changing workforce and the evolving needs of the customers we serve.

Strategy 3: Invest in building positive interpersonal relationships in the workplace.

- **What we want to accomplish with this strategy:**
  This strategy aims to create an inclusive and welcoming working environment by reinforcing positive relationships between all employees and with external stakeholders as the volume and complexity of disputes before the Commission grows.

Strategy 4: Strategically manage and prioritize limited agency resources.

- **What we want to accomplish with this strategy**:
  This strategy seeks to ensure that limited staff and Commissioner resources are allocated strategically to advance the agency's mission. This clarity will help optimize staff time and ensure that resources are distributed in a way that aligns with agency priorities, acknowledging tradeoffs.

Strategy 5: Hire, train, and maintain staffing complement necessary to meet emerging needs.

- **What we want to accomplish with this strategy:**
  The Commission's staff are an extremely important resource. This strategy seeks to ensure that the Commission attracts and maintains the necessary staff to successfully carry out our mission, while building redundancy and implementing a comprehensive and seamless onboarding strategy.

Strategy 6: Implement technology and process solutions for better project management and accountability, and more efficient use of staff time.

- **What we want to accomplish with this strategy:**
  This strategy seeks to improve internal recordkeeping and reporting, to better identify workload trends and use staff time efficiently.

Interagency Relationships and Collaboration

Priority Area 4: Optimize Cross-Agency Coordination.

Strategy 1: Clarify roles and relationships with the Department of Commerce to improve collaboration and efficiency.

- **What we want to accomplish with this strategy**:
  This strategy seeks to improve accountability and regulatory outcomes through enhanced collaboration and a better definition of roles and responsibilities.

Strategy 2: Redefine relationships with support agencies and organizations.

- **What we want to accomplish with this strategy:**
  This strategy is geared toward improving operational outcomes with support agencies, such as Admin, MMB, and MN.IT.

Strategy 3: Establish consistent and productive relationships with cabinet agencies.

- **What we want to accomplish with this strategy:**
  This strategy aims to enhance collaboration with partner agencies. Given the broadening scope of the PUC's work, engagement with impacted agencies will help inform PUC decisions.

Equity and Inclusion

Priority Area 5: Integrate diversity, equity, and inclusion (DEI) into all facets of Commission work.

DEI is one of the Commission's core guiding principles. The Commission has a clear statutory duty to act in the public interest, including a duty to ensure that rates are just, reasonable, and nondiscriminatory. Increasing public participation in dockets and deliberate consideration of equity issues improves record development and therefore improves our regulatory decision-making.

DEI considerations are intended to be incorporated throughout the strategies and action steps in this strategic plan. The strategies listed below are specific items that have been developed by the Commission's DEI Committee and will be overseen by the DEI Coordinator.

Strategy 1: Implement an internal DEI Workplace Action Plan, including recruitment and hiring practices, retention, training, and an inclusive work environment.

Strategy 2: Incorporate DEI into dockets by asking equity-related questions in notices and information requests.

Strategy 3: Incorporate DEI considerations into public engagement efforts by focusing on engagement with underrepresented groups and those who do not regularly participate in Commission work.

CHAPTER 216E

ELECTRIC POWER FACILITY PERMITS

NOTE: The amendments, renumbering instructions, and repeals made to this chapter by Laws 2024, chapter 126, articles 7 and 9, and Laws 2024, chapter 127, articles 43 and 45, are effective July 1, 2025. Laws 2024, chapter 126, article 7, section 16; Laws 2024, chapter 126, article 9, section 22; Laws 2024, chapter 127, article 43, section 16; and Laws 2024, chapter 127, article 45, section 22.

See also Minnesota Statutes, chapter 216I. For most recently published versions of this chapter, see 2022 Minnesota Statutes and 2023 Minnesota Statutes Supplement, as applicable.

216E.001 MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

216E.01 Subdivision 1. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 2. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 3. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 3a. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 4. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 5. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 6. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 7. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 8. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 9. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 9a. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 10. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

216E.02 MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

NOTE: Subdivision 1 was also amended by Laws 2024, chapter 127, article 3, section 86, to read:

"Subdivision 1. **Policy.** The legislature hereby declares it to be the policy of the state to locate large electric power facilities and high voltage transmission lines in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, the commission shall choose locations that minimize adverse human and environmental impact while insuring continuing electric power system reliability and integrity and insuring that electric energy needs are met and fulfilled in an orderly and timely fashion."

216E.021 MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

216E.03 Subdivision 1. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 2. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 3. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 3a. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 3b. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 4. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 5. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 6. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 7. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 8. [Renumbered 216I.22]

Subd. 9. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 10. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 11. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

216E.04 Subdivision 1. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 2. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 3. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 4. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 5. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 6. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 7. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 8. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 9. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

216E.05 Subdivision 1. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 2. MS 2023 Supp [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 3. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

216E.06 [Renumbered 216I.12]

216E.07 [Renumbered 216I.15]

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]

216E.09 [Renumbered 216I.17]

216E.10 [Renumbered 216I.18]

216E.11 [Renumbered 216I.20]

216E.12 [Renumbered 216I.21]

216E.13 [Renumbered 216I.23]

216E.14 [Renumbered 216I.24]

216E.15 [Renumbered 216I.25]

216E.16 [Renumbered 216I.26]

216E.17 [Renumbered 216I.27]

216E.18 Subdivision 1. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 2. MS 2022 [Repealed, 2024 c 126 art 7 s 15; 2024 c 127 art 43 s 15]

Subd. 2a. [Renumbered 216I.28, subd 1]

Subd. 3. [Renumbered 216I.28, subd 2]

CHAPTER 216I

ENERGY INFRASTRUCTURE PERMITTING

NOTE: This chapter, as added by Laws 2024, chapter 126, articles 7 and 9, and Laws 2024, chapter 127, articles 43 and 45, is effective July 1, 2025. Laws 2024, chapter 126, article 7, section 16; and Laws 2024, chapter 127, article 43, section 16.

Before July 1, 2025, see also 2022 Minnesota Statutes and 2023 Minnesota Statutes Supplement, chapters 216E and 216F, as applicable.

216I.01 CITATION.

This chapter may be cited as the "Minnesota Energy Infrastructure Permitting Act."

History: *2024 c 126 art 7 s 1; 2024 c 127 art 43 s 1*

216I.02 DEFINITIONS.

Subdivision 1. **Applicability.** For purposes of this chapter, the terms defined in this section have the meanings given, unless context clearly indicates or provides otherwise.

Subd. 2. **Associated facility.** "Associated facility" means a building, equipment, communication instrumentation, or other physical structure that is necessary to operate a large energy infrastructure facility. Associated facility includes transmission lines designed for and capable of operating at 100 kilovolts or less that interconnect the large energy infrastructure facility with the existing high-voltage transmission system.

Subd. 3. **Commission.** "Commission" means the Public Utilities Commission. Commission also means the executive secretary of the Public Utilities Commission for purposes of the following:

(1) applicability determinations under section 216I.04;

(2) completeness determinations under section 216I.05;

(3) public meetings under section 216I.05, subdivision 9;

(4) draft environmental impact statements under section 216I.06, subdivision 1, paragraph (c); and

(5) public hearings under section 216I.06, subdivision 2, or 216I.07, subdivision 4.

Subd. 4. **Construction.** "Construction" means any clearing of land, excavation, or other action that adversely affects the site's or route's natural environment. Construction does not include changes needed to temporarily use sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

Subd. 5. **Cultivated agricultural land.** "Cultivated agricultural land" has the meaning given in section 216G.01, subdivision 4.

Subd. 6. **Energy storage system.** "Energy storage system" means equipment and associated facilities designed with a nameplate capacity of 10,000 kilowatts or more that is capable of storing generated electricity for a period of time and delivering the electricity for use after storage.

Subd. 7. **Executive secretary.** "Executive secretary" means the executive secretary of the Public Utilities Commission under section 216A.04 or Public Utilities Commission staff designated by the executive secretary.

Subd. 8. **High-voltage transmission line.** "High-voltage transmission line" means a conductor of electric energy and associated facilities that is (1) designed for and capable of operation at a nominal voltage of 100 kilovolts or more, and (2) is greater than 1,500 feet in length.

Subd. 9. **Large electric power generating plant.** "Large electric power generating plant" means electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

Subd. 10. **Large energy infrastructure facility.** "Large energy infrastructure facility" means a high-voltage transmission line, a large electric power generating plant, an energy storage system, a large wind energy conversion system, and any associated facility.

Subd. 11. **Large wind energy conversion system.** "Large wind energy conversion system" means any combination of wind energy conversion systems with a combined nameplate capacity of 5,000 kilowatts or more, and may include transmission lines designed for and capable of operating at 100 kilovolts or less that interconnect a large wind energy conversion system with a high-voltage transmission line.

Subd. 12. **Permittee.** "Permittee" means a person to whom a site or route permit is issued.

Subd. 13. **Person.** "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Subd. 14. **Power purchase agreement.** "Power purchase agreement" means a legally enforceable agreement between two or more persons where one or more of the signatories agrees to provide electrical power and one or more of the signatories agrees to purchase the power.

Subd. 15. **Route.** "Route" means the location of a high-voltage transmission line between two end points. The route may have a variable width of up to 1.25 miles.

Subd. 16. **Site.** "Site" means the location of a large electric power generating plant, solar energy generating system, energy storage system, or large wind energy conversion system.

Subd. 17. **Small wind energy conversion system.** "Small wind energy conversion system" means any combination of wind energy conversion systems with a combined nameplate capacity of less than 5,000 kilowatts.

Subd. 18. **Solar energy generating system.** "Solar energy generating system" means a set of devices whose primary purpose is to produce electricity by means of any combination of collecting, transferring, or converting solar-generated energy with a combined nameplate capacity of 50,000 kilowatts alternating current or more.

Subd. 19. **Utility.** "Utility" means any entity engaged or intending to engage in generating, transmitting, or distributing electric energy in Minnesota. Utility includes but is not limited to a private investor-owned utility, cooperatively owned utility, and public or municipally owned utility.

Subd. 20. **Wind energy conversion system.** "Wind energy conversion system" means a device, including but not limited to a wind charger, windmill, or wind turbine and associated facilities, that converts wind energy to electrical energy.

History: *2024 c 126 art 7 s 2; 2024 c 127 art 43 s 2*

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.

Subd. 2. **Jurisdiction.** (a) The commission has the authority to provide for site and route selection for large energy infrastructure facilities. The commission must issue permits for large energy infrastructure facilities in a timely fashion and in a manner consistent with the overall determination of need for the project under section 216B.2425 or 216B.243, if applicable.

(b) The scope of an environmental review conducted under this chapter must not include: (1) questions of need, including size, type, and timing; (2) alternative system configurations; or (3) voltage.

Subd. 3. **Interstate routes.** If a route is proposed in two or more states, the commission must attempt to reach an agreement with affected states on the entry and exit points before designating a route. The commission, in discharge of the commission's duties under this chapter, may make joint investigations, hold joint hearings within or outside of the state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States. The commission may, pursuant to any consent of Congress, negotiate and enter into any agreements or compacts with agencies of other states for cooperative efforts to certify the construction, operation, and maintenance of large electric power facilities in a manner consistent with this chapter's requirements and to enforce the respective state laws regarding large electric power facilities.

Subd. 4. **Biennial report.** By December 15, 2025, and every odd-numbered year thereafter, the commission must submit a written report to the chairs and ranking minority members of the senate and house of representatives committees with jurisdiction over energy and utilities. The report must:

(1) provide an update on the progress made to permit, approve, and construct the electric utility infrastructure necessary to meet the requirements of section 216B.1691 within the milestones provided under section 216B.1691;

(2) describe efforts made by the commission to engage stakeholders in environmental justice areas, as defined in section 216B.1691, subdivision 1, paragraph (c), in permitting, approving, and constructing electric utility infrastructure under this section, section 216B.1691, or section 216B.243; and

(3) provide information regarding any cumulative impact analysis ordered by the commissioner of the Pollution Control Agency under section 116.065 pertaining to any electric utility infrastructure permitted, approved, or constructed under this section, section 216B.1691, or section 216B.243.

History: *2024 c 126 art 7 s 3; 2024 c 127 art 43 s 3*

216I.04 APPLICABILITY DETERMINATION.

Subdivision 1. **Generally.** This section may be used to determine: (1) whether a proposal meets the definition of large energy infrastructure facility and is subject to the commission's siting or routing jurisdiction under this chapter; or (2) which review process is applicable at the time of the initial application.

Subd. 2. **Solar, wind, or energy storage facilities.** For solar energy generating systems, large wind energy conversion systems, or energy storage systems, the alternating current nameplate capacity of one solar energy generating system, wind energy conversion system, or energy storage system must be combined with the alternating current nameplate capacity of any other solar energy generating system, wind energy conversion system, or energy storage system that:

(1) is constructed within the same 12-month period; and

(2) exhibits characteristics of being a single development, including but not limited to ownership structure, an umbrella sales arrangement, shared interconnection, revenue-sharing arrangements, and common debt or equity financing.

Subd. 3. **Transmission lines.** For transmission lines, the petitioner must describe the applicability question and provide sufficient facts to support the determination.

Subd. 4. **Forms; assistance; written determination.** (a) The commission must provide forms and assistance to help applicants make a request for an applicability determination.

(b) Upon written request from an applicant, the commission or the commission's designee must provide a written determination regarding applicability under this section. The commission or the commission's designee must provide the written determination within 30 days of the date the request was received or 30 days of the date information that the commission requested from the applicant is received, whichever is later. This written determination constitutes a final decision of the commission.

History: *2024 c 126 art 7 s 4; 2024 c 127 art 43 s 4*

216I.05 DESIGNATING SITES AND ROUTES.

Subdivision 1. **Site permit.** (a) A person is prohibited from constructing a large electric generating plant, a solar energy generating system, an energy storage system, or a large wind energy conversion system without a site permit issued by the commission. A person may construct a large electric generating plant, an energy storage system, a solar energy generating system, or a large wind energy conversion system only on a site approved by the commission. A person is prohibited from increasing the generating capacity or output of an electric power plant from under 50 megawatts to more than 50 megawatts without a site permit issued by the commission.

(b) The commission must incorporate into one proceeding the route selection for a high-voltage transmission line that is directly associated with and necessary to interconnect the large electric generating plant, energy storage system, solar energy generating system, or large wind energy conversion system to the transmission system if the applications are submitted jointly under this chapter.

(c) A site permit does not authorize construction of a large electric power generating plant until the permittee has obtained a power purchase agreement or some other enforceable mechanism to sell the power generated by the project. If the permittee does not have a power purchase agreement or other enforceable mechanism at the time the permit is issued, the commission must provide in the permit that the permittee must advise the commission when the permittee obtains a commitment to purchase the power. The commission may establish as a condition in the permit a date by which the permittee must obtain a power purchase agreement or other enforceable mechanism. If the permittee does not obtain a power purchase agreement or other enforceable mechanism by the date required by the permit condition, the site permit is null and void.

Subd. 2. **Route permit.** A person is prohibited from constructing a high-voltage transmission line without a route permit issued by the commission. A person may construct a high-voltage transmission line only along a route approved by the commission.

Subd. 3. **Application.** (a) A person that seeks to construct a large energy infrastructure facility must apply to the commission for a site or route permit, as applicable. The applicant must propose a single route for a high-voltage transmission line.

(b) The application must contain:

(1) a statement of proposed ownership of the facility at the time of filing the application and after commercial operation;

(2) the name of any person or organization initially named as permittee or permittees and the name of any other person to whom the permit may be transferred if transfer of the permit is contemplated;

(3) a description of the proposed large energy infrastructure facility and all associated facilities, including size, type, and timing of the facility;

(4) the environmental information required under subdivision 4;

(5) the names of each owner described under subdivision 8;

(6) United States Geological Survey topographical maps, or other maps acceptable to the commission, that show the entire proposed large energy infrastructure facility;

(7) a document that identifies existing utility and public rights-of-way along or near the large energy infrastructure facility;

(8) the engineering and operational design at each of the proposed sites for the proposed large energy infrastructure facility, and identify transportation, pipeline, and electrical transmission systems that are required to construct, maintain, and operate the facility;

(9) a cost analysis of the proposed large energy infrastructure facility, including the costs to construct, operate, and maintain the facility;

(10) a description of possible design options to accommodate the large energy infrastructure facility's future expansion;

(11) the procedures and practices proposed to acquire, construct, maintain, and restore the large energy infrastructure facility's right-of-way or site;

(12) a list and brief description of federal, state, and local permits that may be required for the proposed large energy infrastructure facility;

(13) a discussion regarding whether a certificate of need application is required and, if a certificate of need application is required, whether the certificate of need application has been submitted;

(14) a discussion regarding any other sites or routes that were considered and rejected by the applicant;

(15) any information the commission requires pursuant to an administrative rule; and

(16) a discussion regarding coordination with Minnesota Tribal governments, as defined under section 10.65, subdivision 2, by the applicant, including but not limited to the notice required under subdivision 5 of this section.

Subd. 4. **Environmental information.** (a) An applicant for a site or route permit must include in the application environmental information for each proposed site or route. The environmental information submitted must include:

(1) a description of each site or route's environmental setting;

(2) a description of the effects the facility's construction and operation has on human settlement, including but not limited to public health and safety, displacement, noise, aesthetics, socioeconomic impacts, environmental justice impacts, cultural values, recreation, and public services;

(3) a description of the facility's effects on land-based economies, including but not limited to agriculture, forestry, tourism, and mining;

(4) a description of the facility's effects on archaeological and historic resources;

(5) a description of the facility's effects on the natural environment, including effects on air and water quality resources, flora, and fauna;

(6) a description of the greenhouse gas emissions associated with constructing and operating the facility;

(7) a description of the facility's climate change resilience;

(8) a description of the facility's effects on rare and unique natural resources;

(9) a list that identifies human and natural environmental effects that are unavoidable if the facility is approved at a specific site or route; and

(10) a description of (i) measures that might be implemented to mitigate the potential human and environmental impacts identified in clauses (1) to (7), and (ii) the estimated costs of the potential mitigative measures.

(b) An applicant that applies using the standard process under section 216I.06 may include the environmental information required under paragraph (a) in the applicant's environmental assessment.

Subd. 5. **Preapplication coordination.** At least 30 days before filing an application with the commission, an applicant must provide notice to: (1) each local unit of government within which a site or route may be proposed; (2) Minnesota Tribal governments, as defined under section 10.65, subdivision 2; and (3) the state

technical resource agencies. The notice must describe the proposed project and provide the entities receiving the notice an opportunity for preapplication coordination or feedback.

Subd. 6. **Preapplication review.** (a) Before submitting an application under this chapter, an applicant must provide a draft application to commission staff for review. A draft application must not be filed electronically.

(b) Commission staff's draft application review must focus on the application's completeness and clarifications that may assist the commission's review of the application. Upon completion of the preapplication review under this subdivision, commission staff must provide the applicant a summary of the completeness review. The applicant may include the completeness review summary with the applicant's application under subdivision 3.

Subd. 7. **Complete applications.** (a) The commission or the commission's designee must determine whether an application is complete and advise the applicant of any deficiencies within ten working days of the date an application is received.

(b) An application is not incomplete if: (1) information that is not included in the application may be obtained from the applicant prior to the initial public meeting; and (2) the information that is not included in the application is not essential to provide adequate notice.

Subd. 8. **Application notice.** (a) Upon finding an application is complete, the commission must:

(1) publish notice of the application in a legal newspaper of general circulation in each county in which the site or route is proposed;

(2) provide notice of the application to any regional development commission, Minnesota Tribal government, as defined under section 10.65, subdivision 2, county, incorporated municipality, and town in which any part of the site or route is proposed;

(3) provide notice of the application and description of the proposed project to each owner whose property is within or adjacent to the proposed site or route for the large energy infrastructure facility; and

(4) provide notice to persons who have requested to be placed on a list maintained by the commission to receive notice of proposed large energy infrastructure facilities.

(b) The commission must identify a standard format and content for application notice. At a minimum, the notice must include: (1) a description of the proposed project, including a map displaying the general area of the proposed site or route; (2) a description detailing how a person may receive more information and future notices regarding the application; and (3) a location where a copy of the application may be reviewed.

(c) The notice must also provide information regarding the date and location of the public meeting where the public may learn more about the proposed project and the commission's review process.

(d) For the purposes of providing mailed notice under this subdivision, an owner is the person indicated in the records of the county auditor or, in a county where tax statements are mailed by the county treasurer, in the records of the county treasurer. If necessary, other appropriate records may be used for purposes of providing mailed notice. The failure to provide mailed notice to a property owner or defects in the notice do not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made.

Subd. 9. **Public meeting.** (a) The commission must hold at least one public meeting in a location near the proposed large energy infrastructure facility project's location to explain the permitting process, present major issues, accept public comments on the scope of the environmental impact statement prepared under section 216I.06 or the addendum prepared under section 216I.07, and respond to questions raised by the public.

(b) At the public meeting and in written comments accepted for at least ten days following the date of the public meeting, the commission must accept comments on (1) potential impacts and alternative sites or routes to be considered in the environmental impact statement prepared under section 216I.06 or the addendum prepared under section 216I.07, and (2) permit conditions.

Subd. 10. **Draft permit; additional considerations.** Upon close of the public comment period following the public meeting in subdivision 9, the commission must:

(1) prepare a draft site or route permit for the large energy infrastructure facility. The draft permit must identify the person or persons who are the permittee, describe the proposed project, and include proposed permit conditions. A draft site permit does not authorize a person to construct a large energy infrastructure facility. The commission may change the draft site permit in any respect before final issuance or may deny the permit; and

(2) identify the scope of the environmental impact statement prepared under section 216I.06 or the addendum prepared under section 216I.07. A member of the commission is prohibited from giving direction to commission environmental review staff on the scope of an environmental assessment, environmental addendum, or environmental impact statement, except in a publicly noticed meeting or through a publicly available commission notice or order.

Subd. 11. **Designating sites and routes; considerations.** (a) The commission's site and route permit determinations must (1) be guided by the state's goals to conserve resources; (2) minimize environmental impacts, and minimize human settlement and other land use conflicts; (3) consider impacts to environmental justice areas, as defined in section 216B.1691, subdivision 1, paragraph (e), including cumulative impacts, as defined in section 116.065, to environmental justice areas; and (4) ensure the state's energy security through efficient, cost-effective energy supply and infrastructure.

(b) When determining whether to issue a site permit for a large energy infrastructure facility, the commission must include but is not limited to:

(1) evaluating research and investigations relating to: (i) large energy infrastructure facilities' effects on land, water, and air resources; and (ii) the effects water and air discharges and electric and magnetic fields resulting from large energy infrastructure facilities have on public health and welfare, vegetation, animals, materials, and aesthetic values, including baseline studies, predictive modeling, and evaluating new or improved methods to minimize adverse impacts of water and air discharges and other matters pertaining to large energy infrastructure facilities' effects on the water and air environment;

(2) conducting environmental evaluation of sites and routes that are proposed for future development and expansion, and the relationship of proposed sites and routes for future development and expansion to Minnesota's land, water, air, and human resources;

(3) evaluating the effects of measures designed to minimize adverse environmental effects;

(4) evaluating the potential for beneficial uses of waste energy from proposed large electric power generating plants;

(5) analyzing the direct and indirect economic impact of proposed sites and routes, including but not limited to productive agricultural land lost or impaired;

(6) evaluating adverse direct and indirect environmental effects that are unavoidable should the proposed site and route be accepted;

(7) evaluating alternatives to the applicant's proposed site or route, if applicable;

(8) when appropriate, evaluating potential routes that would use or parallel existing railroad and highway rights-of-way;

(9) evaluating governmental survey lines and other natural division lines of agricultural land to minimize interference with agricultural operations;

(10) evaluating the future needs for large energy infrastructure facilities in the same general area as any proposed site or route;

(11) evaluating irreversible and irretrievable commitments of resources if the proposed site or route is approved;

(12) when appropriate, considering the potential impacts raised by other state and federal agencies and local entities;

(13) evaluating the benefits of the proposed facility with respect to (i) the protection and enhancement of environmental quality, and (ii) the reliability of state and regional energy supplies;

(14) evaluating the proposed facility's impact on socioeconomic factors; and

(15) evaluating the proposed facility's employment and economic impacts in the facility site's vicinity and throughout Minnesota, including the quantity, quality, and compensation level of construction and permanent jobs. The commission must consider a facility's local employment and economic impacts, and may reject or place conditions on a site or route permit based on the local employment and economic impacts.

(c) If the commission's rules are substantially similar to existing federal agency regulations the utility is subject to, the commission must apply the federal regulations.

(d) The commission is prohibited from designating a site or route that violates state agency rules.

(e) When applicable, the commission must make a specific finding that the commission considered locating a route for a high-voltage transmission line on an existing high-voltage transmission route and using parallel existing highway right-of-way. To the extent an existing high-voltage transmission route or parallel existing right-of-way is not used for the route, the commission must state the reasons.

Subd. 12. **Final decision.** (a) The commission must issue a site or route permit that is demonstrated to be in the public interest pursuant to this chapter. The commission may require any reasonable conditions in the site or route permit that are necessary to protect the public interest. The commission maintains continuing jurisdiction over the route and site permits and any conditions contained in the route and site permits.

(b) The commission is prohibited from issuing a site permit in violation of the site selection standards and criteria established under this section and in rules the commission adopts. When the commission designates a site, the commission must issue a site permit to the applicant with any appropriate conditions. The commission must publish a notice of the commission's decision in the Environmental Quality Board Monitor within 30 days of the date the commission issues the site permit.

(c) The commission is prohibited from issuing a route permit in violation of the route selection standards and criteria established under this section and in rules the commission adopts. When the commission designates a route, the commission must issue a permit for the construction of a high-voltage transmission line that specifies the design, routing, right-of-way preparation, and facility construction the commission deems necessary, including any other appropriate conditions. The commission may order the construction of high-voltage transmission line facilities that are capable of expanding transmission capacity through multiple circuiting or design modifications. The commission must publish a notice of the commission's decision in the Environmental Quality Board Monitor within 30 days of the date the commission issues the route permit.

(d) The commission must require as a condition of permit issuance, including the issuance of a modified permit for a repowering project, as defined in section 216B.243, subdivision 8, paragraph (b), that the recipient of a site or route permit to construct an energy infrastructure facility, including all of the permit recipient's construction contractors and subcontractors on the project: (1) must pay no less than the prevailing wage rate, as defined in section 177.42; and (2) is subject to the requirements and enforcement provisions under sections 177.27, 177.30, 177.32, 177.41 to 177.435, and 177.45.

(e) Immediately following the commission's vote granting an applicant a site or route permit, and prior to issuance of a written commission order embodying the decision, the applicant may submit to commission staff for review preconstruction compliance filings specifying details of the applicant's proposed site or route operations.

Subd. 13. **Commission; technical expertise and other assistance.** (a) The commission must consult with other state agencies and obtain technical expertise and other assistance for activities and proceedings under this chapter.

(b) Notwithstanding the requirements of section 216B.33, employees of the commission may take any action related to the requirements of this chapter immediately following a hearing and vote by the commission, prior to issuing a written order, finding, authorization, or certification.

History: *2024 c 126 art 7 s 5; 2024 c 127 art 43 s 5*

216I.06 APPLICATIONS; MAJOR REVIEW.

Subdivision 1. **Environmental review.** (a) The commission must prepare an environmental impact statement on each proposed large energy infrastructure facility for which a complete application has been submitted. An environmental impact statement means a detailed written statement that describes a large energy infrastructure facility and satisfies the requirements of section 116D.04. For the purposes of environmental review, the commission is prohibited from considering whether or not the project is needed. No other state environmental review documents are required. The commission must study and evaluate any site or route identified by the commission under section 216I.05, subdivision 10, clause (2).

(b) For a cogeneration facility, as defined in section 216H.01, subdivision 1a, that is a large electric power generating plant and is not proposed by a utility, the commission must make a finding in the environmental impact statement whether the project is likely to result in a net reduction of carbon dioxide emissions, considering both the utility providing electric service to the proposed cogeneration facility and any reduction in carbon dioxide emissions resulting from increased efficiency from thermal energy production on the part of the customer that operates or owns the proposed cogeneration facility.

(c) The commission must publish a draft environmental impact statement and a scoping document for the environmental impact statement under section 216I.05, subdivision 10. The public may provide comments

on the draft environmental impact statement at the public hearing and comment period under subdivision 2.

(d) The commission must publish a final environmental impact statement responding to the timely substantive comments on the draft environmental impact statement consistent with the scope approved by the commission under section 216I.05, subdivision 10, clause (2). The final environmental impact statement must discuss at appropriate points in the final environmental impact statement any reasonable opposing views relating to scoping issues that were not adequately discussed in the draft environmental impact statement and must indicate a response to the reasonable opposing views. When making the commission's final decision, the commission must consider the final environmental impact statement and the entirety of the record related to human and environmental impacts.

(e) The commission must determine the adequacy of the final environmental impact statement. The commission must not decide the adequacy for at least ten days after the availability of the final environmental impact statement is announced in the EQB Monitor. The final environmental impact statement is adequate if the final environmental impact statement:

(1) addresses the issues and alternatives raised in scoping;

(2) provides responses to the timely substantive comments received during the draft environmental impact statement review process; and

(3) was prepared in compliance with the procedures in sections 216I.05 and 216I.06.

If the commission finds that the environmental impact statement is not adequate, the commission must direct staff to respond to the deficiencies and resubmit the revised environmental impact statement to the commission as soon as possible.

Subd. 2. **Public hearing.** (a) No sooner than 15 days after the date the draft environmental impact statement is published, the commission must hold a public hearing on an application for a large energy infrastructure facility site or route permit. A hearing held to designate a site or route must be conducted by an administrative law judge from the Office of Administrative Hearings.

(b) The commission may designate a portion of the hearing to be conducted as a contested case proceeding under chapter 14.

(c) The commission must provide notice of the hearing at least ten days before but no earlier than 45 days before the date the hearing commences. The commission must provide notice by (1) publishing in a legal newspaper of general circulation in the county in which the public hearing is to be held, (2) mailing to chief executives of the regional development commissions, counties, organized towns, townships, and incorporated municipalities in which a site or route is proposed, and (3) Tribal governments, as defined by section 10.65, subdivision 2.

(d) Any person may appear at the hearings and offer testimony and exhibits without the necessity of intervening as a formal party to the proceedings. The administrative law judge may allow any person to ask questions of other witnesses.

(e) The administrative law judge must hold a portion of the hearing in the area where the large energy infrastructure facility's location is proposed.

(f) The commission and administrative law judge must accept written comments for at least 20 days after the public hearing's date.

Subd. 3. **Administrative law judge report.** The administrative law judge must issue a report and recommendations after completion of post-hearing briefing or the date the public comment period under subdivision 2 closes, whichever is later.

Subd. 4. **Timing.** The commission must make a final decision on an application within 60 days of the date the administrative law judge's report is received. A final decision on the site or route permit request must be made within one year of the date the commission determines an application is complete. The commission may extend the time limit under this subdivision for up to three months for just cause or upon agreement with the applicant.

History: *2024 c 126 art 7 s 6; 2024 c 127 art 43 s 6*

216I.07 APPLICATIONS; STANDARD REVIEW.

Subdivision 1. **Standard review.** An applicant who seeks a site or route permit for which the applicant's proposal is one of the projects identified in this section may follow the procedures under this section in lieu of the procedures under section 216I.06. The applicant must notify the commission at the time the application is submitted which procedure the applicant has elected to follow.

Subd. 2. **Applicable projects.** The requirements and procedures under this section apply to projects for which the applicant's proposal is:

(1) large electric power generating plants with a capacity of less than 80 megawatts;

(2) large electric power generating plants that are fueled by natural gas;

(3) high-voltage transmission lines with a capacity between 100 and 300 kilovolts;

(4) high-voltage transmission lines with a capacity in excess of 300 kilovolts and less than 30 miles in length in Minnesota;

(5) high-voltage transmission lines with a capacity in excess of 300 kilovolts, if at least 80 percent of the distance of the line in Minnesota, as proposed by the applicant, is located along existing high-voltage transmission line right-of-way;

(6) solar energy systems;

(7) energy storage systems; and

(8) large wind energy conversion systems.

Subd. 3. **Environmental review.** (a) For the projects identified in subdivision 2 and following the procedures under this section, the applicant must prepare and submit an environmental assessment with the application. A draft of the environmental assessment must also be provided to commission staff as part of the preapplication review under section 216I.05, subdivision 6. The environmental assessment must (1) contain information regarding the proposed project's human and environmental impacts, and (2) address mitigating measures for identified impacts. The environmental assessment is the only state environmental review document that must be prepared for the proposed project.

(b) If after the public meeting the commission identifies other sites or routes or potential impacts for review, the commission must prepare an addendum to the environmental assessment that evaluates (1) the human and environmental impacts of the alternative site or route, and (2) any additional mitigating measures related to the identified impacts consistent with the scoping decision made pursuant to section 216I.06,

subdivision 10, clause (2). The public may provide comments on the environmental assessment and any addendum to the environmental assessment at the public hearing and comment period under subdivision 4. When making the commission's final decision, the commission must consider the environmental assessment, the environmental assessment addendum, if any, and the entirety of the record related to human and environmental impacts.

Subd. 4. **Public hearing.** (a) After the commission issues any environmental assessment addendum and a draft permit under section 216I.05, subdivision 10, the commission must hold a public hearing in the area where the facility's location is proposed.

(b) The commission must provide notice of the public hearing in the same manner as required under section 216I.06, subdivision 2.

(c) The commission must conduct the public hearing under procedures established by the commission and may request that an administrative law judge from the Office of Administrative Hearings conduct the hearing and prepare a report.

(d) The applicant must be present at the hearing to present evidence and to answer questions. The commission must provide opportunity at the public hearing for any person to present comments and to ask questions of the applicant and commission staff. The commission must also provide interested persons an opportunity to submit written comments into the record after the public hearing.

Subd. 5. **Timing.** (a) The commission must make a final decision on an application within 60 days of the date the public comment period following completion of the public hearing closes, or the date the report is filed, whichever is later. A final decision on the request for a site or route permit under this section must be made within six months of the date the commission determines the application is complete. The commission may extend the time limit under this subdivision for up to three months for just cause or upon agreement with the applicant.

(b) Immediately following the commission's vote granting an applicant a site or route permit, and prior to issuance of a written commission order embodying the decision, the applicant may submit to commission staff for review preconstruction compliance filings specifying details of the applicant's proposed site or route operations.

History: *2024 c 126 art 7 s 7; 2024 c 127 art 43 s 7*

216I.08 APPLICATIONS; LOCAL REVIEW.

Subdivision 1. **Local review authorized.** (a) Notwithstanding sections 216I.06 and 216I.07, an applicant who seeks a site or route permit for one of the projects identified in subdivision 2 may apply to the local units of government that have jurisdiction over the site or route for approval to build the project. If local approval is granted, a site or route permit is not required from the commission. If the applicant files an application with the commission, the applicant waives the applicant's right to seek local approval for the project.

(b) A local unit of government with jurisdiction over a project identified in this section to whom an applicant has applied for approval to build the project may request that the commission assume jurisdiction and make a decision on a site or route permit pursuant to the applicable provisions under this chapter. A local unit of government must file the request with the commission within 60 days of the date an applicant files an application for the project with any one local unit of government. If one of the local units of government with jurisdiction over the project requests that the commission assume jurisdiction, jurisdiction over the project transfers to the commission. If the local units of government maintain jurisdiction over the

project, the commission must select the appropriate local unit of government to be the responsible governmental unit to conduct the project's environmental review.

Subd. 2. **Applicable projects.** An applicant may seek approval under this section from a local unit of government to construct:

(1) large electric power generating plants and solar energy generating systems with a capacity of less than 80 megawatts;

(2) large electric power generating plants of any size that burn natural gas and are intended to be a peaking plant;

(3) high-voltage transmission lines with a capacity between 100 and 200 kilovolts;

(4) substations with a voltage designed for and capable of operation at a nominal voltage of 100 kilovolts or more;

(5) a high-voltage transmission line service extension to a single customer between 200 and 300 kilovolts and less than ten miles in length;

(6) a high-voltage transmission line rerouting to serve the demand of a single customer, if at least 80 percent of the rerouted line is located on property owned or controlled by the customer or the owner of the transmission line;

(7) energy storage systems; and

(8) large wind energy conversion systems with a capacity less than 25 megawatts.

Subd. 3. **Notice of application.** An applicant must notify the commission that the applicant has elected to seek local approval of the proposed project within ten days of the date the applicant submits an application to a local unit of government to approve an eligible project.

Subd. 4. **Environmental review.** (a) A local unit of government that maintains jurisdiction over a qualifying project must prepare or request that the applicant prepare an environmental assessment on the project. The local unit of government must afford the public an opportunity to participate in developing the scope of the environmental assessment before the environmental assessment is prepared.

(b) Upon completing the environmental assessment, the local unit of government must publish notice in the EQB Monitor that indicates (1) the environmental assessment is available for review, (2) how a copy of the document may be reviewed, (3) that the public may comment on the document, and (4) the procedure for submitting comments to the local unit of government. Upon completion of the environmental assessment, the local unit of government must provide a copy of the environmental assessment to the commission.

(c) The local unit of government is prohibited from making a final decision on the permit until at least ten days after the date the notice appears in the EQB Monitor. If more than one local unit of government has jurisdiction over a project and the local units of government cannot agree which local unit of government prepares the environmental assessment, any local unit of government or the applicant may request that the commission select the appropriate local unit of government to be the responsible governmental unit to conduct an environmental review of the project.

History: *2024 c 126 art 7 s 8; 2024 c 127 art 43 s 8*

216I.09 PERMIT AMENDMENTS.

Subdivision 1. **Applicability.** This section applies to a request by the owner of the large energy infrastructure facility to modify any provision or condition of a site or route permit issued by the commission, including the following:

(1) upgrades or rebuilds an existing electric line and associated facilities to a voltage capable of operating between 100 kilovolts and 300 kilovolts that does not result in significant changes in the human and environmental impact of the facility; or

(2) repowers or refurbishes a large electric power generating plant, a large wind energy conversion system, a solar energy generating system, or an energy storage system that increases the efficiency of the system, provided the project does not increase the developed area within the permitted site or increase the nameplate capacity of the facility's most recent interconnection agreement. For a large electric power generating plant, an increase in efficiency is a reduction in the amount of British thermal units required to produce a kilowatt hour of electricity at the facility.

Subd. 2. **Application.** A person that seeks authorization to amend a large energy infrastructure facility must apply to the commission. The application must be in writing and must (1) describe the alteration to be made or the amendment sought, and (2) explain why the request meets the eligibility criteria under subdivision 1. The application must describe any changes to the environmental impacts evaluated by the commission as part of the initial permit approval. If there are significant changes to the environmental impacts evaluated by the commission as part of the initial permit approval, environmental review must be conducted pursuant to the applicable requirements of Minnesota Rules, chapter 4410, and parts 7849.1000 to 7849.2100.

Subd. 3. **Notice.** The commission must mail notice that the application was received to the persons on the general list and to the persons on the project contact list, if a project list exists.

Subd. 4. **Public comment.** The commission must provide at least a ten-day period for interested persons to submit comments on the application or to request that the matter be brought to the commission for consideration. The applicant may respond to submitted comments within seven days of the date the comment period closes.

Subd. 5. **Timing.** Within 30 days of the date the applicant responds to submitted comments under subdivision 4, the commission must decide whether to authorize the permit amendment, bring the matter to the commission for consideration, or determine that the application requires a permitting decision under another section in this chapter.

Subd. 6. **Decision.** The commission may authorize an amendment but impose reasonable conditions on the approval. The commission must notify the applicant in writing of the commission's decision and send a copy of the decision to any person who requested notification or filed comments on the application.

Subd. 7. **Local review.** For a large electric power generating plant or high-voltage transmission line that was not issued a permit by the commission, the owner or operator of the nonpermitted facility may seek approval of a project listed under subdivision 1 from the local unit of government if the facility qualifies for standard review under section 216I.07 or local review under section 216I.08.

History: *2024 c 126 art 7 s 9; 2024 c 127 art 43 s 9*

216I.10 EXEMPT PROJECTS.

Subdivision 1. **Permit not required.** A permit issued by the commission is not required to construct:

(1) a small wind energy conversion system;

(2) a power plant or solar energy generating system with a capacity of less than 50 megawatts;

(3) an energy storage system with a capacity of less than ten megawatts;

(4) a transmission line that (i) has a capacity of 100 kilovolts or more, and (ii) is less than 1,500 feet in length; and

(5) a transmission line that has a capacity of less than 100 kilovolts.

Subd. 2. **Other approval.** A person that proposes a facility listed in subdivision 1 must (1) obtain any approval required by local, state, or federal units of government with jurisdiction over the project, and (2) comply with the environmental review requirements under chapter 116D and Minnesota Rules, chapter 4410.

History: *2024 c 126 art 7 s 10; 2024 c 127 art 43 s 10*

216I.11 PERMITTING REQUIREMENTS; EXCEPTIONS FOR CERTAIN FACILITIES.

Subdivision 1. **Permit not required.** The following projects do not constitute the construction of a large energy infrastructure facility and may be constructed without a permit issued by the commission:

(1) maintaining or repairing an existing large energy infrastructure facility within an existing site or right-of-way;

(2) adding equipment at an existing substation that does not (i) require more than a one-acre expansion of the land needed for the substation, and (ii) involve an increase in the voltage or changes in the location of existing transmission lines, except that up to the first five transmission line structures outside the substation may be moved to accommodate the equipment additions, provided the structures are not moved more than 500 feet from the existing right-of-way;

(3) reconductoring or reconstructing a high-voltage transmission line that does not result in a change to voltage or a change in right-of-way;

(4) relocating a high-voltage transmission line that is required by a local or state agency as part of road, street, or highway construction;

(5) converting the fuel source of a large electric power generating plant to natural gas, provided the plant is not expanded beyond the developed portion of the plant site; and

(6) starting up an existing large electric power generating plant that has been closed for any period of time at no more than the large electric power generating plant's previous capacity rating and in a manner that does not involve changing the fuel or expanding the developed portion of the plant site.

Subd. 2. **Amendment.** If a modification or other change to an existing large energy infrastructure facility does not qualify for an exception under subdivision 1, the modification or change may qualify as an amendment under section 216I.09.

Subd. 3. **Notice.** A person that proposes to implement changes to a large energy infrastructure facility under subdivision 1, clauses (2) to (5), must notify the commission in writing at least 30 days before commencing construction of the modification or change.

History: *2024 c 126 art 7 s 11; 2024 c 127 art 43 s 11*

216I.12 EMERGENCY PERMITS.

Subdivision 1. **Utility emergency action.** Any utility whose system requires the immediate construction of a large energy infrastructure facility due to a major unforeseen event may apply to the commission for an emergency permit. The application must provide notice in writing of the major unforeseen event and the need for immediate construction. The permit must be issued in a timely manner, no later than 195 days after the commission's acceptance of the application and upon a finding by the commission that (1) a demonstrable emergency exists, (2) the emergency requires immediate construction, and (3) adherence to the procedures and time schedules specified under this chapter jeopardizes the utility's electric power system or jeopardizes the utility's ability to meet the electric needs of the utility's customers in an orderly and timely manner.

Subd. 2. **Utility emergency procedures.** A public hearing to determine if an emergency exists must be held within 90 days of the application. The commission, after notice and hearing, must adopt rules specifying the criteria for emergency certification.

History: *2001 c 212 art 7 s 16; 2005 c 97 art 3 s 8; 2023 c 60 art 12 s 57; 2024 c 126 art 7 s 14; art 9 s 5; 2024 c 127 art 43 s 14; art 45 s 5*

216I.13 PERMIT TRANSFER.

Subdivision 1. **Application.** A permittee holding a large energy infrastructure facility site or route permit may request that the commission transfer the permittee's permit. The permittee must provide the name of the existing permittee, the name and description of the entity to which the permit is to be transferred, the reasons for the transfer, a description of the facilities affected, and the proposed effective date of the transfer. The person to whom the permit is to be transferred must provide the commission with information the commission requires to determine whether the new permittee is able to comply with the permit's conditions. The commission must mail notice of receipt of the application to the persons on the general list at least seven days in advance of the date the commission considers the matter. The commission must provide the same notice to persons on the project contact list if a project contact list exists.

Subd. 2. **Approval of transfer.** The commission must approve the transfer if the commission determines that the new permittee complies with the conditions of the permit. The commission, in approving the transfer of a permit, may impose reasonable additional conditions in the permit as part of the approval. The commission may decide to hold a public meeting to provide the public with an opportunity to comment on the request for the transfer prior to making a decision.

History: *2024 c 126 art 7 s 12; 2024 c 127 art 43 s 12*

216I.14 PERMIT REVOCATION OR SUSPENSION.

Subdivision 1. **Initiation of action to revoke or suspend.** The commission may initiate action to consider revoking or suspending a permit on the commission's own motion or upon the request of any person who has made a prima facie showing by affidavit and documentation that a violation of this chapter or the permit has occurred.

Subd. 2. **Hearing.** If the commission initiates action to consider revoking or suspending a permit, the commission must provide the permittee with an opportunity for a contested case hearing conducted by an administrative law judge from the Office of Administrative Hearings.

Subd. 3. **Finding of violation.** If the commission finds that a violation of this chapter or the permit has occurred, the commission may revoke or suspend the permit, require the permittee to undertake corrective

or ameliorative measures as a condition to avoid revocation or suspension, or require corrective measures and suspend the permit. When determining the appropriate sanction, the commission must consider whether:

(1) the violation results in any significant additional adverse environmental effects;

(2) the results of the violation can be corrected or ameliorated; and

(3) suspending or revoking a permit impairs the permittee's electrical power system reliability.

History: *2024 c 126 art 7 s 13; 2024 c 127 art 43 s 13*

216I.15 ANNUAL HEARING.

The commission must hold an annual public hearing at a time and place prescribed by rule in order to afford interested persons an opportunity to be heard regarding any matters relating to the siting and routing of large energy infrastructure facilities. At the meeting, the commission must advise the public of the permits issued by the commission in the past year. The commission must provide at least ten days but no more than 45 days' notice of the annual meeting by mailing or serving electronically, as provided in section 216.17, a notice to those persons who have requested notice and by publication in the EQB Monitor and the commission's weekly calendar.

History: *1973 c 591 s 8; 1975 c 271 s 6; 1977 c 439 s 11; 1980 c 615 s 60; 1982 c 424 s 130; 1984 c 640 s 32; 2001 c 212 art 7 s 17; 2005 c 97 art 3 s 9; 2007 c 10 s 12; 2023 c 60 art 12 s 58; 2024 c 126 art 7 s 14; art 9 s 6; 2024 c 127 art 43 s 14; art 45 s 6*

216I.16 PUBLIC PARTICIPATION.

Subdivision 1. **Public participation; generally.** The commission must adopt broad spectrum citizen participation as a principal of operation. The form of public participation must not be limited to public meetings and hearings and must be consistent with the commission's rules and guidelines under section 216I.26.

Subd. 2. **Public advisor.** The commission shall designate one staff person for the sole purpose of assisting and advising those affected and interested citizens on how to effectively participate in site or route proceedings.

1973 c 591 s 9; 1975 c 271 s 6; 1977 c 439 s 13;1988 c 629 s 20; 2005 c 97 art 3 s 19; 2024 c 126 art 7 s 14; 2024 c 127 art 43 s 14

216I.17 PUBLIC MEETINGS; TRANSCRIPTS; WRITTEN RECORDS.

Meetings of the commission, including hearings, shall be open to the public. Minutes shall be kept of commission meetings and a complete record of public hearings shall be kept. All books, records, files, and correspondence of the commission shall be available for public inspection at any reasonable time. The commission shall also be subject to chapter 13D.

History: *1973 c 591 s 10; 1975 c 271 s 6; 2001 c 212 art 7 s 20; 2005 c 97 art 3 s 19; 2024 c 126 art 7 s 14; 2024 c 127 art 43 s 14*

216I.18 APPLICATION TO LOCAL REGULATION AND OTHER STATE PERMITS.

Subdivision 1. **Site or route permit prevails over local provisions.** To assure the paramount and controlling effect of the provisions herein over other state agencies, regional, county, and local governments, and special purpose government districts, the issuance of a site permit or route permit and subsequent purchase and use of the site or route locations for large energy infrastructure facility purposes is the sole

site or route approval required to be obtained by the permittee. The permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government.

Subd. 2. **Other state permits.** Notwithstanding anything herein to the contrary, a permittee must obtain state permits that may be required to construct and operate large energy infrastructure facilities. A state agency in processing a permittee's facility permit application is bound to the decisions of the commission with respect to (1) the site or route designation, and (2) other matters for which authority has been granted to the commission by this chapter.

Subd. 3. **State agency participation.** (a) A state agency authorized to issue permits required to construct or operate a large energy infrastructure facility must participate during routing and siting at public hearings and all other activities of the commission on specific site or route designations and design considerations of the commission, and must clearly state whether the site or route being considered for designation or permit and other design matters under consideration for approval complies with state agency standards, rules, or policies.

(b) An applicant for a permit under this section or under chapter 216G must notify the commissioner of agriculture if the proposed project impacts cultivated agricultural land. The commissioner may participate and advise the commission as to whether to grant a permit for the project and the best options for mitigating adverse impacts to agricultural lands if the permit is granted. The Department of Agriculture is the lead agency on the development of any agricultural mitigation plan required for the project.

(c) The Minnesota State Historic Preservation Office must participate in the commission's siting and routing activities described in this section. The commission's consideration and resolution of Minnesota State Historic Preservation Office's comments satisfies the requirements of section 138.665, when applicable.

History: *1973 c 591 s 11; 1975 c 271 s 6; 1977 c 439 s 14,15; 1985 c 248 s 70; 2001 c 212 art 7 s 21,22; 2005 c 97 art 3 s 10,19; 2023 c 60 art 12 s 59; 2024 c 126 art 7 s 14; art 9 s 8-10; 2024 c 127 art 43 s 14; art 45 s 8-10*

216I.19 WIND TURBINE LIGHTING SYSTEMS.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given.

(b) "Duration" means the length of time during which the lights of a wind turbine lighting system are lit.

(c) "Intensity" means the brightness of a wind turbine lighting system's lights.

(d) "Light-mitigating technology" means a sensor-based system that reduces the duration or intensity of wind turbine lighting systems by:

(1) using radio frequency or other sensors to detect aircraft approaching one or more wind turbines, or detecting visibility conditions at turbine sites; and

(2) automatically activating appropriate lights until the lights are no longer needed by the aircraft and are turned off or dimmed.

A light-mitigating technology may include an audio feature that transmits an audible warning message to provide a pilot additional information regarding a wind turbine the aircraft is approaching.

(e) "Repowering project" has the meaning given in section 216B.243, subdivision 8, paragraph (b).

(f) "Wind turbine lighting system" means a system of lights installed on an LWECS that meets the applicable Federal Aviation Administration requirements.

Subd. 2. **Application.** This section applies to an LWECS issued a site permit or site permit amendment, including a site permit amendment for an LWECS repowering project, by the commission under section 216F.04 or by a county under section 216F.08, provided that the application for a site permit or permit amendment is filed after July 1, 2021.

Subd. 3. **Required lighting system.** (a) An LWECS subject to this section must be equipped with a light-mitigating technology that meets the requirements established in Chapter 14 of the Federal Aviation Administration's Advisory Circular 70/760-1, Obstruction Marking and Lighting, as updated, unless the Federal Aviation Administration, after reviewing the LWECS site plan, rejects the use of the light-mitigating technology for the LWECS. A light-mitigating technology installed on a wind turbine in Minnesota must be purchased from a vendor approved by the Federal Aviation Administration.

(b) If the Federal Aviation Administration, after reviewing the LWECS site plan, rejects the use of a light-mitigating technology for the LWECS under paragraph (a), the LWECS must be equipped with a wind turbine lighting system that minimizes the duration or intensity of the lighting system while maintaining full compliance with the lighting standards established in Chapter 13 of the Federal Aviation Administration's Advisory Circular 70/760-1, Obstruction Marking and Lighting, as updated.

Subd. 4. **Exemptions.** (a) The Public Utilities Commission or a county that has assumed permitting authority under section 216F.08 must grant an owner of an LWECS an exemption from subdivision 3, paragraph (a), if the Federal Aviation Administration denies the owner's application to equip an LWECS with a light-mitigating technology.

(b) The Public Utilities Commission or a county that has assumed permitting authority under section 216F.08 must grant an owner of an LWECS an exemption from or an extension of time to comply with subdivision 3, paragraph (a), if after notice and public hearing the owner of the LWECS demonstrates to the satisfaction of the commission or county that:

(1) equipping an LWECS with a light-mitigating technology is technically infeasible;

(2) equipping an LWECS with a light-mitigating technology imposes a significant financial burden on the permittee; or

(3) a vendor approved by the Federal Aviation Administration cannot deliver a light-mitigating technology to the LWECS owner in a reasonable amount of time.

History: *1Sp2021 c 4 art 8 s 26; 2024 c 126 art 7 s 14; 2024 c 127 art 43 s 14*

216I.20 IMPROVEMENT OF SITES AND ROUTES.

A permittee that acquires a site or route in accordance with this chapter may proceed to construct or improve the site or route for the intended purposes at any time, subject to section 216I.18, subdivision 2, provided that if the construction and improvement has not commenced within four years after a permit for the site or route has been issued, the permittee must certify to the commission that the site or route continues to meet the conditions upon which the site or route permit was issued.

History: *1973 c 591 s 12; 1975 c 271 s 6; 1977 c 439 s 16; 2001 c 212 art 7 s 23; 2005 c 97 art 3 s 19; 2024 c 126 art 7 s 14; art 9 s 11; 2024 c 127 art 43 s 14; art 45 s 11*

216I.21 EMINENT DOMAIN POWERS; POWER OF CONDEMNATION.

Subdivision 1. **Generally.** Nothing in this section shall invalidate the power of eminent domain vested in utilities by statute or common law existing as of May 24, 1973, except to the extent modified herein. The power of eminent domain shall continue to exist for utilities and may be used according to law to accomplish any of the purposes and objectives of this chapter, including acquisition of the right to utilize existing high-voltage transmission facilities which are capable of expansion or modification to accommodate both existing and proposed conductors. Notwithstanding any law to the contrary, all easement interests shall revert to the then fee owner if a route is not used for high-voltage transmission line purposes for a period of five years.

Subd. 2. **Conduct of proceedings.** In eminent domain proceedings by a utility for the acquisition of real property proposed for construction of a route or a site, the proceedings shall be conducted in the manner prescribed in chapter 117, except as otherwise specifically provided in this section.

Subd. 3. **Payment.** When such property is acquired by eminent domain proceedings or voluntary purchase and the amount the owner shall receive for the property is finally determined, the owner who is entitled to payment may elect to have the amount paid in not more than ten annual installments, with interest on the deferred installments, at the rate of eight percent per annum on the unpaid balance, by submitting a written request to the utility before any payment has been made. After the first installment is paid the petitioner may make its final certificate, as provided by law, in the same manner as though the entire amount had been paid.

Subd. 4. **Contiguous land.** (a) When private real property that is an agricultural or nonagricultural homestead, nonhomestead agricultural land, rental residential property, and both commercial and noncommercial seasonal residential recreational property, as those terms are defined in section 273.13 is proposed to be acquired for the construction of a site or route for a high-voltage transmission line with a capacity of 200 kilovolts or more by eminent domain proceedings, the owner shall have the option to require the utility to condemn a fee interest in any amount of contiguous, commercially viable land which the owner wholly owns in undivided fee and elects in writing to transfer to the utility within 60 days after receipt of the notice of the objects of the petition filed pursuant to section 117.055. Commercial viability shall be determined without regard to the presence of the utility route or site. Within 60 days after receipt by the utility of an owner's election to exercise this option, the utility shall provide written notice to the owner of any objection the utility has to the owner's election, and if no objection is made within that time, any objection shall be deemed waived. Within 120 days of the service of an objection by the utility, the district court having jurisdiction over the eminent domain proceeding shall hold a hearing to determine whether the utility's objection is upheld or rejected. The utility has the burden of proof to prove by a preponderance of the evidence that the property elected by the owner is not commercially viable. The owner shall have only one such option and may not expand or otherwise modify an election without the consent of the utility. The required acquisition of land pursuant to this subdivision shall be considered an acquisition for a public purpose and for use in the utility's business, for purposes of chapter 117 and section 500.24, respectively; provided that a utility shall divest itself completely of all such lands used for farming or capable of being used for farming not later than the time it can receive the market value paid at the time of acquisition of lands less any diminution in value by reason of the presence of the utility route or site. Upon the owner's election made under this subdivision, the easement interest over and adjacent to the lands designated by the owner to be acquired in fee, sought in the condemnation petition for a right-of-way for a high-voltage transmission line with a capacity of 200 kilovolts or more shall automatically be converted into a fee taking.

(b) All rights and protections provided to an owner under chapter 117 apply to acquisition of land or an interest in land under this section.

(c) Within 120 days of an owner's election under this subdivision to require the utility to acquire land, or 120 days after a district court decision overruling a utility objection to an election made pursuant to paragraph (a), the utility must make a written offer to acquire that land and amend its condemnation petition to include the additional land.

(d) For purposes of this subdivision, "owner" means the fee owner, or when applicable, the fee owner with the written consent of the contract for deed vendee, or the contract for deed vendee with the written consent of the fee owner.

Subd. 5. **Notification.** A utility shall notify by certified mail each person who has transferred any interest in real property to the utility after July 1, 1974, but prior to the effective date of Laws 1977, chapter 439, for the purpose of a site or route that the person may elect in writing within 90 days after receipt of notice to require the utility to acquire any remaining contiguous parcel of land pursuant to this section or to return any payment to the utility and require it to make installment payments pursuant to this section.

History: *1973 c 591 s 13; 1977 c 439 s 17; 1978 c 674 s 15; 1980 c 614 s 87; 1Sp1985 c 14 art 4 s 15; 1986 c 444; 1Sp1986 c 1 art 4 s 7; 1987 c 268 art 6 s 1; 2002 c 398 s 1; 2006 c 214 s 20; 2013 c 132 s 4; 2024 c 126 art 7 s 14; 2024 c 127 art 43 s 14*

216I.22 SITES AND ROUTES; RECORDING SURVEY POINTS.

The permanent location of monuments or markers found or placed by a utility in a survey of right-of-way for a route shall be placed on record in the office of the county recorder or registrar of titles. No fee shall be charged to the utility for recording this information.

1977 c 439, s 10; 2024 c 126 art 4 s 14; 2024 c 127 art 43 s 14

216I.23 FAILURE TO ACT.

If the commission fails to act within the times specified under this chapter, the applicant or any affected person may seek an order of the district court requiring the commission to designate or refuse to designate a site or route.

History: *1973 c 591 s 14; 1975 c 271 s 6; 1977 c 439 s 19; 2001 c 212 art 7 s 24; 2005 c 97 art 3 s 19; 2024 c 126 art 7 s 14; art 9 s 12; 2024 c 127 art 43 s 14; art 45 s 12*

216I.24 REVOCATION OR SUSPENSION.

A site or route permit may be revoked or suspended by the commission after adequate notice of the alleged grounds for revocation or suspension and a full and fair hearing in which the affected permittee has an opportunity to confront any witness and respond to any evidence against the permittee and to present rebuttal or mitigating evidence upon a finding by the commission of:

(1) any false statement knowingly made in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted a change in the commission's findings;

(2) failure to comply with material conditions of the site certificate or construction permit, or failure to maintain health and safety standards; or

(3) any material violation of the provisions of this chapter, any rule promulgated pursuant thereto, or any order of the commission.

History: *1977 c 439 s 20; 1978 c 658 s 1; 2001 c 212 art 7 s 25; 2005 c 97 art 3 s 19; 2024 c 126 art 7 s 14; art 9 s 13; 2024 c 127 art 43 s 14; art 45 s 13*

216I.25 JUDICIAL REVIEW.

Any applicant, party, or person aggrieved by the issuance of a site or route permit, minor alteration, amendment, or emergency permit from the commission, by a certification of continuing suitability filed by a permittee with the commission, or by a final order in accordance with any rules promulgated by the commission may appeal to the court of appeals in accordance with chapter 14. The appeal must be filed within 30 days after the date the notice of the commission's permit issuance is published in the EQB Monitor, certification is filed with the commission, or any final order is filed by the commission.

History: *1973 c 591 s 15; 1975 c 271 s 6; 1977 c 439 s 21; 1980 c 509 s 28; 1982 c 424 s 130; 1983 c 247 s 54; 2001 c 212 art 7 s 26; 2005 c 97 art 3 s 19; 2024 c 126 art 7 s 14; art 9 s 14; 2024 c 127 art 43 s 14; art 45 s 14*

216I.26 RULES.

Subdivision 1. **Commission rules.** The commission, in order to give effect to the purposes of this chapter, may adopt rules consistent with this chapter, including promulgation of site and route designation criteria, the description of the information to be furnished by the utilities, establishment of minimum guidelines for public participation in the development, revision, and enforcement of any rule, plan, or program established by the commission, procedures for the revocation or suspension of a site or route permit, and the procedure and timeliness for proposing alternative routes and sites. A rule adopted by the commission must not grant priority to state-owned wildlife management areas over agricultural lands in the designation of route avoidance areas. Chapter 14 applies to the appeal of rules adopted by the commission to the same extent as it applies to review of rules adopted by any other agency of state government.

Subd. 2. **Office of Administrative Hearings rules.** The chief administrative law judge must adopt procedural rules for public hearings relating to the site and route permit process. The rules must attempt to maximize citizen participation in these processes consistent with the time limits for commission decision established under this chapter.

History: *1973 c 591 s 16; 1975 c 271 s 6; 1977 c 439 s 22; 1978 c 658 s 2; 1982 c 424 s 130; 1984 c 640 s 32; 2001 c 212 art 7 s 27; 2005 c 97 art 3 s 19; 2024 c 126 art 7 s 14; art 9 s 15; 2024 c 127 art 43 s 14; art 45 s 15*

216I.27 ENFORCEMENT, PENALTIES.

Subdivision 1. **Criminal penalty.** Any person who violates this chapter or any rule promulgated hereunder, or knowingly submits false information in any report required by this chapter is guilty of a misdemeanor for the first offense and a gross misdemeanor for the second and each subsequent offense. Each day of violation shall constitute a separate offense.

Subd. 2. **Enforcement.** The provisions of this chapter or any rules promulgated hereunder may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county wherein the violation takes place. The attorney general shall bring any action under this subdivision upon the request of the commission.

Subd. 3. **Civil penalty.** When the court finds that any person has violated this chapter, any rule hereunder, knowingly submitted false information in any report required by this chapter, or has violated any court order issued under this chapter, the court may impose a civil penalty of not more than $10,000 for each violation. These penalties shall be paid to the general fund in the state treasury.

History: *1973 c 591 s 18; 1975 c 271 s 6; 1977 c 439 s 24; 2005 c 97 art 3 s 19; 2024 c 126 art 7 s 14; 2024 c 127 art 43 s 14*

216I.28 ROUTE APPLICATION FEE; APPROPRIATION; FUNDING.

Subdivision 1. **Application fee; appropriation.** An applicant for a site or route permit must pay to the commission a fee to cover the necessary and reasonable costs incurred by the commission to act on the permit application and carry out the requirements of this chapter. The commission may adopt rules providing for fee payment. Section 16A.1283 does not apply to establishment of the fee under this subdivision. All money received under this subdivision must be deposited in a special account. Money in the account is appropriated to the commission to pay expenses incurred to process applications for site and route permits in accordance with this chapter and, in the event expenses are less than the fee paid, to refund the excess fee paid to the applicant.

Subd. 2. **Funding; assessment.** The commission shall finance its baseline studies, general environmental studies, development of criteria, inventory preparation, monitoring of conditions placed on site and route permits, and all other work, other than specific site and route designation, from an assessment made quarterly, at least 30 days before the start of each quarter, by the commission against all utilities with annual retail kilowatt-hour sales greater than 4,000,000 kilowatt-hours in the previous calendar year.

Each share shall be determined as follows: (1) the ratio that the annual retail kilowatt-hour sales in the state of each utility bears to the annual total retail kilowatt-hour sales in the state of all these utilities, multiplied by 0.667, plus (2) the ratio that the annual gross revenue from retail kilowatt-hour sales in the state of each utility bears to the annual total gross revenues from retail kilowatt-hour sales in the state of all these utilities, multiplied by 0.333, as determined by the commission. The assessment shall be credited to the special revenue fund and shall be paid to the state treasury within 30 days after receipt of the bill, which shall constitute notice of said assessment and demand of payment thereof. The total amount which may be assessed to the several utilities under authority of this subdivision shall not exceed the sum of the annual budget of the commission for carrying out the purposes of this subdivision. The assessment for the third quarter of each fiscal year shall be adjusted to compensate for the amount by which actual expenditures by the commission for the preceding fiscal year were more or less than the estimated expenditures previously assessed.

History: *1973 c 591 s 19; 1975 c 271 s 6; 1977 c 439 s 25; 1981 c 356 s 314,315; 1982 c 482 s 5; 1Sp1985 c 13 s 240; 1987 c 186 s 15; 1987 c 304 s 1; 1988 c 690 art 1 s 4; 1989 c 335 art 1 s 269; 1990 c 597 s 56; 1995 c 220 s 110; 2001 c 212 art 7 s 28; 2005 c 97 art 3 s 12,19; 2011 c 97 s 29; 2024 c 126 art 7 s 14; 2024 c 127 art 43 s 14*

Attachment E– Minn. Stat. §216B.631

https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/60/

Sec. 25.

[216B.631] COMPENSATION FOR PARTICIPANTS IN PROCEEDINGS.

Subdivision 1. Definitions.

(a) For the purposes of this section, the following terms have the meanings given.

(b) "Participant" means a person who files comments or appears in a commission proceeding concerning one or more public utilities, excluding public hearings held in contested cases and commission proceedings conducted to receive general public comments.

(c) "Party" means a person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding, other than public hearings, concerning one or more public utilities.

(d) "Proceeding" means:

(1) a rate change proceeding under section 216B.16, including a request to withdraw, defer, or modify a petition to change rates;

(2) a proceeding in which the commission considers a utility request for cost recovery through general rates or riders;

(3) a proceeding in which the commission considers a determination related to ratepayer protections, service quality, or disconnection policies and practices, including but not limited to utility compliance with the requirements of sections 216B.091 to 216B.0993;

(4) a proceeding in which the commission considers determinations directly related to low-income affordability programs, including but not limited to utility compliance with the requirements of section 216B.16, subdivisions 14, 15, and 19, paragraph (a), clause (3);

(5) a proceeding related to the design or approval of utility tariffs or rates;

(6) a proceeding related to utility performance measures or incentives, including but not limited to proceedings under sections 216B.16, subdivision 19, paragraph (h); 216B.167; and 216B.1675;

(7) proceedings related to distribution system planning and grid modernization, including but not limited to proceedings in compliance with the requirements in section 216B.2425, subdivision 2, paragraph (e);

(8) investigations or inquiries initiated by the commission or the Department of Commerce; or

(9) proceedings related to utility pilot programs in which the commission considers a proposal with a proposed cost of at least $5,000,000.

(e) "Public utility" has the meaning given in section 216B.02, subdivision 4.

Subd. 2. Participants; eligibility.

Any of the following participants is eligible to receive compensation under this section:

(1) a nonprofit organization that:

(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code;

(ii) is incorporated or organized in Minnesota;

(iii) is governed under chapter 317A or section 322C.1101; and

(iv) the commission determines under subdivision 3, paragraph (c), would suffer financial hardship if not compensated for the nonprofit organization's participation in the applicable proceeding; or

(2) a Tribal government of a federally recognized Indian Tribe that is located in Minnesota.

Subd. 3. Compensation; conditions.

(a) The commission may order a public utility to compensate all or part of a participant's

reasonable costs incurred to participate in a proceeding before the commission if the participant is eligible under subdivision 2 and the commission finds:
(1) that the participant has materially assisted the commission's deliberation; and
(2) if the participant is a nonprofit organization, that the participant would suffer financial hardship if the nonprofit organization's participation in the proceeding was not compensated.
(b) In determining whether a participant has materially assisted the commission's deliberation, the commission must find that:
(1) the participant made a unique contribution to the record and represented an interest that would not otherwise have been adequately represented;
(2) the evidence or arguments presented or the positions taken by the participant were an important factor in producing a fair decision;
(3) the participant's position promoted a public purpose or policy;
(4) the evidence presented, arguments made, issues raised, or positions taken by the participant would not otherwise have been part of the record;
(5) the participant was active in any stakeholder process included in the proceeding; and
(6) the proceeding resulted in a commission order that adopted, in whole or in part, a position advocated by the participant.
(c) In determining whether a nonprofit participant has demonstrated that a lack of compensation would present financial hardship, the commission must find that the nonprofit participant:
(1) had an average annual payroll expense less than $600,000 for participation in commission proceedings over the previous three years; and
(2) has fewer than 30 full-time equivalent employees.
(d) In reviewing a compensation request, the commission must consider whether the costs presented in the participant's claim are reasonable. If the commission determines that an eligible participant materially assisted the commission's deliberation, the commission shall award all or part of the requested compensation, up to the maximum amounts provided under subdivision 4.

Subd. 4. Compensation; amount.

(a) Compensation must not exceed $50,000 for a single participant in any proceeding, except that:
(1) if a proceeding extends longer than 12 months, a participant may request and be awarded compensation of up to $50,000 for costs incurred in each calendar year; and
(2) for a contested case proceeding, a participant may request and be awarded up to $75,000.
(b) No single participant may be awarded more than $200,000 under this section in a single calendar year.
(c) Compensation requests from joint participants must be presented as a single request.
(d) Notwithstanding paragraphs (a) and (b), the commission must not, in any calendar year, require a single public utility to pay aggregate compensation under this section that exceeds the following amounts:
(1) $100,000, for a public utility with up to $300,000,000 annual gross operating revenue in Minnesota;
(2) $275,000, for a public utility with at least $300,000,000 but less than $900,000,000 annual gross operating revenue in Minnesota;
(3) $375,000, for a public utility with at least $900,000,000 but less than $2,000,000,000 annual gross operating revenue in Minnesota; and
(4) $1,250,000, for a public utility with $2,000,000,000 or more annual gross operating revenue in Minnesota.

(e) When requests for compensation from any public utility approach the limits established in paragraph (d), the commission may give priority to requests from participants that received less than $150,000 in total compensation during the previous two years and from participants who represent residential ratepayers, particularly those residential ratepayers who the participant can demonstrate have been underrepresented in past commission proceedings.

Subd. 5. Compensation; process.

(a) A participant seeking compensation must file a request and an affidavit of service with the commission, and serve a copy of the request on each party to the proceeding. The request must be filed no more than 30 days after the later of:

(1) the expiration of the period within which a petition for rehearing, amendment, vacation, reconsideration, or reargument must be filed; or

(2) the date the commission issues an order following rehearing, amendment, vacation, reconsideration, or reargument.

(b) A compensation request must include:

(1) the name and address of the participant or nonprofit organization the participant is representing;

(2) evidence of the organization's nonprofit, tax-exempt status, if applicable;

(3) the name and docket number of the proceeding for which compensation is requested;

(4) for a nonprofit participant, evidence supporting the nonprofit organization's eligibility for compensation under the financial hardship test under subdivision 3, paragraph (c);

(5) amounts of compensation awarded to the participant under this section during the current year and any pending requests for compensation, itemized by docket;

(6) an itemization of the participant's costs, not including overhead costs;

(7) participant revenues dedicated to the proceeding;

(8) the total compensation request; and

(9) a narrative describing the unique contribution made to the proceeding by the participant.

(c) A participant must comply with reasonable requests for information by the commission and other parties or participants. A participant must reply to information requests within ten calendar days of the date the request is received, unless doing so would place an extreme hardship upon the replying participant. The replying participant must provide a copy of the information to any other participant or interested person upon request. Disputes regarding information requests may be resolved by the commission.

(d) A party or participant objecting to a request for compensation must, within 30 days after service of the request for compensation, file a response and an affidavit of service with the commission. A copy of the response must be served on the requesting participant and all other parties to the proceeding.

(e) The requesting participant may file a reply with the commission within 15 days after a response is filed under paragraph (d). A copy of the reply and an affidavit of service must be served on all other parties to the proceeding.

(f) If additional costs are incurred by a participant as a result of additional proceedings following the commission's initial order, the participant may file an amended request within 30 days after the commission issues an amended order. Paragraphs (b) to (e) apply to an amended request.

(g) The commission must issue a decision on participant compensation within 120 days of the date a request for compensation is filed by a participant.

(h) The commission may extend the deadlines in paragraphs (d), (e), and (g) for up to 30 days upon the request of a participant or on the commission's own initiative.

(i) A participant may request reconsideration of the commission's compensation decision within 30 days of the decision date.

Subd. 6. Compensation; orders.

(a) If the commission issues an order requiring payment of participant compensation, the public utility that was the subject of the proceeding must pay the full compensation to the participant and file proof of payment with the commission within 30 days after the later of:

(1) the expiration of the period within which a petition for reconsideration of the commission's compensation decision must be filed; or

(2) the date the commission issues an order following reconsideration of the commission's order on participant compensation.

(b) If the commission issues an order requiring payment of participant compensation in a proceeding involving multiple public utilities, the commission must apportion costs among the public utilities in proportion to each public utility's annual revenue.

(c) The commission may issue orders necessary to allow a public utility to recover the costs of participant compensation on a timely basis.

Subd. 7. Report.

By July 1, 2026, the commission must report to the chairs and ranking minority members of the legislative committees with primary jurisdiction over energy policy on the operation of this section. The report must include but is not limited to:

(1) the amount of compensation paid each year by each utility;

(2) each recipient of compensation, the commission dockets in which compensation was awarded, and the compensation amounts; and

(3) the impact of the participation of compensated participants.

Subd. 8. Sunset.

This section expires July 1, 2031.

EFFECTIVE DATE.

This section is effective the day following final enactment and applies to any proceeding in which the commission has not issued a final order as of that date.

Public Utilities Commission's Public Participation Processes

2020
EVALUATION REPORT

Program Evaluation Division
Office of the Legislative Auditor
State of Minnesota

Program Evaluation Division

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OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA • James Nobles, Legislative Auditor

July 2020

Members of the Legislative Audit Commission:

The Public Utilities Commission (PUC) regulates telecommunications and gas and electric utilities in Minnesota. It also permits energy facilities, such as power plants and pipelines.

PUC's public participation processes are complex, varied, and have been implemented inconsistently. Further, PUC has not done a good job helping the public understand how to participate in those processes. We make a number of recommendations for improvements.

PUC cooperated fully with our evaluation, and we thank the agency for its assistance.

Sincerely,

James Nobles
Legislative Auditor

Judy Randall
Deputy Legislative Auditor

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THE GREAT SEAL OF THE STATE OF MINNESOTA
L'ETOILE DU NORD
1858

Summary

Public Utilities Commission's Public Participation Processes

Key Facts and Findings:

- PUC regulates telecommunications, electric and natural gas utilities, and energy facility permitting. It makes most of its decisions using quasi-judicial procedures. (pp. 3-4, 10-12)
- A key role of public participation in PUC cases is to help develop the official record on which the commission must base its decisions. (pp. 12-13)
- PUC's public participation processes vary significantly from case to case and are administered by multiple state agencies, which makes those processes complex and challenging for the public to navigate. (pp. 14-15, 18-22)
- The law does not require notification of tribal governments about PUC cases that may affect them, even when it requires such notification for other governments. (p. 26)
- PUC has done a poor job educating the public about the roles of its partner agencies and the complex processes that these agencies administer. (p. 21)
- PUC has done a poor job educating the public about PUC's unique role and processes, and has not provided adequate resources to help the public participate. (pp. 31-38)
- PUC has established "attendee protocols" to maintain order in its meetings, but these protocols have varied and staff have enforced them inconsistently. (p. 48)
- PUC was not adequately prepared to administer meetings regarding a controversial pipeline. PUC did not provide its staff with adequate guidance, support, or oversight, which resulted in inconsistent practices and frustration among attendees and staff. (pp. 68-78)

Key Recommendations:

- PUC should provide more and better resources to help the public understand PUC's unique role and the role of the public in PUC's proceedings. (pp. 32, 36-37, 43)
- PUC should provide better guidance to its staff and partner agencies to ensure consistency and fairness across public participation processes. (pp. 22, 39)
- The Legislature should require notification of affected tribal governments whenever notification of other affected governments is required. (p. 27)
- PUC leadership should provide more oversight of the agency's public participation processes and better prepare for cases with significant public interest. (p. 78)

PUC proceedings are complex; the commission should do more to facilitate participation.

OFFICE OF THE LEGISLATIVE AUDITOR **JULY 2020**

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Report Summary

The Public Utilities Commission (PUC) regulates telecommunications and electric and natural gas utilities in Minnesota; it also permits energy facilities, including power plants, transmission lines, wind-energy systems, and pipelines. In this evaluation, we focused on public participation in PUC's energy facility cases.

PUC is composed of five commissioners who are appointed by the Governor and approved by the Senate. PUC makes most of its regulatory decisions using quasi-judicial procedures that resemble those of courts. PUC's work is largely driven by petitions from utilities and other entities, such as requests to build power plants, rather than its own policy initiatives.

State law requires PUC to provide opportunities for the public to provide input.

State law requires PUC to provide the public with opportunities to participate in its cases, but these opportunities vary significantly across different types of cases.

PUC must base its regulatory decisions on: (1) criteria in law, such as the impact a proposed project may have on humans or the environment; and (2) the information in the official record for the case, which may include evidence about the need for the proposed project or its potential impacts. The key role of the public in PUC cases is to help develop the official record by providing evidence or testimony related to the criteria in law.

State law requires PUC to "adopt broad spectrum participation as a principal of operation" with respect to energy facilities in particular.[1] State law also identifies specific opportunities in which PUC must allow the public to provide input on a given case. For example, at various points in a case, the public may submit written comments, provide comments or ask questions at public meetings or hearings, propose alternatives to the project, or formally "intervene" as a party to a case. But, the complex set of laws that govern energy facility cases guarantee varying participation opportunities across different types of cases. The complexity of these processes can be challenging for the public to navigate.

By law, other state agencies administer some public participation processes for PUC, which increases the complexity of those processes.

The Department of Commerce conducts the environmental reviews of proposed energy facilities for PUC. As such, it administers the public participation opportunities that accompany environmental reviews. Administrative law judges from the Office of Administrative Hearings hold public hearings in certain PUC cases to establish the facts in the case. These two agencies administer many of the public participation processes associated with PUC's cases, often alongside PUC staff.

The fact that PUC's public participation processes are administered by multiple state agencies makes those processes complex for participants. PUC has not provided the public with sufficient information to help it understand these complex processes or the roles that its partner agencies play. We recommend that PUC provide more information to the public.

Further, PUC has not provided adequate guidance to its staff or partner agencies about the administration or coordination of public participation processes. As such, the processes have involved unnecessary variation and have been confusing for some. We recommend that PUC more formally coordinate among its staff and agency partners.

PUC and the Department of Commerce have at times delegated some of the logistical duties associated with these participation processes—such as reserving and renting venues for public meetings or hearings—to the applicants whose proposed projects are under review. PUC should direct its staff and partner agencies not to delegate these responsibilities, as it provides applicants

[1] *Minnesota Statutes* 2019, 216E.08, subd. 2.

with too much actual or perceived control over the state's processes.

Until recently, PUC had not formally consulted with American Indian tribes, and state law does not always require notification of affected tribes.

In recent years, several tribes have intervened in PUC cases. PUC did not have a formal policy of consulting with tribes until 2019.

State law requires PUC, its partner agencies, and applicants to notify affected units of government (such as municipalities and counties) at various stages throughout a case; but, it does not always require them to notify affected tribal governments. The Legislature should require PUC, its partner agencies, and applicants to notify tribal governments whenever notification of other affected governments is required.

PUC has not provided adequate guidance to effectively facilitate public participation.

A number of institutions, including various state agencies and nonprofit organizations, advocate on behalf of the public in PUC utility cases. However, fewer institutions advocate for the public in energy facility cases. As a result, affected members of the public may need to advocate for themselves, such as by intervening as parties to a case.

However, PUC has not provided sufficient resources to help the public participate in its processes. For example, PUC's website provides no information about how members of the public may intervene in a case. Further, the website provides little information to help the public understand PUC's unique role as a quasi-judicial body, its complex processes, or the criteria that PUC must use to make its decisions. PUC should provide more and better information on its website to facilitate participation.

PUC has not done a good job helping the public understand both how PUC staff can support public participation and the limits of the support they can give. Moreover, PUC has not done a good job helping its staff understand the scope of their responsibilities to aid public participation. Further, until early 2020, PUC had not provided staff with sufficient agency-wide guidance on issues such as how to handle public comments or complaints, which has resulted in inconsistent practices. PUC should provide the public and its staff with more guidance.

PUC's meetings are not easily accessible to the public.

PUC's five commissioners regularly meet in two types of meetings: (1) agenda meetings, where they make regulatory decisions; and (2) planning meetings, where they make internal operations decisions and discuss broader policy issues with stakeholders.

PUC has sent mixed messages to the public about whether or when they may address the commissioners during agenda meetings. PUC has also not done a good job educating the public about the purpose of its planning meetings. As a result, the opportunity to engage with commissioners directly on policy or other issues has likely been limited to those stakeholders who are most familiar with PUC, such as utilities. PUC should provide clearer guidance about the purpose of its meetings and the role of the public in them.

PUC and its partner agencies offered the public numerous opportunities to participate in the Line 3 case.

In 2015, Enbridge, a Canadian corporation, submitted an application to PUC to replace its Line 3 pipeline, which runs across northern Minnesota, with a larger pipeline along a partly new corridor, also in northern Minnesota.

From 2015 through 2017, Department of Commerce and PUC staff held dozens of public meetings as part of the review process for Line 3. In 2017, an administrative law judge held numerous public hearings to develop the record for the case. In these public meetings or hearings, members of the public could submit project alternatives, testimony, or documents about how the project could impact them, their communities, or the environment. In

PUC has not provided adequate resources to support public participation.

PUC did not use consistent practices when interacting with the public during its Line 3 meetings.

addition, numerous individuals or groups formally intervened as parties to the case.

PUC staff were not adequately prepared to administer some Line 3 meetings.

From mid-2018 through early 2020, PUC met in a series of agenda meetings to make final decisions about the Line 3 case.

Despite the large amount of public interest in the case, PUC chose not to hold most of the Line 3 agenda meetings in a larger venue. Instead, it used its normal meeting space for most of the meetings and used tickets to manage admission. PUC's ticket procedures caused a number of problems. Staff did not offer equal numbers of reserved tickets to each party in the case, made decisions about which party representatives could have access to the reserved tickets, and made inconsistent exceptions to its ticketing procedures. Staff barred several individuals—including representatives of intervening parties—from the meetings for allegedly violating ticket procedures.

PUC also imposed special rules on attendees during the Line 3 meetings. These special rules varied from meeting to meeting, were not all posted publicly, and were enforced inconsistently. Staff were not adequately trained or prepared to enforce the rules, and were expected to perform tasks that fell outside of their normal job duties, such as searching bags. Finally, PUC did not have adequate processes in place to resolve complaints from the public during the meetings.

In future cases, PUC leadership should conduct more advanced planning. It should provide more oversight of staff and training for staff; establish clear, written procedures for staff; and establish, publicly post, and consistently enforce clear, written protocols for the public.

Summary of Agency Response

In a letter dated July 22, 2020, the five commissioners of the Public Utilities Commission stated that, "Over the past year, the Commission has been working diligently to make changes aimed at improving public engagement, some of which are identified in this report." Specifically, the commissioners explained that PUC has adopted a Tribal Engagement and Consultation Policy, is working to rebuild its website to provide more and better information for the public, is working with the Department of Commerce to improve the eDockets system, and has added new positions to support public outreach. Regarding the Line 3 pipeline proceedings, the commissioners noted that PUC provided numerous opportunities for public participation. They noted that PUC made improvements over the course of the Line 3 proceedings as lessons were learned. The commissioners also stated that PUC leadership "has committed to providing more oversight of public participation in general, and particularly for cases that have a significant level of public interest." They went on to say that, "Improved public engagement is a priority for the new leadership team, and this report provides some important recommendations to incorporate into our ongoing efforts."

The full evaluation report, *Public Utilities Commission's Public Participation Processes*, is available at 651-296-4708 or: **www.auditor.leg.state.mn.us/ped/2020/puc2020.htm**

Table of Contents


THE GREAT SEAL OF THE STATE OF MINNESOTA
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Introduction

Minnesota's Public Utilities Commission (PUC) regulates certain public utilities in the state, including telecommunications and electric and gas utilities. It also permits energy facilities, such as pipelines. Minnesota law provides a variety of opportunities for the public to participate in PUC's regulatory proceedings, depending on the type and nature of the case.

In 2018, PUC approved a request by Enbridge, a Canadian corporation, to replace and relocate the "Line 3" crude oil pipeline. This pipeline currently crosses the reservations of two sovereign American Indian tribes and 13 counties in northern Minnesota. The Line 3 case generated significant controversy and led to concerns about how PUC handles public participation.

In April 2019, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate PUC's public participation processes. The Legislative Audit Commission selected this topic largely in response to concerns about how PUC handled public participation in the Line 3 case. Our primary research questions were:

- **What are PUC's processes and rules for public participation?**
- **To what extent do PUC's structure, processes, and rules facilitate public participation?**
- **To what extent does PUC enforce its rules for public participation appropriately and consistently?**

In this evaluation, we reviewed PUC's public participation processes in general. We also looked more closely at public participation in the Line 3 case. It is important to note, however, that we did *not* evaluate PUC's decision to approve the Line 3 pipeline, or evaluate PUC's regulatory decisions in any other cases.

In this evaluation, we defined "the public" broadly to include anyone who may be interested in PUC's regulatory work, as well as anyone directly affected by a proposed project, such as landowners, area residents, local municipalities, local businesses, and advocacy groups. We did not, however, review the participation opportunities afforded to regulated entities. Also, given the interest in the Line 3 case, we focused on public participation processes in PUC's energy facility cases more so than in its utility or telecommunications cases.

We used a variety of research methods to conduct this evaluation. Among other things, we reviewed the statutes and rules that govern PUC's work, PUC's policies and procedures, other PUC documents and data, PUC's website, and other resources that PUC makes available for the public. We also reviewed public participation opportunities in four energy facility cases that were pending before PUC during the

evaluation.[1] In addition, we attended numerous PUC proceedings, both in St. Paul and outstate.

We also solicited input from a wide range of stakeholders. We held a public meeting to gather input on the scope and focus of the evaluation, and we accepted written comments throughout the evaluation. We reached out to:

- Various energy, environmental, and community organizations.
- Anyone who was included on the official contact list for the four energy facility cases that we reviewed.
- Participants that we encountered at PUC proceedings.
- The 11 American Indian tribes located within Minnesota's borders.
- The state, regional, and federal agencies whose work may be affected by PUC's decisions.[2]
- All of PUC's current staff.
- All of the entities that submitted energy facility applications to PUC in the last two years, as well as the telecommunications companies and electric and/or gas utilities that PUC regulates.

Although we did not receive responses from all of those listed above, we received a large number of responses from stakeholders. We also accepted written input from anyone who reached out to us over the course of the evaluation and reviewed all of their comments.

Additionally, we interviewed key stakeholders, many on the condition of anonymity. We interviewed representatives from a number of stakeholder organizations, tribal officials, and other participants. We individually interviewed the five commissioners who compose the Public Utilities Commission, as well as some past commissioners and several of the commission's current and former staff. Finally, because the Department of Commerce and the Office of Administrative Hearings manage certain aspects of the commission's public participation processes, we interviewed officials from both of those agencies.

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[1] We reviewed the public participation opportunities of the following energy facility cases that took place at least in part during our research period: (1) "Huntley-Wilmarth," an application for a 40-mile, high-voltage transmission line near Mankato; (2) "Dodge County Wind," an application for a large wind-energy system and accompanying 23-mile, high-voltage transmission line in Dodge, Steele, and Olmstead counties; (3) "Line 3," an application to replace and relocate Enbridge's Line 3 petroleum pipeline; and (4) "Line 4," an application to replace and relocate a 10-mile segment of Enbridge's Line 4 petroleum pipeline.

[2] The government agencies we reached out to included: the Metropolitan Council; the Minnesota Board of Water and Soil Resources; the Minnesota Environmental Quality Board; the Minnesota Indian Affairs Council; the Minnesota Office of Pipeline Safety; the Minnesota Pollution Control Agency; the Minnesota State Archaeologist; the Minnesota State Historic Preservation Office; the Southwest Regional Development Commission; and the Minnesota departments of Agriculture, Commerce, Employment and Economic Development, Health, Labor and Industry, Natural Resources, and Transportation, as well as the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service.

Chapter 1: Background

The Public Utilities Commission (PUC) regulates several industries that affect the lives of Minnesotans. In this chapter, we provide background information about PUC and the role of public participation in the agency's work. We begin with an overview of PUC's regulatory authority. Then, we describe its structure and processes. Finally, we discuss who can participate in PUC's proceedings and how they can participate.[1]

Regulatory Authority

The state agency now known as the Public Utilities Commission is Minnesota's oldest regulatory body. Over time, it has regulated numerous industries in Minnesota, including railroads. Today, it regulates (1) telecommunications, (2) electric and natural gas utilities, and (3) energy facility permitting.

PUC's authority over telecommunications includes regulating the rates and/or services of certain types of local and long-distance landline telephone companies, as well as other telecommunications matters.[2] It does not regulate cell phone or internet providers. In 2019, PUC had regulatory authority over more than 200 telephone companies, according to PUC estimates.

The Public Utilities Commission Regulates:

1. Telecommunications
2. Electric and Gas Utilities
3. Energy Facility Permitting

PUC's regulatory authority over electric and natural gas utilities includes setting utility standards and rates, approving utilities' long-term plans, and ensuring service quality, among other things.[3] PUC's authority over utilities is primarily limited to for-profit companies that are owned by investors.[4] PUC does not regulate most aspects of municipal utilities or electric cooperative associations, but it can mediate or investigate complaints about them and advise on their long-term plans. Municipal utilities and electric cooperative associations, however, may *elect* to be regulated by PUC.[5] In 2019, PUC regulated one

[1] We use the term "proceeding" generically throughout the report to refer to PUC's meetings and broader processes.

[2] See *Minnesota Statutes* 2019, Chapter 237, for PUC's regulatory authority over telecommunications.

[3] See *Minnesota Statutes* 2019, Chapter 216B, for PUC's regulatory authority over electric and gas utilities.

[4] *Minnesota Statutes* 2019, 216B.01; and 216B.02, subd. 4.

[5] *Minnesota Statutes* 2019, 216B.025; and 216B.026, subd. 1.

cooperative electric association in addition to eight investor-owned electric and/or natural gas utilities.[6]

PUC also permits "energy facilities," which encompass various types of energy infrastructure.[7] For example, from January 2016 through mid-2019, PUC received permit applications for 13 wind-energy projects, 5 pipeline projects, 4 transmission-line projects, 3 solar-energy projects, and 1 natural gas power plant project.[8] Various types of entities, including utilities, municipalities, pipeline or transmission companies, and wind- or solar-energy developers, submit energy facility applications to PUC.

In this evaluation, we focused our attention on public participation in PUC's energy facility proceedings. Large energy facility projects typically require two types of PUC approval.[9] First, PUC must determine whether the state needs the proposed facility; if needed, PUC issues a "certificate of need."[10] Then, PUC must approve a "site" or "route" permit, which determines where the applicant may construct the proposed facility.[11]

Energy Facility Projects Often Require:

- ✓ Certificate of Need
- ✓ Site or Route Permit

Before PUC can approve either a certificate of need or a site or route permit, it must consider the environmental impacts associated with granting that approval.[12] The Department of Commerce studies these potential impacts for PUC through environmental reviews.[13] In addition, before making decisions about certain types of energy facility permits, PUC must ask an administrative law judge from the Office of Administrative Hearings to establish the facts of the case through a public hearing.[14]

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[6] In 2019, PUC regulated the following *electric* utilities: Dakota Electric Cooperative Association (an electric cooperative association), Minnesota Power (owned by Allete, Inc.), Northwestern Wisconsin Electric, Otter Tail Power Company, and Xcel Energy (owned by Northern States Power Company). In 2019, PUC regulated the following *natural gas* utilities: CenterPoint Energy, Great Plains Natural Gas Company (owned by Montana-Dakota Utilities Company), Greater Minnesota Gas, Minnesota Energy Resources (owned by WEC Energy Group), and Xcel Energy (owned by Northern States Power Company). In 2019, 124 municipal electric utilities, 33 municipal gas utilities, and 44 electric cooperative associations served energy customers in Minnesota.

[7] See *Minnesota Statutes* 2019, 216B.2421 and 216B.243; and chapters 216E, 216F, and 216G, for PUC's authority to regulate energy facilities.

[8] Four of the wind-energy projects involved applications for accompanying transmission lines.

[9] *Minnesota Statutes* 2019, 216B.2421, subd. 2, defines "large" energy facilities.

[10] *Minnesota Statutes* 2019, 216B.243, subd. 2.

[11] *Minnesota Statutes* 2019, 216E.03, subds. 1-2; 216F.04 (a); and 216G.02, subd. 2.

[12] Minnesota Environmental Policy Act, *Minnesota Statutes* 2019, 116D.04, subd. 2a(a)-(b); and *Minnesota Rules*, 4410.4400, subps. 1, 3, 6, and 24, published electronically November 30, 2009.

[13] In this report, we use the term "environmental review" generically to refer to various types of reviews, including environmental impact statements.

[14] We discuss the roles of the Department of Commerce and the Office of Administrative Hearings further in Chapter 2.

The issues that the Public Utilities Commission regulates have the potential to affect Minnesotans deeply and in a wide range of ways.

PUC's regulatory decisions can affect the lives of individual Minnesotans in various ways. For example, the quality of service provided by regulated telephone companies could affect the ability of its customers to call emergency services. In utility rate cases, the prices proposed by state-sanctioned monopolies could affect all ratepayers. In energy facility cases, Minnesotans could lose property through eminent domain if the commission chooses to site or route a project through their properties.[15] In the energy facility cases that we reviewed, individuals notified PUC about various other ways in which the proposed energy facility projects could affect them. For example, they said proposed projects could lower their property values, affect their health or quality of life, disrupt their businesses, affect their sacred cultural practices (such as tribal members' ability to gather wild rice), or violate tribal sovereignty, among other things. Others said proposed projects could benefit them positively, such as through the creation of construction jobs, income from easements, increased electricity reliability, or added renewable energy into the region's energy grid.[16]

High-voltage transmission lines can be large.

Photo courtesy of the Department of Commerce.

Structure and Processes

In this section, we outline PUC's structure and processes at a high level. First, we outline its organizational structure, functions, and meetings. Then, we describe the procedures that PUC uses to make its decisions.

Organizational Structure

PUC's organizational structure is largely dictated by law, but the agency has some discretion over how its staff are organized.

The Public Utilities Commission is composed of five commissioners.

Statutes vest the power of the agency in five commissioners who are appointed by the Governor and approved by the Senate.[17] When appointing commissioners, the Governor must consider applicants from various fields, including law, accounting,

[15] "Eminent domain" is the right to seize private property; it typically involves compensation for the property owner.

[16] An "easement" is a contract that gives an entity the right to use part of a property, usually in exchange for a fee.

[17] *Minnesota Statutes* 2019, 216A.03, subd. 1, defines PUC's composition.

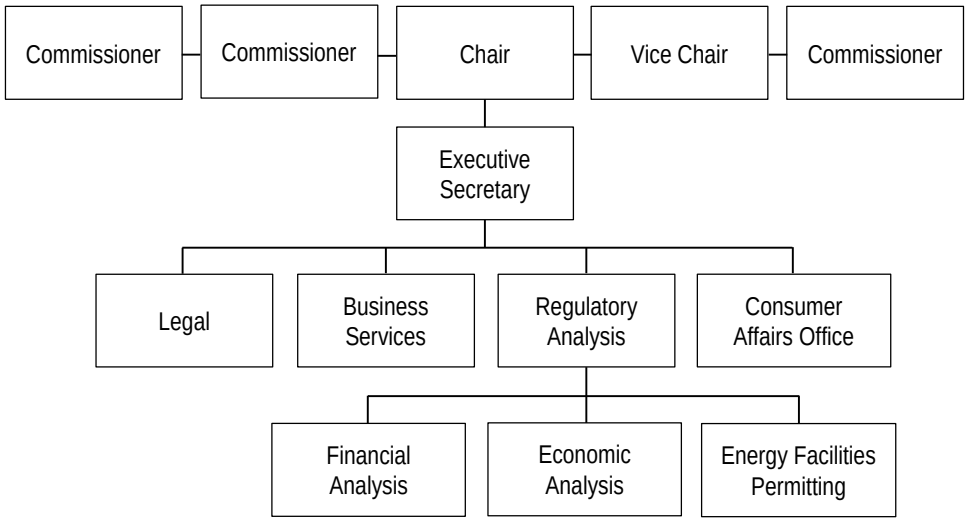
agriculture, engineering, natural resources, and other sciences. Statutes stipulate that not more than three commissioners may be of the same political party and that at least one reside outside of the seven-county metropolitan area at the time of appointment. Commissioners serve staggered, six-year terms and may be reappointed.

Statutes give the Governor authority to select the commission's chair, whose term is concurrent with that of the Governor.[18] The chair functions as the "principal executive officer" of the agency and has statutory authority to preside over the commission's meetings and (upon commission approval) give direction to staff through the executive secretary, whose role we discuss below.[19]

The Public Utilities Commission has about 50 staff led by an executive secretary.

Statutes give administrative authority over the agency to an executive secretary who is responsible for hiring, directing, and supervising the agency's personnel; developing the agency's budget; and making recommendations to achieve the agency's objectives, among other things.[20] Exhibit 1.1 illustrates PUC's organizational structure in 2019.

Exhibit 1.1: Public Utilities Commission's Organizational Structure



SOURCE: Office of the Legislative Auditor.

[18] *Minnesota Statutes* 2019, 216A.03, subd. 3.

[19] *Minnesota Statutes* 2019, 216A.03, subd. 3a.

[20] *Minnesota Statutes* 2019, 216A.04, subd. 1a.

In 2019, more than half of PUC's staff (28) worked in the Regulatory Analysis unit. Regulatory analysts from that unit are responsible for analyzing and interpreting the issues that go before the commission to help the commissioners make decisions. The Regulatory Analysis unit contains three subunits: (1) Financial Analysis, which handles utility rate cases, among other things; (2) Economic Analysis, which handles telecommunications, utility long-term planning and service quality, and other emerging energy issues; and (3) Energy Facilities Permitting, which handles energy facility applications. The Energy Facilities Permitting unit also contains a "public advisor," whose position is established in law.[21] The role of the public advisor is to assist members of the public in participating in energy facility proceedings.

The agency has three other units: (1) Legal, (2) Business Services, and (3) Consumer Affairs. The Legal unit provides legal analysis of cases and drafts the commission's orders. The Business Services unit handles the agency's finances and provides general administrative support. Finally, the Consumer Affairs Office mediates complaints about utilities from utility customers, among other things.

Functions

The Public Utilities Commission has an unusual combination of functions.

The Public Utilities Commission has quasi-judicial, legislative, and executive functions.

First, statutes explicitly grant the commission quasi-judicial functions.[22] Its quasi-judicial functions typically involve making decisions with *particular applicability*, such as approving the construction of a particular energy facility using criteria outlined in law.[23] The commission also adjudicates allegations of misconduct by particular regulated entities, such as a utility accused of overcharging its customers or a wind developer accused of violating the conditions of its site permit.

Second, statutes explicitly grant the commission legislative functions.[24] For example, the commission acts in its legislative capacity when it promulgates rules or balances competing criteria when setting utility rates. The commission's legislative functions may have *general applicability*.[25] For example, in 2004, the commission issued an order establishing fees and standards related to how small electricity generators (such as homeowners with solar panels) may connect to the electrical grid.[26] The order did not relate to one particular entity, but rather to small electricity generators generally.

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[21] *Minnesota Statutes* 2019, 216B.243, subd. 4; 216E.08, subd. 3; and 216F.02 (a); and *Minnesota Rules*, 7850.2200, published electronically September 18, 2009; 7852.1200, published electronically August 21, 2007; and 7854.0700, published electronically September 18, 2009.

[22] *Minnesota Statutes* 2019, 216A.05, subd. 1.

[23] *Minnesota Statutes* 2019, 216A.02, subd. 4.

[24] *Minnesota Statutes* 2019, 216A.05, subd. 1.

[25] *Minnesota Statutes* 2019, 216A.02, subd. 2.

[26] Minnesota Public Utilities Commission, "In the Matter Establishing Generic Standards for Utility Tariffs for Interconnection and Operation of Distributed Generation Facilities under *Minnesota Laws* 2001, Chapter 212: Order Establishing Standards," Docket No. CI-01-1023, September 28, 2004.

Alternatively, the commission's legislative functions may have particular applicability, such as when the commission balances competing factors when establishing rates for a particular utility.

Finally, although not explicitly stated, statutes give the commission functions that are inherently executive in nature.[27] For example, the commission administers discount telephone programs and enforces Minnesota's "Cold Weather Rule."[28]

The relationships between PUC's three functions are complex. For example, when PUC approves the rates set by a utility, it exercises both its quasi-judicial and its legislative functions. PUC's complicated functions and responsibilities were created over time through a patchwork of legislation and case law. Such complexity poses real challenges for members of the public as they try to participate in PUC's processes.

Meetings

The Public Utilities Commission is subject to Minnesota's Open Meeting Law, which requires public bodies to conduct their business in meetings that are open to the public.[29]

The commissioners of the Public Utilities Commission hold two different types of meetings.

PUC's five commissioners meet regularly in "agenda meetings" and "planning meetings."[30] In agenda meetings, the commission makes decisions about specific cases, which are organized into "dockets." A docket is essentially any pending matter before the commission, such as a request by a utility to raise its rates. Energy facility cases often involve more than one docket. For example, a transmission line case might involve one docket related to the certificate of need application and another docket related to the route permit application.

Docket

A "docket" is a matter pending before the commission that is assigned a unique number.

The commission often makes decisions about specific cases over the course of multiple agenda meetings. For example, in one meeting, it might determine whether the application materials for a transmission line contain the required information. In a subsequent meeting, it might approve the certificate of need for that transmission line. And, in yet another meeting, it might approve the route permit.

[27] *Minnesota Statutes* 2019, 216A.02, subd. 3.

[28] Minnesota's Cold Weather Rule requires utilities to provide notice before disconnecting heat to low-income households between October 15 and April 15 when those households fail to pay their bills. The rule also prohibits utilities from shutting off power if those households set up and adhere to a payment plan. *Minnesota Statutes* 2019, 216B.096-216B.097.

[29] Open Meeting Law, *Minnesota Statutes* 2019, 13D.01, subd. 1(a)(3).

[30] PUC's staff and partner agencies also administer other types of public meetings and hearings to inform the public about pending projects and to solicit public input. We discuss those opportunities in more detail at the end of this chapter and in Chapter 2.

The five commissioners of the Public Utilities Commission in 2019 during a PUC meeting.

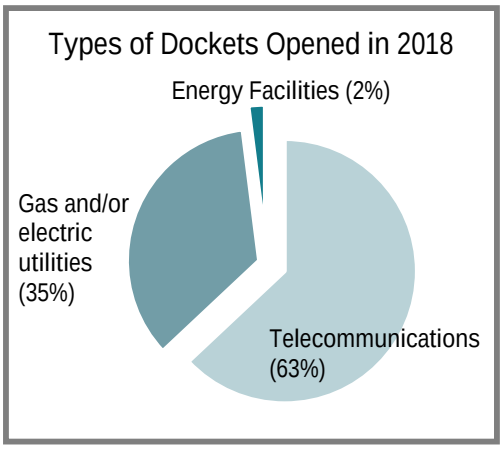
In planning meetings, the commissioners make decisions about administrative issues, such as scheduling and personnel matters, and discuss broader policy issues that are not pending as dockets before the commission. (We discuss the commission's agenda and planning meetings further in Chapter 4.)

The Public Utilities Commission handles a large volume of work each year.

In calendar year 2019, the commission held 49 agenda meetings, during which it issued 313 orders. That year, it also held 50 planning meetings.

The commission's workload can vary widely according to the complexity and scope of the issues that it handles. Some dockets may be closed relatively quickly, while others may remain open for long periods of time, such as if a regulated entity has ongoing compliance requirements.

As the box at right shows, of the nearly 800 dockets that the commission opened in calendar year 2018, the majority (63 percent) related to telecommunications; only 35 percent related to gas and/or electric utilities and only 2 percent related to energy facilities. However, according to PUC, telecommunications dockets are often routine and resolved quickly, while utility and energy facility dockets typically take up the majority of the commission's time.



Procedures

In this section, we describe the formal procedures that the commission uses in its agenda meetings.

The Public Utilities Commission makes most of its decisions through quasi-judicial procedures.

When making both legislative and quasi-judicial decisions in its agenda meetings, the commission typically uses formal procedures that more closely resemble those found in courts than in legislative committees or city council meetings. For example, legislators or city council members may make decisions based on the sentiments of their constituents. The commission, however, like a court, must base its decisions on legal criteria and the information in the official record for a given case.[31] According to state rules, "Commissioners shall not be swayed by partisan interests, public clamor, or fear of criticism."[32] However, at specific stages in a case, members of the public may submit information into the official record. When they do so, the commission may use that information to inform its decision, consistent with state law.

The Record

The commission must base its decisions on criteria outlined in law and the information in the official record for the case.

Also similar to courts, the commission's proceedings involve "parties." A party is a person or entity who files a petition with the commission or who is the subject of a petition.[33] For example, if a company submitted an application to construct a transmission line, it would be a party to that case. Or, if a person filed a formal complaint against a utility, both the complainant and the utility would be parties to the case. As we discuss at the end of the chapter, members of the public who are not parties to a case may still be able to participate in that case at certain stages and in certain ways.

Individuals or entities who are not, by definition, already parties to a case may petition to become parties through a process called "intervention."[34] In a transmission line case, for example, landowners might petition to intervene if a route were proposed to pass through their properties. To successfully intervene, petitioners must meet specific legal

[31] For example, see *Minnesota Rules*, 7849.0100, 7849.0110, and 7849.0120, published electronically October 13, 2009.

[32] *Minnesota Rules*, 7845.0500, subp. 1, published electronically January 5, 2010.

[33] *Minnesota Rules*, 7829.0100, subp. 14, published electronically June 14, 2016. A "petition" is a request for the commission's permission, authorization, or approval, or other type of action.

[34] For example, see Minnesota Environmental Rights Act, *Minnesota Statutes* 2019, 116B.09; and *Minnesota Rules*, 7829.0800, published electronically June 14, 2016; 1400.6200, published electronically August 6, 2013; and 1405.0900, published electronically August 21, 2007. Under certain circumstances, the commission rules on petitions to intervene; in other circumstances, administrative law judges rule on them, as we discuss in Chapter 2.

criteria, listed in the box at right.[35] Party status provides intervenors with additional opportunities to make their case to the commission.[36] For example, typically only parties may file motions or address the commission directly during agenda meetings.[37]

Grounds for Intervention

- The person's interests are not adequately represented by another party
- The outcome of the proceeding will affect a person's specific interests, as opposed to the interests of the general public
- Certain other reasons allowed by law

— Minnesota Rules, 7829.0800

Also like a court, the commission is subject to rules about *ex parte* communication.[38] *Ex parte* communication is any oral or written communication: (1) between certain PUC officials and certain interested parties or participants, (2) that takes place without notice to all parties, and (3) that pertains to the merits or outcome of a pending case. *Ex parte* communication between a commissioner and a party or participant is prohibited in certain types of pending cases.[39] For example, in an open transmission line case, a commissioner may not have a private discussion with the applicant about issues in that case.

Prohibited Ex Parte Communication

Ex parte communication is prohibited when it occurs in certain types of pending cases between a commissioner and a party or other participant and pertains to the merits or outcome of the case.

— Minnesota Rules, 7845.7200

The commission's proceedings are often dictated by rules of procedure that resemble those found in courts, such as the ability of parties to make motions.[40] Many of the commission's procedures are dictated by statutes or rules that vary based on the type of case at hand. For example, rules require the commission to give parties an opportunity to make oral arguments only in certain types of cases or situations. In general, however, the PUC chair has discretion over whether and when parties may address the commission. When considering an issue in an agenda meeting, the chair typically allows commissioners to ask questions of parties as needed.

When commissioners have finished hearing parties' oral arguments and asking them questions, they enter into deliberations. During deliberations, the commissioners discuss their options publicly with one another. The commission then makes a decision through majority votes of a quorum of its members.[41]

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[35] For example, see *Minnesota Rules*, 7829.0800, subp. 2, published electronically June 14, 2016; 1400.6200, subp. 1, published electronically August 6, 2013; and 1405.0900, subp. 1, published electronically August 21, 2007.

[36] For example, see *Minnesota Rules*, 7829.0410, subp. 1; and 7829.2700, published electronically June 14, 2016.

[37] A "motion" is a formal request to the commission, such as a request by an intervening party that an energy facility applicant provide certain information about the proposed project.

[38] *Minnesota Statutes* 2019, 216A.037; and *Minnesota Rules*, 7845.7000-7845.7900, published electronically January 5, 2010.

[39] *Ex parte* communication is prohibited in rulemaking proceedings, contested case proceedings, and disputed formal petitions. *Minnesota Rules*, 7845.7200, subp. 1, published electronically January 5, 2010.

[40] For example, see *Minnesota Rules*, Chapter 7829.

[41] *Minnesota Statutes* 2019, 216A.03, subd. 5.

Also like a court, the commission's decisions are translated into orders, which have the effect of law.[42] Parties or other participants may petition the commission to reconsider its orders.[43] They may also appeal the commission's orders to the Minnesota Court of Appeals.[44]

Finally, like a court, the commission's schedule is driven in large part by petitions from the regulated entities, not by the commission's own policy initiatives. Of the roughly 800 dockets that the commission opened in 2018, fewer than 2 percent represented commission initiatives, such as investigations into utilities' practices.

Public Participation

In this final section, we discuss what "public participation" means in the context of PUC's cases, particularly its energy facility cases.

Role of Public Participation

Across Minnesota state government, public participation plays a variety of roles; in PUC's work, it plays a specific role.

The key role of public participation in the Public Utilities Commission's cases is to help develop the official record upon which the commission must base its decisions.

As we discussed earlier, the commission must base its decisions on criteria outlined in law and on the information in the official record for a given case.[45] In the box on the next page, we list some of the many criteria that the commission must consider in energy facility cases.

[42] *Minnesota Statutes* 2019, 216A.02, subds. 2 and 4; and 216A.05, subd. 1.

[43] *Minnesota Rules*, 7829.3000, published electronically June 14, 2016.

[44] *Minnesota Statutes* 2019, 14.63, 216.25, and 216B.52.

[45] For some of the legal criteria related to certificates of need, see *Minnesota Statutes* 2019, 216B.243 and 216C.05-216C.30; *Minnesota Rules*, 7849.0100-7849.0120, published electronically October 13, 2009; and *Minnesota Rules*, 7853.0100-7853.0130, published electronically November 14, 2003. For some of the criteria related to power plant siting and transmission line routing, see *Minnesota Statutes* 2019, 216E.03, subd. 7; and *Minnesota Rules*, 7850.4000-7850.4200, published electronically September 18, 2009. For some of the criteria related to pipeline routing, see *Minnesota Statutes* 2019, 216G.02, subd. 3(b)(4); and *Minnesota Rules* 7852.0200, subps. 3-4; 7852.0700; 7852.0800; and 7852.1900, published electronically August 21, 2007. For some of the criteria related to wind-energy siting, see *Minnesota Statutes* 2019, 216F.05, (1) and (5); and *Minnesota Rules*, 7854.1000, published electronically September 18, 2009. The criteria for power plant projects also apply to large wind projects, per *Minnesota Statutes* 2019, 216E.03, subd. 7; and 216F.02(a). For criteria related to the state's greenhouse gas emissions-reduction goal, see *Minnesota Statutes* 2019, Chapter 216H.03. For criteria related to the state's energy conservation and renewable energy goals, see *Minnesota Statutes* 2019, 216C.05, subd. 2.

The key role of the public in PUC cases is to provide information related to the criteria that the commission must use in a given case. For example, when considering where to route a transmission line, the commission must consider what effects the proposed routes could have on "human settlement, including, but not limited to, displacement, noise, aesthetics, cultural values, recreation, and public services" (among other things).[46] Individuals who live along a proposed route could provide information to the commission about how selecting that route would affect them. The commission uses the information that the public has provided (along with other information in the record) to choose among the proposed routes.

Examples of Decision Criteria in Energy Facility Cases

- Socioeconomic effects on humans, including health, displacement, noise, aesthetics, cultural values, recreation, and public services
- Effects on archaeological and historic resources
- Economic effects, including loss of agricultural land, forestry, tourism, and mining
- Effects on the natural environment
- Energy reliability and demand forecasts
- The state's renewable energy and greenhouse gas emissions-reduction goals
- Efforts to reduce energy consumption
- Use of existing corridors and rights-of-way

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.

> At the end of the day, when we're deciding whether to…site a power plant at one place or another…what really comes to the fore are the views of the people in the vicinity of that plant…that's really what drives our decision—environmental impact—but also impact on people.
>
> — A PUC Commissioner

State law also recognizes the importance of public participation in energy facility cases and guarantees specific opportunities in which the public may help develop the record. State law also directs PUC to facilitate participation in energy facility cases, stating: "The 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 task forces…."[47]

Who Is the "Public"?

In this evaluation, we reviewed the opportunities available to members of the general public to participate in PUC's proceedings—with an emphasis on energy facility proceedings. We also considered the opportunities available to the public to engage with the commission on broader regulatory issues.

We defined "the public" to include those who may be directly affected by a proposed project, such as landowners, area residents, local municipalities, local businesses, and

[46] *Minnesota Rules*, 7850.4100 A, published electronically September 18, 2009.

[47] *Minnesota Statutes* 2019, 216E.08, subd. 2.

advocacy groups (such as community, labor, energy, or environmental groups), as well as those who may not be directly affected by a proposed project. Anyone may participate in PUC's proceedings, whether or not they may be directly affected by a given case.

What Is "Participation"?

Public participation can take a variety of forms. In PUC's energy facility cases, some public participation opportunities are defined in law.

State law provides opportunities for the public to participate in certain energy facility proceedings, but these opportunities vary across different types of cases.

How to Participate
in an Energy Facility Case

- During a public comment period, submit written comments or other information into the record about potential impacts of the proposed project
- During a public meeting, ask questions of state officials or the applicant, or submit oral or written comments into the record
- During a public hearing before an administrative law judge, submit evidence or testimony into the official case record; cross-examine the applicant's testimony or evidence
- Submit proposed alternatives to the project into the record
- Participate in a citizen advisory task force to help identify potential impacts of the project, alternatives, and mitigation measures
- Formally intervene as a party to the case to participate more actively
- Observe an agenda meeting

Energy facility permitting is governed by a complex set of state laws that are intertwined in a complicated way. (Appendix A at the back of this report outlines these laws.) The law guarantees varying participation opportunities across different types of energy facility cases.

For example, the law explicitly requires PUC to order formal, "contested case" hearings for cases involving certain types of large energy facility projects, such as large power plants.[48] For other types of energy facility projects, however, the law allows PUC to order less formal public hearings, or none at all.

Further, energy facility cases are subject to varying procedures, which also affects participation. For example, public hearings related to pipeline *route permit* cases must follow one set of rules, while public hearings related to pipeline *certificate of need* cases must follow another. Under the former set of rules, members of the public must be allowed to cross-examine the applicant during the hearing; under the latter set of rules, the public is not guaranteed this right.[49]

The box above lists various participation opportunities outlined in law across different types of energy facility cases.

[48] "Contested case" hearings are a specific type of proceeding in which an administrative law judge develops the record for a case. As defined in *Minnesota Statutes* 2019, 14.02, subd. 3, "'contested case' means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing."

[49] *Minnesota Rules*, 1400.7150, published electronically August 6, 2013; 1405.0800 and 7852.1700, published electronically August 21, 2007; and 7853.0200, subp. 5, published electronically November 14, 2003.

Chapter 2: Partner Agencies and Other Participants

The Public Utilities Commission's (PUC's) proceedings are incredibly complex—in no small part because many entities are involved in them. In this chapter, we discuss the roles of some of those entities and how they relate to public participation.

We begin the chapter by discussing the roles of two state agencies that administer key components of PUC's public participation processes. Then, we discuss some of the entities charged with advocating for the public in PUC proceedings. Finally, we discuss the participation of tribal governments in PUC's proceedings.

Partner Agencies

Although PUC is the final decision-making authority for matters under its jurisdiction, other state agencies are heavily involved in PUC's proceedings.

The Public Utilities Commission's public participation processes are administered by multiple state agencies, which makes those processes complex and challenging for the public to navigate.

The Department of Commerce and the Office of Administrative Hearings administer many of PUC's public participation processes, often in partnership with PUC staff. Over the life of a single energy facility case, an interested member of the public may encounter public participation opportunities administered by each of these three agencies, each with its own rules and procedures.[1] It can be difficult for members of the public to figure out whose rules and procedures apply or which agency is in charge of a given event.

In the sections below, we describe the roles of the Department of Commerce and the Office of Administrative Hearings in PUC energy facility proceedings. Then, we discuss some of the challenges that result from having multiple state agencies administer these public participation processes.

Department of Commerce

The Minnesota Environmental Policy Act requires all state agencies to consider any potential significant environmental impacts of large projects before approving those projects.[2] State agencies evaluate these impacts by conducting "environmental reviews."[3]

[1] As we discussed in Chapter 1, "energy facilities" encompass various types of infrastructure, such as power plants, transmission lines, wind-energy systems, and pipelines. To construct a large energy facility, applicants typically must obtain from PUC (1) a certificate of need and (2) a route or site permit.

[2] Minnesota Environmental Policy Act, *Minnesota Statutes* 2019, 116D.04, subd. 2a(a).

[3] In this chapter, we use the term "environmental review" generically to refer to various types of reviews, including environmental impact statements.

The Department of Commerce conducts environmental reviews of energy facilities for the Public Utilities Commission and administers the associated public participation processes.

The Department of Commerce's Energy Environmental Review and Analysis (EERA) unit conducts the environmental reviews of proposed energy facility projects for PUC. PUC, however, is the "responsible government unit" in charge of the reviews, and determines whether the reviews conducted by EERA are adequate. For certain kinds of energy facility cases, the two agencies' roles are set in law.[4]

In General, Environmental Reviews Analyze:

- ✓ Environmental impacts
- ✓ Economic impacts
- ✓ Employment impacts
- ✓ Sociological impacts
- ✓ Methods for mitigating impacts
- ✓ Alternatives

The Minnesota Environmental Policy Act requires state agencies to provide public participation opportunities during the environmental review process. EERA administers these public participation opportunities for PUC, often in coordination with PUC staff.

Although requirements under the Minnesota Environmental Policy Act prescribe standard public participation procedures during environmental reviews, state law provides for alternative environmental review processes for several types of energy facilities. As a result, the public participation opportunities that EERA administers for PUC vary across different types of energy facility projects. This variation creates complexity and can cause confusion for participants.

Generally speaking, the public may participate in environmental reviews by asking questions of applicants or state officials or by providing comments during public comment periods or at "public meetings."[5] The public may alert EERA to potential environmental, economic, employment, or sociological impacts of proposed projects. Members of the public may also suggest alternatives to proposed projects, as described in the box at right.

Alternatives

System Alternatives: In relation to a certificate of need application, members of the public may propose alternatives to the project itself. For example, they could suggest conservation strategies to eliminate the need for a new high-capacity transmission line.

Site or Route Alternatives: In relation to a site or route permit application, members of the public may propose alternative sites or routes that differ from those that the applicant has proposed. For example, a farmer could suggest a route for a transmission line that would not interfere with the farmer's field practices.

[4] The Minnesota Environmental Policy Act establishes PUC as the responsible government unit in charge of environmental reviews for energy facilities; see *Minnesota Statutes* 2019, 116D.04, 2a(b) and (j); and *Minnesota Rules*, 4410.2800, subp. 1; and 4410.4400, subps. 1, 3, 6, and 24, published electronically November 30, 2009. The Power Plant Siting Act charges the Department of Commerce with conducting for PUC the environmental reviews of power plants and transmission lines; see *Minnesota Statutes* 2019, 216E.03, subd. 5; and 216E.04, subd. 5. Under an interagency agreement, the Department of Commerce also conducts the environmental reviews of wind-energy systems and pipelines for PUC. See Public Utilities Commission and Department of Commerce, "Memorandum of Understanding Between the Minnesota Public Utilities Commission and the Minnesota Department of Commerce," January 10, 2017.

[5] Throughout this chapter, we use the term "public meeting" generically to refer to various types of meetings that PUC or the Department of Commerce hold to provide information to the public or to receive information from the public as part of the review process for energy facility applications.

Because of EERA's role in the environmental review process, its staff are among the most public faces of state government in PUC's energy facility proceedings. During public meetings, EERA staff give presentations to the public, often alongside PUC staff, about the review process, answer questions from members of the public, and help members of the public submit alternatives. In addition, if PUC orders the formation of a "citizen advisory task force" to supplement the environmental review process, EERA officials organize and facilitate those task forces.[6]

Office of Administrative Hearings

The Office of Administrative Hearings also administers some of the public participation processes involved in PUC's proceedings.

Administrative law judges hold hearings to establish the official record used by the Public Utilities Commission to make its decisions.

PUC refers certain types of cases to administrative law judges within the Office of Administrative Hearings. Administrative law judges develop the official record for those cases by holding hearings.

The procedures that administrative law judges use to administer hearings vary across different types of PUC cases.[7] Under the law, PUC must refer certain large energy facility cases for a specific type of hearing, called a "contested case" hearing.[8] In contested case hearings, administrative law judges must use procedures prescribed in state law. However, procedures vary somewhat according to the type of energy facility project under review. Sometimes, PUC also refers other types of cases to the Office of Administrative Hearings, such as smaller energy facility projects that do not require contested case hearings. In those cases, administrative law judges may use other, less formal procedures.

State law requires the Office of Administrative Hearings to establish rules that "attempt to maximize citizen participation."

— Minnesota Statutes, 216E.16

Generally, in large energy facility cases, contested case hearings involve several stages. First, the judge assigned to the case makes decisions about how the hearings will be conducted. The judge may, for example, hold prehearing conferences and issue orders that set deadlines; grant or deny petitions to intervene; or

[6] For more on "citizen advisory task forces," see *Minnesota Statutes* 2019, 216E.08, subd. 1; 216F.02, (a); and *Minnesota Rules*, 7850.2400, published electronically September 18, 2009; and 7852.1000, published electronically August 21, 2007.

[7] Administrative law judges administer public hearings using the procedures outlined in *Minnesota Rules*, chapters 1400, 1405, 7829, 7849, 7850, 7852, 7853, and 7854.

[8] "Contested case" hearings are a specific type of proceeding in which an administrative law judge develops the record for a case. As defined in *Minnesota Statutes* 2019, 14.02, subd. 3, "'contested case' means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing." *Minnesota Statutes* 2019, 216E.03, subd. 6; 216F.05, (3); and 216B.243, subd. 4; and *Minnesota Rules*, 7829.1000, published electronically August 21, 2007; 7829.2500, subp. 9, published electronically June 14, 2016; 7852.1700, published electronically August 21, 2007; 7853.0200, subp. 5, published electronically November 14, 2003; and 7854.0900, subp. 5, published electronically September 18, 2009.

establish the format, locations, and dates of the hearings.[9] Next, parties to the case prefile testimony and documents into the record.

Then, in *public* hearings, any person may provide oral or written testimony, exhibits, or evidence. Persons who may be directly affected by the project, or any other member of the general public, may submit information about the need for the project or lack thereof, the project's potential positive or negative impacts, or why the commission should select one site or route over another. In certain types of energy facility cases, rules also grant members of the public the right to testify under oath and to question testifiers and cross-examine witnesses, to be a witness, and to provide witnesses.[10]

Finally, in *evidentiary* hearings, parties to the case cross-examine each other's witnesses. Members of the general public may attend evidentiary hearings.[11]

At the conclusion of a contested case hearing, the judge assigned to the case reviews the information in the record and writes a report for PUC with findings of fact, conclusions, and recommendations.[12] PUC must then make the final decisions in the case based on criteria in law and the official record developed by the judge.[13]

Interagency Administration

For members of the general public, trying to navigate the various processes administered by PUC and its partner agencies can be daunting and confusing. The box below lists the various types of meetings and hearings that PUC or its partner agencies may hold over the course of a single case.

Types of Meetings and Hearings

Type	Description
Public Meeting	A type of public meeting conducted by EERA or PUC staff or administrative law judges to provide information to the public or solicit input, often for the environmental review; various types of public meetings go by various names, such as "public information meetings"
Contested Case Hearing	A type of hearing in which an administrative law judge develops the record for a case using procedures prescribed in law, and which may involve both a "public hearing" in which members of the public may provide input into the record and an "evidentiary hearing" in which parties submit testimony and documents into the record and cross-examine each other's witnesses
Informal Public Hearing	A type of hearing typically held by an administrative law judge to solicit input from the public that may use less formal procedures than those established for contested cases
Agenda Meeting	A type of public meeting in which PUC commissioners make decisions about specific cases
Planning Meeting	A type of public meeting in which PUC commissioners make administrative and policy decisions and hear from stakeholders; rarely, the commission also hears issues pertaining to specific dockets

[9] As we discussed in Chapter 1, "intervention" is the process by which a person or entity petitions to become a party to a case.

[10] *Minnesota Rules*, 1400.7150, published electronically August 6, 2013; and 1405.0800 and 1405.1700, published electronically August 21, 2007.

[11] *Minnesota Rules*, 1400.7800, published electronically August 6, 2013.

[12] *Minnesota Rules*, 1400.5500 and 1400.8100, published electronically August 6, 2013; and 1405.0400, subp. 3; and 1405.2400, published electronically August 21, 2007.

[13] *Minnesota Rules*, 1400.8200, published electronically August 6, 2013; and 1405.2500, published electronically August 21, 2007.

The three agencies may combine or jointly administer these meetings or hearings, or administer them on behalf of one another. For example, under the law, PUC and EERA are both required to hold public meetings as part of certain energy facility review processes; to avoid duplication, the agencies often combine the meetings. In addition to public *hearings*, PUC sometimes asks the Office of Administrative Hearings to appoint an administrative law judge to administer a public *meeting* on its behalf.

In some cases, the law requires PUC to combine the processes associated with the individual components of a single case—unless it would be more efficient not to. For example, in an energy facility case involving two applications—one for a certificate of need and another for a route permit—PUC may combine the environmental reviews required for each, or the public hearings required for each. While combining these component processes may create efficiencies that benefit the public, it may also add confusion to an already complex process. For example, the individual components of a combined process may be subject to different timelines and procedures.

It also can be challenging for the public to understand the differences between the roles of PUC and its partner agencies within these complex processes. For example, when a case is before an administrative law judge, the judge has authority to make certain decisions, such as whether or not to grant a petition to intervene.[14] But, when a case is before the commission, the commission has that authority. The three agencies also may each follow different procedures established in law or by their agencies.

Further complicating matters, a second unit within the Department of Commerce plays an important role in PUC energy facility cases that is completely different from EERA's role. The department's Energy Regulation and Planning unit analyzes whether PUC should grant certificates of need; the unit intervenes in certificate of need cases to advocate on behalf of ratepayers and the public at large.[15] This means that, in a single energy facility case, the Department of Commerce's Energy Regulation and Planning unit could be advocating against a project, while its EERA unit is defending the adequacy of the environmental review that it produced for that project. This can be confusing for participants.

When members of the public do not understand what rules apply or who is in charge of a given process, they may struggle to figure out who can resolve their problems or answer their questions. One agency's staff may technically be in charge of only one component of a joint meeting or hearing, yet its staff may be present and interacting with the public in official capacities. Or, while one agency's staff may appear to the public to be administering a process, another agency may technically be responsible for that process under the law. Such complex processes can even be challenging for state officials to understand, which can make it difficult for them to accurately guide the public through them.

> "...there is no clear indication of who to contact when problems arise."
>
> — A Member of the Public

[14] *Minnesota Rules*, 7829.0800, subps. 5-6, published electronically June 14, 2016.

[15] *Minnesota Statutes* 2019, 216A.01, 216A.07, and chapters 216B and 216C.

The Public Utilities Commission has not provided adequate guidance to its staff or partner agencies about the administration or coordination of its public participation processes, which has affected the consistency of these processes.

Although PUC and its partner agencies must follow various procedures established in law, they also have significant discretion over the processes that they administer. PUC and EERA developed a memorandum of understanding to "clarify and formalize" their roles and responsibilities.[16] But, this document describes the agencies' roles at a high level; it does not provide detailed guidance to standardize how their staff administer or coordinate public participation processes. And, this document does not provide guidance about how PUC should coordinate with the Office of Administrative Hearings in the administration of public hearings. Absent further standardized guidance, PUC and its partner agencies coordinate their efforts informally and on an as-needed basis, and individual staff members use their discretion.

This level of informal coordination and discretion has led to variation in practices and quality, as well as logistical missteps. For example, one state official told us about a recent public meeting in which PUC and EERA staff were confused about which agency's staff was supposed to secure a court reporter to create a transcript of public comments; each thought the other agency had already made arrangements for one. At some public meetings that we attended, we observed two different sets of sign-up sheets and flow charts describing the permitting process for a single project. When we asked individual PUC or EERA staff questions about public participation processes, they sometimes gave us conflicting answers. Some members of the public told us that variations in rules or procedures have confused them or made them feel like they are being treated unfairly.

State officials have delegated some of their responsibilities related to public participation to the companies whose proposals are under review.

PUC and EERA staff have sometimes delegated certain responsibilities for public meetings or hearings, such as reserving and renting the venues, to the applicants whose proposed energy facility projects have been under review. State officials told us they have delegated these responsibilities to the applicant to make accounting practices easier, because state procurement practices take too long, or because they do not have enough resources to handle these logistics internally. Various stakeholders, including state officials, told us this arrangement can create the perception that the state is working on behalf of the applicant, or can give the applicant too much real or perceived control over the event.

[16] Public Utilities Commission and Department of Commerce, "Memorandum of Understanding Between the Minnesota Public Utilities Commission and the Minnesota Department of Commerce," February 7, 2014. The two agencies updated the agreement in 2017.

The Public Utilities Commission has done a poor job educating the public about the roles of its partner agencies and the complex processes that they administer.

PUC's website and other educational materials contain little information about the complex roles that PUC's partner agencies play. The information PUC's website does provide about its partner agencies is hard to find and not contextualized to help the public understand the agencies' roles, their processes, or the scopes of their authority. The website does not, for example, publish the memorandum of understanding between PUC and EERA or contain any description about the role of the Department of Commerce's Energy Regulation and Planning unit. PUC's website does contain a link to EERA's website, which provides more useful information, including flow charts that illustrate the regulatory process for energy facility cases. But, understandably, the information on EERA's website is generally limited to the parts of the process that involve EERA.

Additionally, the notices for some public meetings or hearings that we reviewed did not contain adequate information about PUC's partner agencies. For example, one of the hearing notices that we reviewed did not explain that members of the public could cross-examine the applicant during the hearing. Another did not explain how the public would or would not be able to participate in a public hearing versus an evidentiary hearing.

PUC does, however, provide educational information to the public about the roles of its partner agencies during the public meetings and hearings that it holds with them. For example, PUC (and its partner agencies) may give slide show presentations with high-level overviews of their respective roles and review processes. But, members of the public must be present at these meetings or hearings or search through PUC's eDockets system to receive this information.[17] As we describe in Chapter 3, eDockets can be difficult to use. We discuss PUC's efforts to educate the public further in Chapter 3.

In 2015, Minnesota Management and Budget's Management Analysis and Development Division recommended that PUC and the Department of Commerce develop information for the public to help the public better understand the two agencies' roles.[18] Notably, it suggested that the agencies develop a one-stop website and a plain-language version of the agencies' memorandum of understanding. We think these recommendations stand true today.

[17] "eDockets" is an electronic system that houses the commission's case records and is available to the public through the Department of Commerce's website.

[18] Minnesota Management and Budget, Management Analysis and Development Division, *Public Utilities Commission and Department of Commerce Function Transfer Study* (St. Paul, 2015), 10 and 73.

RECOMMENDATIONS

- **The Public Utilities Commission should formalize its coordination efforts with partner agencies to reduce variation across its public participation processes.**
- **The Public Utilities Commission should not delegate logistical responsibilities related to its public participation processes to applicants.**
- **The Public Utilities Commission should do more to help the public understand the roles of its partner agencies in energy facility proceedings.**

PUC's public participation processes are extremely complex. Given this complexity, PUC should more formally coordinate with its agency partners. For example, it could update its memorandum of understanding with the Department of Commerce to include more detailed guidance for staff, and create a similar agreement with the Office of Administrative Hearings. Such guidance should aim to reduce unnecessary variation across public participation processes, such as establishing which agency arranges for a court reporter or assesses the need for security. Such guidance could also serve as a reference to help orient the rotating set of administrative law judges who are assigned to PUC cases at any given time.

PUC should also direct its staff and encourage its partner agencies not to delegate the logistics for public participation processes to the applicants seeking the commission's approval. We think this arrangement gives regulated entities too much actual or perceived control over the state's processes.

Finally, PUC should better educate the public about its processes and about the roles of its partner agencies in those processes. Notably, it should provide more and clearer information on its website, and it should publish a plain-language version of its memorandum of understanding with the Department of Commerce's EERA unit, as Minnesota Management and Budget's Management Analysis and Development Division suggested in 2015.

Institutional Advocates

In addition to the Department of Commerce and the Office of Administrative Hearings, a number of other institutions also participate in PUC's proceedings. In this section, we discuss the institutions that advocate on behalf of the public interest in PUC's proceedings.

A number of government agencies and other organizations advocate on behalf of the public interest in the Public Utilities Commission's proceedings.

Many of the entities that PUC regulates, such as investor-owned utilities, are for-profit enterprises whose actions—by nature—are driven by the interests of shareholders. The Legislature has chosen to regulate these entities and/or their activities precisely for the

purpose of protecting the public interest.[19] Petitions that these or other entities submit to PUC for approval may or may not be in the public interest.

The Legislature has charged a number of state agencies with advocating on behalf of the public interest in PUC's proceedings. For example, the Minnesota Office of the Attorney General's Residential Utilities and Antitrust Division is responsible for advocating before PUC on behalf of residential and small business ratepayers.[20] Under state law, the Attorney General has the right to intervene in any PUC proceeding.[21] The Department of Commerce's Energy Regulation and Planning unit (which we discussed earlier in the chapter) advocates on behalf of ratepayers and the public at large. The unit analyzes whether proposed energy facilities are needed and whether rate increases and long-term plans proposed by utilities are reasonable and consistent with state policies. Like the Attorney General, the Department of Commerce has the right to intervene in any PUC proceeding.[22]

Numerous other government agencies also have responsibilities to protect the public interest in PUC's proceedings. In some cases, applicants proposing energy facility projects must obtain permits from other state agencies in addition to those issued by PUC. For example, if a transmission line is proposed to cross a river, the applicant may need to obtain a permit from the Department of Natural Resources.

Numerous Government Agencies May Participate in PUC Proceedings

1. Metropolitan Council
2. MN Board of Water and Soil Resources
3. MN Department of Agriculture
4. MN Department of Commerce
5. MN Department of Employment and Economic Development
6. MN Department of Health
7. MN Department of Labor and Industry
8. MN Department of Natural Resources
9. MN Department of Transportation
10. MN Environmental Quality Board
11. MN Indian Affairs Council
12. MN Office of Pipeline Safety
13. MN Pollution Control Agency
14. MN State Archaeologist
15. MN State Historic Preservation Office
16. Southwest Regional Development Commission
17. U.S. Army Corps of Engineers
18. U.S. Environmental Protection Agency
19. U.S. Fish and Wildlife Service

By law, PUC's decisions are binding on other state agencies.[23] As a result, state agencies participate in PUC's proceedings to ensure that their responsibilities to protect

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[19] *Minnesota Statutes* 2019, 216B.01.

[20] *Minnesota Statutes* 2019, 8.33. The Attorney General plays several other roles in PUC proceedings. It represents the Department of Commerce's Energy Regulation and Planning unit and its EERA unit. It also represents PUC when PUC's decisions are appealed to the Minnesota Court of Appeals. And, it investigates and enforces noncompliance of entities regulated by PUC.

[21] *Minnesota Statutes* 2019, 8.33, subd. 3; and *Minnesota Rules*, 7829.0800, subp. 3, published electronically June 14, 2016.

[22] *Minnesota Statutes* 2019, 216A.07, subd. 3; and 216C.10 (a)(9); and *Minnesota Rules*, 7829.0800, subp. 3, published electronically June 14, 2016.

[23] *Minnesota Statutes* 2019, 216E.10.

the public interest are exercised. The Department of Natural Resources, for example, might recommend during a comment period that PUC select one proposed route over another, or that PUC impose conditions in a permit that would help protect the state's waters. PUC maintains a list of 19 state, federal, and regional agencies (shown in the box on the previous page) that it uses to notify those agencies when a pending case could affect the agencies' work.

In addition, a number of nonprofit organizations, such as the Citizens Utility Board of Minnesota and the Energy CENTS Coalition, have missions to advocate before PUC on behalf of Minnesota's utility customers or other segments of the state's population. Several PUC commissioners that we spoke with told us that advocates such as these are critical in helping them understand the public interest.

We spoke with a number of organizations that routinely advocate in the commission's utility proceedings. In general, representatives from these organizations spoke favorably about the commission's efforts to work with them. For example, a representative from one organization commented that the commission offers a "comfortable" and "accommodating" environment for smaller organizations. Another suggested that the commission is a much more welcoming environment now compared to years past, stating, "It has evolved to the point where [commissioners] expect us to be in the room, they ask for our perspective and suggestions."

> Many of our issues are heard because we have been in the room for 27 years—usually as the only non-governmental consumer organization. I don't know how the commission would hear about low-income consumer concerns…without some form of institutionalization….
>
> — A Stakeholder Organization

The public generally has fewer institutional advocates in energy facility cases than in other types of cases.

The institutions that we discussed above typically advocate in matters that affect *classes* of the public—such as ratepayers in utility cases. They typically do not advocate in energy facility cases, which often involve balancing the interests of *individual* members of the public.

For example, the Office of the Attorney General's Residential Utilities and Antitrust Division does not advocate on behalf of an individual resident, landowner, or small business that might be affected by a proposed transmission line. As a result, the division does not typically intervene in energy facility cases, which require the balancing of those interests. Similarly, even if the Department of Commerce's Energy Regulation and Planning unit were to recommend that PUC approve a certificate of need for a transmission line, it would

> If we don't have experts and well-trained effective advocates appearing in front of us on behalf of the public…the public is in trouble.
>
> — A PUC Commissioner

not advocate for or against a specific route for that transmission line.[24] Likewise, the nonprofit advocacy organizations with whom we spoke typically only participate in cases that affect classes of people, such as ratepayers in general or low-income ratepayers.

Therefore, in energy facility cases, the individual interests of landowners, residents, small business owners, or other individuals may not be represented by any institutional advocate. Rather, these individuals must advocate for themselves. In Chapter 3, we discuss some challenges that participants in energy facility cases face when advocating for themselves.

Tribal Governments

Like any other entity, American Indian tribes may intervene or otherwise participate in PUC proceedings.[25] American Indian tribes, however, are not like most other entities. They are sovereign nations whose relationships with the United States are governed by a series of treaties. Under the U.S. Constitution, treaties are the "supreme law of the land."[26] The potential impacts of the proposed projects that go before PUC become more complicated when they involve the lands or rights of another sovereign nation or its citizens. In recent years, a number of tribes whose reservations lie within Minnesota's borders have intervened in PUC's cases.

Until recently, the Public Utilities Commission had not established formal protocols for interacting with tribal governments.

In 2013, Governor Dayton issued an executive order directing certain executive branch agencies to develop and implement tribal consultation policies and to consult annually with each tribe.[27] However, neither PUC nor the Department of Commerce nor the Office of Administrative Hearings was named in the order.[28] In April 2019, Governor Walz issued a new executive order on tribal consultation.[29] Unlike the previous one, this order included the Department of Commerce. But, like the previous one, it did not include PUC or the Office of Administrative Hearings.

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[24] As we explained in Chapter 1, large energy facility cases often involve multiple "dockets" or components of the case. For example, they may involve one docket related to the certificate of need and another related to the site or route permit.

[25] In this report, we use the term "tribe" when referring to the six bands that compose the Minnesota Chippewa Tribe, as well as the other federally recognized American Indian tribes whose reservations are located within Minnesota's borders.

[26] *U.S. Constitution*, art. VI.

[27] State of Minnesota Executive Order 13-10, "Affirming the Government to Government Relationship between the State of Minnesota and the Minnesota Tribal Nations: Providing for Consultation, Coordination, and Cooperation; Rescinding Executive Order 03-05," August 8, 2013.

[28] We did not evaluate the efforts of the Department of Commerce or the Office of Administrative Hearings to consult with tribal governments.

[29] State of Minnesota Executive Order 19-24, "Affirming the Government to Government Relationship between the State of Minnesota and the Minnesota Tribal Nations: Providing for Consultation, Coordination, and Cooperation," April 4, 2019.

It is important to note that PUC's unique role as a quasi-judicial body limits its ability to interact with parties to a given case, including tribal governments. *Ex parte* communication rules prohibit PUC commissioners from communicating with one party without providing proper notice to the other parties. But, *ex parte* communication restrictions apply only on material matters in certain types of pending cases. Commissioners can and do interact with entities that are parties to PUC cases (such as utilities) in other settings about other issues. *Ex parte* communication rules do not prevent PUC from consulting with tribes about matters that are not pending before it.[30]

We asked PUC officials about the agency's efforts to consult with tribes. Officials told us that PUC historically has not conducted formal consultation with tribal governments or adopted special protocols for working with them. However, in a letter to Governor Walz in June 2019, PUC's chair stated the commission's "intent to recognize and implement to the extent possible" the Governor's executive order.[31] And, in December 2019, PUC approved a tribal consultation plan.

Federally Recognized American Indian Tribes Located within Minnesota's Borders

- Lower Sioux Community
- Minnesota Chippewa Tribe
  - Bois Forte Band
  - Fond du Lac Band
  - Grand Portage Band
  - Leech Lake Band
  - Mille Lacs Band
  - White Earth Band
- Prairie Island Mdewakanton Dakota Community
- Red Lake Nation
- Shakopee Mdewakanton Sioux Community
- Upper Sioux Community

State law does not always require state agencies and regulated entities to notify tribal governments when it requires notification of other governments about pending PUC cases.

State law requires state agencies and regulated entities to notify—at various stages during a case—stakeholders that may be affected by a proposed project, including regional and local units of government. In some cases, the law also requires state agencies and regulated entities to notify tribal governments; but, in other cases, it does not. For example, when applicants submit a site or route permit application for an energy facility, they must notify any county, city, or town that would be affected. But, they are not required to notify any tribal governments that may be affected.

Further, as we noted earlier, PUC maintains a list of 19 government agencies that it uses to notify those agencies about proposed projects that may overlap their respective jurisdictions. Although this list includes the Minnesota Indian Affairs Council, it does not include tribal governments. The Minnesota Indian Affairs Council is not a

[30] PUC commissioners also must adhere to a code of conduct outlined in *Minnesota Rules*, Chapter 7845.

[31] Katie Sieben, Chair, Public Utilities Commission, letter to Tim Walz, Governor, *Executive Order 19-24 and Tribal Liaison*, June 27, 2019.

representative of any tribe; rather, it is a state agency that liaises with tribes, among other things.[32]

RECOMMENDATIONS

- **The Public Utilities Commission should regularly consult with each tribe.**
- **The Legislature should require tribal notification whenever notification of affected units of government is required.**

Over the course of this evaluation, PUC took a number of steps to improve its work with tribes, such as the development of a tribal consultation plan. In mid-to-late 2019, several key PUC officials also attended training on tribal-state relations, and the commission designated its public advisor to serve as a tribal liaison.[33]

PUC should continue and expand on these recent efforts. For example, it should regularly consult with each tribe to ensure a shared understanding of the rights imparted by treaties and to engage with tribes on other matters of interest or concern. PUC should also add each of the tribes to its contact list of government agencies to ensure tribes are notified of projects that could affect them.

In addition, the Legislature should modify state law to ensure that tribal governments are provided the same notification as other governments that may be affected by pending PUC cases. Tribal governments and members cannot effectively participate in the commission's processes if they are not informed about them.

[32] *Minnesota Statutes* 2019, 3.922, subd. 6(7).

[33] PUC's public advisor attended training on tribal-state relations in mid-2018.


THE GREAT SEAL OF THE STATE OF MINNESOTA
L'ETOILE DU NORD
1858

Chapter 3: Participation Resources

The Public Utilities Commission's (PUC's) public participation processes are incredibly complex for a number of reasons. They are complex because a complicated set of laws establish different participation opportunities for different types of projects, as we discussed in Chapter 1. They are complex because they are administered by multiple state agencies and involve numerous entities with numerous roles, as we discussed in Chapter 2. And, they are complex because they involve highly technical subject matter, legalistic proceedings, and issues that may impact individuals deeply, such as the threat of property loss.

Because PUC's processes are so complex, it is important that PUC provide resources to help members of the public navigate them. In fact, state law directs PUC to facilitate public participation in energy facility cases. It states: "The 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 task forces…."[1]

> The commission shall adopt broad spectrum citizen participation as a principal of operation.
>
> — Minnesota Statutes, 216E.08, subd. 2

In this chapter, we explore the resources that PUC has provided to facilitate public participation. First, we review the "eDockets" system, which houses PUC's case records. Then, we review the educational materials posted on PUC's website, followed by resources that PUC has provided to enable the public to submit comments. Next, we discuss the resources that PUC has provided to help members of the public intervene in its cases. Finally, we discuss the extent to which PUC staff function as a resource to the public.

eDockets

Since the mid-2000s, PUC has used "eDockets" to house its case records. eDockets is an electronic record system that is accessible to the public through the Department of Commerce's website. The Department of Commerce maintains the system on behalf of PUC. State agencies, parties to cases, and others upload case records directly into the eDockets system, including: meeting notices, application materials, environmental reports, public comments, administrative law judges' reports, and PUC decisions.

The eDockets system provides valuable public access to case records, but it is difficult to use.

The eDockets system facilitates public participation in several ways. It provides users with remote access to information in the official case record. It allows users to directly

[1] *Minnesota Statutes* 2019, 216E.08, subd. 2.

upload public comments and other documents. And, it allows users to subscribe to e-mail alerts, which notify them whenever someone uploads a relevant document or sends out a notice.

But, the eDockets system is antiquated and difficult to use. Both state officials and members of the public expressed frustration to us about it. One official described it as a tool "for insiders." In a 2015 report, Minnesota Management and Budget's Management Analysis and Development Division also reported stakeholder frustration with the eDockets system.[2]

> eDockets is such a horrible system.
>
> — A PUC Official

One of the system's key limitations is that it does not link related dockets.[3] For example, one pipeline case that we reviewed involved two dockets—one for the certificate of need application and one for the route permit application. In that case, notices for some PUC meetings were issued through one docket, but not the other. This means that if users were subscribed to only one of the two dockets, they may have missed notifications for some meetings.

On the other hand, because related dockets are not linked, users often—but not always—post the same information in each docket. For example, one pipeline case we reviewed involved around 6,300 documents; many of those documents were duplicated across the case's two dockets. When dockets are so voluminous, it can be challenging for PUC commissioners, PUC staff, and the public to carefully review the full record.

Another key limitation of the system is that users typically must know the unique docket number(s) associated with a case. For example, we searched eDockets for one case using the abbreviated title for the case, "Dodge County Wind." The search returned 1,000 documents (the maximum possible) under 135 different docket numbers. Because PUC's website does not contain a comprehensive list of pending energy facility cases, it was difficult to identify the relevant docket numbers associated with that case.

The eDockets system can be difficult to use for other reasons, too. Notably, its search features are limited; users cannot search by certain criteria simultaneously or by case status. Transcripts of public comments are often not available through the system, and the system does not provide clear instructions on how to access the transcripts by other means. Further, users must download one document at a time, which is impractical for large dockets. And, although the system's subscription function can help users stay apprised of actions in a given case, the function cannot be tailored, which means subscribers' inboxes may be bombarded daily by irrelevant notifications.

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[2] Minnesota Management and Budget, Management Analysis and Development Division, *Public Utilities Commission and Department of Commerce Function Transfer Study* (St. Paul, 2015), 73.

[3] A "docket" is a matter pending before the commission that is assigned a unique number.

RECOMMENDATION

The Public Utilities Commission should work with the Department of Commerce to improve the usability of the eDockets system.

First, PUC should adjust its practices to make eDockets more useful. For example, PUC should post meeting notices in all related dockets and direct agency partners (the Department of Commerce and the Office of Administrative Hearings) to do the same for notices that they issue. PUC should also post a list of pending energy facility dockets on its website so members of the public can refer to the list when using eDockets.[4]

Second, PUC should work with the Department of Commerce to make eDockets more user friendly. They should, for example:

- Explore whether they can expand the system's search functions.
- Explore ways to link related cases.
- Explore the system's ability to automatically "stamp" the first page of a document with pertinent information, such as a unique identifier for the document, the date it was uploaded, and who uploaded it. Alternatively, PUC could require certain users (such as parties and state agencies) to upload accompanying cover sheets with this information. PUC could also require users to provide tables of contents for large, multi-part uploads.

In April 2020, PUC officials told us the agency had begun working with the Department of Commerce and the Office of Minnesota Information Technology Services (MNIT) to improve the eDockets system.

Website

Websites are often the first resource that members of the public turn to when trying to learn about an agency's work or processes.

The Public Utilities Commission's website does a poor job educating the public about the commission's unique role and processes.

PUC's website does a poor job helping the public understand PUC's unique role as a quasi-judicial body. For example, the website contains little information about the legal criteria that PUC must apply to the record when making its decisions. As we discussed in Chapter 1, a key role of the public in PUC's proceedings is to help develop the record for a given case. But, members of the public cannot effectively develop the record if they do not know what criteria are relevant. In one public meeting that we attended, we observed a PUC staff person struggle to find the criteria relevant to the project when

[4] As we discuss below, the Department of Commerce maintains a list of energy facility cases on its website, but it does not include certificate of need dockets.

asked about them by a member of the public. This crucial information should be readily available at public meetings and on PUC's website.

Additionally, the website does not explain which types of entities have the power of eminent domain.[5] Eminent domain is an important issue in PUC's energy facility proceedings; many of the companies seeking PUC's regulatory approval have this power.[6] Members of the public cannot make a fully informed decision about whether or how they should participate in a proceeding if they do not understand whether they may lose property through eminent domain.

Further, with some exceptions, PUC's website does not provide information about important PUC orders. As we discussed in Chapter 1, the commission issues orders with "general applicability."[7] These orders are not accessible on PUC's website. In most cases, members of the public must comb through eDockets to learn that these orders exist. PUC's website also does not explain how precedent that the commission has set through orders in past cases could influence future cases, nor does it point the public to key PUC decisions that might guide the commission in future cases, such as in wind-energy cases.

Finally, PUC's website contains little information to help the public understand what cases are currently before the commission. The website does contain a link to eDockets; but, eDockets does not allow users to search cases by status, which means they cannot identify a comprehensive list of open dockets. PUC's website also contains a link to the Department of Commerce's website, which has a list of PUC's open energy facility dockets, but this list is incomplete.[8]

RECOMMENDATION

The Public Utilities Commission should include more and better information on its website to facilitate public participation.

Numerous stakeholders that we spoke with, including PUC staff, recommended improvements to PUC's website. We agree that improvements are warranted. In particular, PUC should provide more information about its quasi-judicial processes.

PUC's website could serve as a powerful tool to help the public understand how and when to participate in cases. In Chapter 2, we explained that members of the public may have access to fewer resources when participating in PUC cases as compared to regulated entities. PUC could help level the playing field by providing the public with

[5] "Eminent domain" is the right to seize private property; it typically involves compensation for the property owner.

[6] *Minnesota Statutes* 2019, 117.025, subds. 10-11; and 117.48.

[7] These orders apply generally, rather than to a particular case, such as to a particular energy facility application. For example, as we discussed in Chapter 1, in 2004, the commission issued an order with general applicability that established fees and standards for how small electricity generators, such as homeowners with solar panels, may connect to the electrical grid. See *Minnesota Statutes* 2019, 216A.02, subd. 2.

[8] The Department of Commerce's Energy Environmental Review and Analysis unit's website does not include all certificate of need dockets.

more educational resources. Such resources could help develop a shared understanding between PUC commissioners, staff, partner agencies, and other stakeholders about the role of the public, the participation opportunities afforded to them by law or PUC discretion, and the limits of public participation.

Throughout this report, we discuss other information that PUC should provide on its website. PUC should also reach out to stakeholders to find out what additional information they would find useful on the website.

Public Comments

PUC has provided various resources to enable members of the public to submit into the record information related to open cases. PUC generally refers to this sort of information as "public comments."

The resources that the Public Utilities Commission has provided for the public to submit comments have been difficult to use or unreliable.

Through late 2019, PUC used an application on its website to collect public comments. We heard numerous complaints about this application. For example, people reportedly had problems uploading attachments or finding the relevant docket within the application. In addition, officials told us that because the application used a discussion-based format, users could submit disparaging replies to other users' comments, which could be intimidating for some.

In late 2019, PUC replaced the application with an electronic form on its website. This new form alleviates many of the problems users faced with the old system. However, in early 2020, we observed that the form was down during a public comment period for a highly controversial pipeline project.

PUC allows members of the public to submit comments in other ways, too. For example, members of the public can directly upload comments into eDockets. But, as we described earlier, the eDockets system can be difficult to use, especially for those who are not technologically savvy.

Members of the public can also submit public comments to PUC by mail or e-mail, or orally or in writing during a public meeting or hearing. When they submit comments this way, PUC staff upload the comments to eDockets for them. But, as we discuss later in this chapter, until early 2020, PUC did not have agency-wide policies about how staff should handle comments, which resulted in some staff not uploading comments that did not meet their personal criteria. Later in this chapter, we recommend that PUC provide better guidance about issues such as this to its staff.

Intervention

As we discussed in Chapter 1, members of the public can participate in a PUC case in a variety of ways; one way is by petitioning to intervene as a party.[9] As a party to a case, members of the public have more guaranteed opportunities to advocate than they do by participating in other ways.

Intervening as a party to a case can be difficult, time consuming, and expensive for a member of the general public; the Public Utilities Commission has provided few resources to help the public participate in this way.

Intervening in a case is not easy. Members of the public first must be aware of their right to petition to intervene. PUC's website does not inform the public of this right.

> …just getting through the process of submitting our very first petition to intervene was really daunting. We wouldn't have made it that far if it wasn't for a volunteer who went through and wrote up all of the statutes relevant to citizen intervenors and the intervenor process for us. …We then took that information, spent hours parsing through all of it and writing guides that could help us and other people intervene.
>
> — An Intervenor Organization

In certain types of cases, state law requires PUC to post information about the right to intervene and the responsibilities of intervenors when it orders a hearing to take place.[10] While PUC's orders for some of the cases that we reviewed contained information about intervening, they did not contain sufficient information to guide someone through the process. Further, this information was presented only in PUC orders that were housed in eDockets, not posted in plain language on PUC's website or in press releases.

In addition, aside from the limited information posted in these orders, we found no evidence that PUC has provided resources to educate the public on how to exercise their right to intervene. As a result, members of the public must turn directly to state law, which is voluminous, confusing, and does not provide instructions about the mechanics of petitioning to intervene.

Individuals and entities may intervene without legal counsel, but this can be challenging.[11] For example, intervenors would have to read the law very carefully to understand that they may ask an administrative law judge to have PUC review the

[9] *Minnesota Rules*, 7829.0800, published electronically June 14, 2016.

[10] *Minnesota Rules*, 1405.0500, subp. 1I, published electronically August 21, 2007, requires PUC to provide information in hearing orders and notices regarding: the right to intervene, the rights and responsibilities of intervenors and how they differ from the rights of other participants, and the procedures for intervening. This requirement applies in only certain types of PUC energy facility cases.

[11] *Minnesota Statutes* 2019, 216.16; and *Minnesota Rules*, 1400.5800; and 1400.7100, subp. 5, published electronically August 6, 2013; and 1405.0600, published electronically August 21, 2007.

matter if the judge makes a decision with which they disagree.[12] In one case that we observed, a judge ruled that an intervenor group could not represent itself without legal counsel. Fortunately for that group, it was familiar enough with state rules to ask the judge to refer the matter to PUC for review. In that case, PUC clarified its position that legal representation by intervenors is not required in PUC proceedings.[13]

> If you're not an advocate, if you're not a lawyer…it's going to be hard. It's hard for members of the public generally, I think, to participate at the same level…with someone who actually does it for a living.
>
> — A PUC Commissioner

Intervening can be time consuming and challenging in other ways, too. Intervenors may have to defend their petitions to intervene from legal objections by the regulated entities that they oppose. Intervenors may need to make motions; respond to motions; and adhere to numerous deadlines, which may be scattered throughout state law. They may have to travel to St. Paul from outstate Minnesota during their work days to appear at numerous hearings or meetings, which may be spread across months or years and scheduled with little advanced notice. They may need to prepare documents in a specific format. They may need to present expert witnesses, submit to cross-examination by attorneys, and cross-examine the regulated entity's witnesses. Intervenors may also have to pay for, make, and deliver numerous paper copies of their materials.

Generally speaking, intervenors and other participants in energy facility cases face greater challenges in advocating for themselves than participants in other types of cases.

In Chapter 2, we explained that the public generally has fewer institutional advocates in energy facility cases than in other types of PUC cases. As a result, members of the public affected by proposed energy facility projects must advocate for themselves.

> We would learn just how hard [intervening] was as time progressed and our involvement deepened…in its complexity and expense [the process] was neither designed for nor friendly to access by a small group of citizens.
>
> — An Intervenor Organization

Additionally, intervenors and other participants in energy facility cases face challenges that participants in other types of cases do not. For example, utility cases typically involve the same sets of stakeholders over and over again (the ratepayers of the nine utilities). Energy facility cases, on the other hand, generally affect new stakeholders each time (such as local landowners, businesses, and municipal governments). As a result, intervenors and participants in energy facility cases may acquire less institutional knowledge over time and across cases, which can limit their effectiveness. And, because they may not have a need to participate in other PUC cases, they may be less likely to seek changes to problematic processes.

[12] *Minnesota Rules*, 1400.7600, published electronically August 6, 2013; and 1405.2200, published electronically August 21, 2007.

[13] Minnesota Public Utilities Commission, "Order Allowing Withdrawal of Route Permit Application, Suspending Certificate of Need and Site Permit Proceedings, and Allowing Refiling," Docket Nos. 17-306, 17-307, and 17-308, December 5, 2019.

A handful of institutions, including some counties and labor and environmental groups, do routinely intervene in energy facility cases, which allows them to sharpen their skills over time. But, the interests of those groups may not necessarily align with those of other stakeholders in a given case. Individual American Indian tribes, area residents, landowners, lake associations or other environmental organizations, labor organizations, and local governments may each have different goals for the same energy facility project.

Further, state law allows intervenors to request reimbursement for their costs in utility and telecommunications rate cases, but not in energy facility cases.[14] In energy facility cases, local residents or small businesses that choose to intervene may face significant financial, time, and information resource imbalances compared to the regulated entities that they challenge. Although they may hire an attorney, they may not be able to afford one. Meanwhile, the regulated entities that they face may be able to afford skilled, full-time legal counsel specializing in utility regulation. Without legal counsel, it may be challenging for members of the general public to craft arguments that are relevant to the legal guidelines that the commission must follow.

> "...one of the commissioners ...said, 'Why aren't there more landowners up here being intervenors?' ...He had no clue that they've tried...you have to get a lawyer. You have to have money."
>
> — A Member of the Public

RECOMMENDATION

The Public Utilities Commission should provide educational resources about intervening to members of the general public.

As we explained earlier, statutes require PUC to "adopt broad spectrum citizen participation as a principal of operation" in energy facility cases.[15] One way the commission could better facilitate citizen participation and help to level the playing field is by educating the public about opportunities to participate in PUC cases, which includes the right to intervene. PUC should inform the public about the grounds under which the public may intervene, the rights and responsibilities of intervenors, and the procedures that intervenors must follow.

PUC should not only provide better information about intervening in orders for hearings, as required by law, but also provide it in plain language on its website and in other forms. For example, the public advisor could create and make available educational materials about intervening, such as webinars or downloadable guides. After all, state law requires PUC's public advisor to "assis[t] and advis[e] those affected and interested citizens on how to effectively participate" in PUC proceedings.[16] As such, the public advisor should inform members of the public about the benefits and challenges of intervening.

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[14] *Minnesota Statutes* 2019, 216B.16, subd. 10; and 237.075, subd. 10.

[15] *Minnesota Statutes* 2019, 216E.08, subd. 2.

[16] *Minnesota Statutes* 2019, 216E.08, subd. 3.

Commission Staff

Various PUC staff, including the public advisor, staff in the Consumer Affairs Office, and regulatory analysts, serve as resources to the public. For example, the public advisor must assist members of the public and advise them on how to participate in energy facility cases.[17] PUC's Consumer Affairs Office mediates complaints about utilities from utility customers and responds to inquiries from PUC's general phone line and e-mail account, among other duties. And, PUC's regulatory analysts answer questions from the public about specific dockets.

Guidance for the Public

In order for the public to use PUC's staff as a resource, the public must know that PUC's staff can serve in that capacity.

The Public Utilities Commission has not provided adequate information to the public about how to use its staff as a resource.

Although PUC's website provides contact information for all of its staff, it does not clearly explain the roles of those staff or explain how most staff can help the public participate in PUC's processes. For example, the website posts the name and contact information for the individual who works as the public advisor, but does not identify that person as the public advisor. Additionally, the website does not provide sufficient guidance about what kind of support the public advisor may or may not give.

Similarly, although a page on the website posts the names and contact information for PUC's regulatory analysts, it does not clearly explain what the regulatory analysts do, how they can help the public, or the limits of their ability to work with the public, if any. For example, we encountered some confusion over whether conversations about pending cases between PUC staff and parties or members of the public are considered prohibited *ex parte* communication. But, such communication is not prohibited by law.[18]

> Significant differences of opinion exist on what counts as prohibited ex parte communication.
>
> — Minnesota Management and Budget, 2015 Report

RECOMMENDATION

The Public Utilities Commission should provide better information to the public about how its staff can support public participation.

PUC should post more information on its website about the roles of its staff and provide clear guidance about the kinds of support staff can and cannot give. Clear guidance

[17] *Minnesota Statutes* 2019, 216B.243, subd. 4; 216E.08, subd. 3; and 216F.02(a); and *Minnesota Rules*, 7850.2200 and 7854.0700, published electronically September 18, 2009; and 7852.1200, published electronically August 21, 2007.

[18] *Minnesota Rules*, 7845.7200, subp. 2, published electronically January 5, 2010.

could, for example, not only help reduce accidental *ex parte* communications, but also create a better and shared understanding between staff, intervening parties, and members of the public about the kind of communication and support that *is* permissible.

> The public have little idea of who the Commission is, what the Commission does, and the role of staff.
>
> — A PUC Staff Member

Guidance for Staff

In order for PUC's staff to serve as a resource to the public, those staff also must understand how they are supposed to serve the public.

The Public Utilities Commission has not provided adequate guidance to its staff about working with the public, which has led to inconsistent treatment of the public.

PUC has not provided its staff—particularly the public advisor and staff in the Consumer Affairs Office—with adequate guidance about the scope of their responsibilities or their authority when working with the public. Notably, the agency has not provided position descriptions to some key staff. Our conversations with PUC staff revealed that they did not have a clear or common understanding of the scope of their—or their colleagues'—responsibilities in working with the public.

PUC officials also told us they were unsure about the extent to which either the public advisor or the Consumer Affairs Office should proactively facilitate public participation, such as by developing educational materials or conducting outreach. To date, their efforts to facilitate public participation have been largely passive, such as responding to questions when asked, staffing public meetings and hearings, and filing comments from the public when requested.

> For the most part, public participation at PUC runs on autopilot…. There should be more thoughtful internal discussion about public participation, and the staffing to support it.
>
> — A PUC Staff Member

In addition, PUC has not developed sufficient policies on how staff should work with the public. Notably, until early 2020, PUC had not established clear, agency-wide policies about how staff should process public comments or certain kinds of complaints. As a result, staff have used inconsistent practices. For example, staff used varying definitions for what constituted a "complaint" or a "public comment" and did not always file in the docket or maintain submissions that did not meet their personal definitions. In the absence of agency-wide guidance, staff have relied on their own judgment to make some important decisions. For example, staff have barred attendees from proceedings for breaking rules imposed by the individual staff person, rather than enforcing only those that were officially established and publicly posted.

RECOMMENDATION

The Public Utilities Commission should provide clearer guidance to staff about their responsibilities to ensure consistent treatment of the public.

PUC should ensure that staff across the agency understand the scope of their respective roles. To this end, PUC should require that all staff review, sign, and maintain copies of their own position descriptions. In early 2020, PUC officials told us that they had instituted a new policy of maintaining copies of position descriptions and having staff sign them, and that they planned to review position descriptions across the agency. We commend the commission on this plan. We think it is a good first step in providing staff with clearer guidance on their responsibilities—including those related to working with the public.

In early 2020, PUC also established an agency-wide policy about how staff should handle complaints and public comments. Again, we commend the commission on taking steps to help staff understand how they should work with the public. Ensuring that staff have a common understanding of their responsibility to work with the public is a good first step toward more equitable and consistent treatment of those who engage with the commission.


THE GREAT SEAL OF THE STATE OF MINNESOTA
L'ETOILE DU NORD
1858

Chapter 4: Commission Meetings

Minnesota's Open Meeting Law requires the Public Utilities Commission (PUC) to conduct its business in meetings that are open to the public.[1] PUC's five commissioners conduct their business in two types of meetings—agenda meetings and planning meetings. In this chapter, we discuss public participation in those two types of meetings.[2]

We begin the chapter by discussing the role of the public in PUC's meetings. Then, we review how PUC notifies the public about its meetings and the meeting records that PUC makes available to the public. Next, we discuss the rules that PUC has imposed on the members of the public who attend its meetings. Finally, we discuss other issues that affect public participation in PUC's meetings.

Role of the Public in Meetings

In this section, we first discuss the role of the public in agenda meetings, then we discuss the public's role in planning meetings.

Purpose of PUC Meetings

Agenda Meetings	Planning Meetings
To make decisions about specific dockets	To make internal operational decisions and discuss broader policy issues with external stakeholders

In agenda meetings, the commission makes decisions about specific dockets, as we discussed in Chapter 1.[3] For example, in an agenda meeting, the commission may vote on whether to approve a permit for a specific energy facility. Generally speaking, the commission must base its decisions on the information in the record for that docket and on applicable law. As we discussed in Chapter 1, a key role of the public in the commission's proceedings is to help develop that record for a given case.

Generally speaking, the record for a given case is closed by the time the case goes before the commission for a final vote in an agenda meeting. The general public usually does not have an opportunity to further develop the record at late-stage agenda meetings. Parties, however, may be able to supplement the record through oral arguments, or when asked a question by a commissioner. Therefore, the role of the public in late-stage agenda meetings is typically to observe the commission—a public body—as it makes its decisions based on the record. But, this is not exclusively the case.

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[1] Open Meeting Law, *Minnesota Statutes* 2019, 13D.01, subd. 1.

[2] In Chapter 2, we discussed other types of PUC meetings, including "public meetings" and "public hearings," which are held specifically to solicit public input.

[3] A "docket" is essentially any pending matter before PUC, such as a request by a utility to raise its rates. A case may involve more than one docket.

The commission may allow members of the public to supplement the record during an agenda meeting. In fact, Minnesota rules explicitly allow the commission to grant members of the public an opportunity to address it during an agenda meeting, although they do not guarantee this as a right.[4] PUC's internal "Meeting Procedures" also acknowledge the possibility, as the box at right shows.[5]

> Occasionally it will be useful to the commission to accept public comments at the time of the agenda meeting to aid its deliberations, or because matters are raised that are of public interest and there was no formal public comment process.
>
> — PUC Meeting Procedures

Whether or not the commission allows the public to address it during an agenda meeting can depend on the type and stage of the case, as well as commission discretion. The commission typically does not make a single summary judgment at the end of each case; rather, it typically makes a series of decisions throughout the life of a case and over multiple agenda meetings. The commission may let individual members of the public speak at an earlier stage in a case, but not at a later one. At a later stage, the commission may need to take extra care not to give one person an opportunity to supplement the record when others do not have an opportunity to provide contrary arguments or evidence.

The Public Utilities Commission has done a poor job educating the public about the public's role in its meetings.

PUC has sent mixed messages about the public's ability to address the commission during agenda meetings. For example, through 2019, the page on PUC's website that discussed agenda meetings stated simply, "No 'open mike' [*sic*] time." Yet, some attendees have witnessed PUC grant this opportunity to members of the public. PUC's website does not explain why a member of the public might be able to supplement the record at one point in a case but not another, or why parties might be able to supplement the record during an agenda meeting when members of the public might not.

PUC's internal meeting procedures (shown in the box at right) explain what members of the public should do if they would like to address the commission during an agenda meeting. But, these instructions are not posted publicly on PUC's website, or anywhere else.[6]

> Members of the public who wish to address the commission are encouraged to notify commission staff in advance of the meeting so that the commission is aware of the request.
>
> — PUC Meeting Procedures

PUC has also done a poor job educating the public about the role of the public in its planning meetings. In many planning meetings, the commission handles internal or operational matters that may be of little interest to the public, such as scheduling which dockets will be heard at upcoming agenda

[4] *Minnesota Rules*, 7829.0100, subp. 13, published electronically June 14, 2016; and 7829.0900, published electronically August 21, 2007.

[5] Minnesota Public Utilities Commission, *Operating Procedures and Policy*, "Meeting Procedures," (St. Paul, adopted September 18, 2014).

[6] *Ibid*.

meetings, approving the agency's budget, or handling personnel issues. But in other planning meetings, the commission engages with stakeholders and considers policy issues that are more likely to be of interest to the public. For example, in 2019 planning meetings, the commission heard presentations from utilities, renewable energy advocates, and others; it also discussed policy proposals, renewable energy goals, how severe winter weather impacted utilities' operations, and various other issues.

At least in theory, compared to agenda meetings, the public has a greater opportunity to interact with the commission in planning meetings. Planning meetings are less formal than agenda meetings, which—given their quasi-judicial format—are adversarial by nature. And, because the commission is not usually dealing with specific dockets in planning meetings, it is typically not restricted by *ex parte* communication rules.

Although planning meetings offer interested members of the public a valuable opportunity to engage with the commission, PUC's website provides little information about this opportunity. PUC's web calendar lists the dates of upcoming planning meetings, but it provides no description of the general purpose of planning meetings and rarely contains agendas for upcoming ones. As a result, likely only experienced stakeholders, such as utilities or some advocacy groups, know that they may give presentations to or otherwise engage with the commission on policy or other issues in planning meetings.

RECOMMENDATION

The Public Utilities Commission should do a better job educating the public about the role of the public in its agenda and planning meetings.

First, PUC should provide clear information on its website about whether and when the public may address the commission during agenda meetings. PUC should also provide information that explains when the record is truly closed, and why that may affect the public's ability to address the commission during agenda meetings.

Second, PUC should provide information on its website about the purpose of its planning meetings. The opportunity to engage with the commission during planning meetings should not be limited to only those experienced stakeholders with inside knowledge of the commission's processes. Numerous stakeholders expressed frustration to us about their inability to address the commission directly. PUC could better leverage its planning meetings to engage with the public on non-docketed issues, such as how to continuously improve its public participation processes.

> …informal planning meetings are essential…the commission [should] hold more regular ones….
>
> — A Stakeholder Organization

Meeting Notification

State law dictates whether and when PUC must notify the public about its meetings. The box below lists the requirements that apply to agenda and planning meetings.

According to state rules, before PUC may hear a given docket, it must provide the parties to the docket (and certain other participants) at least ten days' notice.[7] PUC typically hears dockets in agenda (not planning) meetings. When PUC decides to hear a docket, it notifies the parties (and certain other participants) about the meeting through the eDockets system.[8] PUC also posts the agendas for upcoming agenda meetings on its web calendar.[9]

Notification Requirements

Agenda Meetings	Planning Meetings
At least ten days to parties and certain other participants	At least three days when a meeting is held at a special time or location
– Minnesota Rules, 7829.2800	– Minnesota Statutes, 13D.04

PUC uses its web calendar to notify the public about upcoming planning meetings as well. But, planning meetings typically do not involve dockets or parties to those dockets; therefore, PUC does not usually have to provide ten days' notice for them. By law, PUC only has to provide advanced notice of *special* planning meetings.[10] The Open Meeting Law requires PUC to keep a copy of its regular meeting schedule at its office. If PUC holds a planning meeting outside of its normal time or place, it must post a notice for that meeting on its "principal bulletin board" at least three days before the meeting will take place.

The Public Utilities Commission's meetings—especially planning meetings—can be difficult to track and attend.

It can be difficult to track and attend PUC's meetings, given the relatively short notice requirements. The short notice requirements can be especially challenging for intervenors or other stakeholders who must travel from outstate Minnesota to PUC's office in St. Paul. We had to check PUC's website multiple times per week to stay apprised of the schedule, sometimes without success.

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[7] *Minnesota Rules*, 7829.0300; 7829.1200, subp. 3; and 7829.2800, published electronically August 21, 2007.

[8] "eDockets" is an electronic system that houses the commission's case records and is available to the public through the Department of Commerce's website. It also provides alerts to subscribers, such as when a document has been filed for a specific docket.

[9] PUC's web calendar is located at: https://mn.gov/puc/newsroom/calendar.

[10] Open Meeting Law, *Minnesota Statutes* 2019, 13D.04, subds. 1 and 2(a)-(b), requires public bodies to post "written notice of the date, time, place, and purpose of the meeting on the principal bulletin board of the public body" when a regular meeting is held at a special time or place. We considered the commission's web calendar to be its "principal bulletin board." PUC also posts meeting notices on a bulletin board located outside one of its hearing rooms.

Regular Meeting Schedule

Agenda Meetings	Planning Meetings
Thursdays at 9:30 a.m.	Every other Tuesday at 9:30 a.m., and every Thursday at 11:00 a.m. or after the agenda meeting ends

For agenda meetings, individuals can subscribe to eDockets to receive meeting notices by e-mail. However, eDocket's subscription options are limited. For example, individuals may subscribe to receive notifications for all agenda meetings, *or* for any activity on a specific docket. Subscribers cannot limit alert subscriptions to agenda meeting notices for a specific case, which means they may be inundated with unwanted notifications if they subscribe to either of the available options.

For planning meetings, the three-day notice requirement can be especially challenging. For example, one Friday in 2019, PUC provided notice for a planning meeting that would take place the following Monday in the city of Cloquet. Although PUC met the three-day requirement, the short amount of notice may have made it difficult for some interested persons to learn about and attend the meeting.

Further, while PUC typically livestreams agenda meetings and makes audio and video archives of them available to the public, it does neither for planning meetings. Planning meetings are also much less predictable. For Thursday planning meetings, PUC holds them either at 11:00 a.m. or after the agenda meeting adjourns. This means that if members of the public want to observe a Thursday planning meeting, they need to arrive in person at 11:00 a.m. and may need to wait all afternoon until the end of the agenda meeting, at which point it may be too late to hold the planning meeting. PUC also frequently cancels planning meetings with little notice.

Moreover, PUC rarely posts agendas for planning meetings, which makes it difficult for a prospective attendee to know whether it would be worthwhile to try to attend one. According to PUC officials, the agency tries to post agendas of planning meetings whenever they include presentations from external stakeholders. The Open Meeting Law does not require PUC to post agendas for planning meetings, but it does requires PUC to post the "purpose" for an upcoming meeting when that meeting will be held at a special time or location.[11] PUC did not post the purpose for several planning meetings that it held or planned to hold at special times or locations in 2019. In addition, PUC failed to post on its website that several special planning meetings were canceled. As a result, members of the public could have unnecessarily traveled to PUC to attend them.

RECOMMENDATION

The Public Utilities Commission should make its planning meetings more accessible and transparent to the public. It should also ensure that its meeting notices comply with state law.

We understand that PUC often deals with issues in planning meetings that may not be of great concern to the public but that are important to PUC's continuing operations. However, it is difficult for members of the public to make this determination for

[11] Open Meeting Law, *Minnesota Statutes* 2019, 13D.04, subds. 1-2.

themselves, given how little information PUC currently provides about the purpose of upcoming planning meetings.

PUC should make its planning meetings more accessible and transparent to the public. First, PUC should post the purpose of planning meetings that are to be held at special times or locations, as required by law. PUC could also livestream planning meetings like it does for agenda meetings and/or make audio and video archives of them available to the public. It could also regularly post the purpose of upcoming planning meetings, if not agendas for them. And, when possible, it could provide more than the minimum amount of notice required by law for special planning meetings.

In early 2020, PUC adopted a new practice that we think has helped. It began issuing notifications from its web calendar that notify subscribers whenever it makes changes to or cancels a meeting. We think this is a good first step.

Meeting Records

We reviewed the extent to which PUC makes meeting records and other meeting materials available to the public.

In general, PUC maintains good records for its *agenda* meetings. State law requires PUC to make audio recordings of all of its proceedings.[12] As previously stated, PUC typically makes audio and video recordings of its agenda meetings and posts them on its website. In addition, PUC quickly posts decisions made during agenda meetings on its website—although full minutes are not usually posted until several months later.

The Public Utilities Commission has not made planning meeting records available to the public, including some required by law.

Record Requirements

Agenda Meetings	Planning Meetings
An audio recording must be made of all PUC proceedings	PUC votes must be recorded and maintained at PUC's office for public inspection during business hours
— Minnesota Statutes, 216A.03, subd. 6	— Minnesota Statutes, 13D.01, subds. 4-5

In contrast to agenda meetings, PUC does not create records, such as audio or video archives or minutes, for most planning meetings. The Open Meeting Law does not require PUC to keep minutes. But, it does require PUC to keep a record of any votes taken at its meetings.[13] Records of these votes must be maintained at PUC's office for public inspection during business hours. We inspected PUC's records for planning meetings and found that PUC had not recorded at least one vote taken in 2019.[14]

[12] *Minnesota Statutes* 2019, 216A.03, subd. 6.

[13] Open Meeting Law, *Minnesota Statutes* 2019, 13D.01, subds. 4-5.

[14] Because PUC maintains neither meeting minutes nor audio or video archives of its planning meetings, we could not verify whether or not it maintained records of all other votes taken in 2019.

RECOMMENDATION

The Public Utilities Commission should record all votes taken at planning meetings, as required by law. It should also consider making planning meeting records more accessible to the public.

In addition to recording votes as required by law, PUC should consider taking minutes at its planning meetings and uploading them to its website, as it does for agenda meetings. If PUC does not implement our earlier recommendations (regarding posting agendas for upcoming planning meetings, livestreaming them, or making audio and/or video archives of them available to the public), then providing minutes would be one way to make the business that PUC conducts at planning meetings more transparent. If nothing else, PUC could at least post records of the votes taken at planning meetings on its website. Given PUC's current practices, most members of the public have no way of knowing what occurs at most planning meetings.

Meeting Rules

We also reviewed the rules that PUC has imposed on members of the general public who attend its meetings.

State law protects the rights of citizens to protest; it also requires the Public Utilities Commission to maintain order to ensure that its business can be conducted.

Some inherent tension exists in the law with regard to the role of the public in PUC's meetings. On one hand, state law protects the rights of citizens to protest the commission and its actions; it "acknowledges and reaffirms the right of its citizens to petition, peacefully and in an orderly manner, all levels and units of government for the redress of grievances of whatever nature...."[15]

On the other hand, PUC has a statutory responsibility to ensure that its business can be conducted. Participants' rights are affected when PUC's proceedings are disrupted. State law requires that the business of state agencies be able to proceed in an orderly manner.[16]

> ...functions and proceedings of governmental bodies and agencies must remain free from organized or calculated confusion, disturbance or delay....
>
> — Minnesota Statutes, 624.72, subd. 1

[15] *Minnesota Statutes* 2019, 624.72, subd. 1.

[16] *Ibid.*

The Public Utilities Commission has established formal rules as well as "attendee protocols" to maintain order in its meetings; however, these protocols have varied, and staff have enforced them inconsistently.

State law authorizes government bodies to promulgate rules "for the purpose of protecting the conduct of public business therein or thereon, free from interference, or disruption or the threat thereof."[17] As such, PUC has promulgated rules about maintaining order in its meetings. One of the provisions in rules states that PUC's commissioners, as well as persons who appear before the commissioners, be "patient, dignified, and courteous," as the box below shows.[18]

> Commissioners shall not be swayed by partisan interests, public clamor, or fear of criticism.
>
> Commissioners shall maintain order and decorum in proceedings before the commission. In their official capacity, commissioners must be patient, dignified, and courteous to litigants, witnesses, lawyers, commission staff, and others appearing before them.
>
> Commissioners shall require similar conduct from persons appearing before them.
>
> — Minnesota Rules, 7845.0500

Another provision states: "Commissioners shall not be swayed by partisan influences, public clamor, or fear of criticism."[19] Several commissioners we spoke with cited this provision when discussing their role as decision makers. Commissioners emphasized that they must base their decisions on criteria in law and information in the case record—not on so-called "public clamor." However, this is not always an easy distinction since members of the public may contribute to the case record.

In addition to formally promulgated rules, PUC has also established "attendee protocols" to maintain decorum among attendees at its meetings. We found a number of issues with these rules. For example, rules posted simultaneously in various locations have differed from one another. Rules posted on PUC's hearing room doors prohibited attendees from bringing in briefcases, backpacks, or other bags; while rules posted on PUC's website did not. This means someone could check the website ahead of a meeting and—seeing no rule against it—bring a briefcase to a meeting, then be turned away because of it. Additionally, the rules have changed from meeting to meeting, and agency officials told us they have not been good about consistently enforcing them.

Numerous meeting attendees expressed frustration to us about the inconsistencies in PUC's meeting rules. For example, one person told us: "There needs to be one thing: consistency with the rules. [W]e've always had water, then all of a sudden [we] can't…we used to be able to bring our purses in, [then we] can't…. There were different rules every meeting." We discuss these inconsistencies more in Chapter 5.

[17] *Minnesota Statutes* 2019, 624.72, subd. 3.

[18] *Minnesota Rules*, 7845.0500, subp. 2, published electronically January 5, 2010.

[19] *Minnesota Rules*, 7845.0500, subp. 1, published electronically January 5, 2010.

Attendee Protocols

- The commission asks that you are respectful of the Commissioners, staff and others attending the hearing.
- Signs displayed outside of the hearing room should not be larger than 8.5 x 11 inches and must not have handles such as wood or metal poles.
- Signs or banners must be put away inside of the hearing room; stickers, flyers or other materials must be handed out before entering the hearing room.
- Do not block the hearing room doors.
- Every person watching the hearing must be seated in a chair.
- Rooms cannot be over capacity.
- No unnecessary talking, loud whispering, or other distracting activity is allowed inside of the hearing room. Conversations in the hallway should not be disruptive.
- Pictures without flash cameras may be taken and video recording is allowed if not disruptive or unless prohibited by the Commission Chair.
- Demonstrations of any kind are not allowed in the hearing room.
- Pagers and cell phones must be turned off before entering the hearing room.
- Distracting activity may result in you being asked to leave the hearing room.

This version of attendee protocols was posted on PUC's website throughout 2019.

Protesters have disrupted some of the Public Utilities Commission's agenda meetings.

Even though PUC has established rules to maintain decorum in its meetings, protestors have disrupted some agenda meetings. For example, in September 2018, the PUC chair had to adjourn an agenda meeting before the commission voted because it was continuously disrupted by protestors. The protestors performed a call-and-response chant during the meeting, spoke over a megaphone, and played music over a wireless speaker. In November 2018, protesters attached signs to the backs of their shirts and kneeled backwards on their chairs to symbolize that the commission had turned its back on them; however, the commission was able to continue its business during this largely silent protest. In February 2020, protestors disrupted another agenda meeting, interrupting and yelling at the commissioners.

Threats

At times, PUC commissioners, PUC staff, and other state employees have been threatened. For example, after approving the Line 3 pipeline, which we discuss in Chapter 5, protestors showed up at each of the commissioners' houses, sometimes with a coffin. Other state officials told us they were physically pushed or verbally threatened by attendees during that case. During one agenda meeting, a protestor announced the cities in which some of the commissioners and staff members lived; their addresses were also posted online.

Commissioners told us they have little recourse to act when their meetings are disrupted. This is because, in 2017, the Minnesota Supreme Court held that the statute that authorized law enforcement to charge individuals with disorderly conduct for disrupting a public meeting was overly broad and unconstitutional.[20] In fact, in the three meetings mentioned previously, law enforcement was present to ensure public safety but did not step in to stop the protests (at least to the extent that law enforcement actions were captured in official videos of the meetings). Rather, the PUC chair either regained control or adjourned those meetings.

Other Meeting Issues

Finally, we reviewed other aspects of PUC's meetings and considered the extent to which they facilitate public participation.

The Public Utilities Commission's meetings are not easily accessible to the general public.

For members of the public to be able to effectively participate in PUC's meetings, they must have a reasonable understanding of what goes on during them. But, this can be challenging because PUC's meetings are often highly technical and legalistic. One former PUC official that we spoke with described them as "intellectually lethal," given the number of acronyms used throughout them and their long and cumbersome processes.

> …we need to have regulatory agencies that invite that public discourse, even with folks that aren't familiar.
>
> — A Stakeholder Organization

PUC meetings can be challenging to follow for other reasons. For example, in some of the meetings that we attended, the commissioners or their staff provided little introduction to the matters at hand, did not define acronyms or technical terms being discussed, or offered little or no instructions to the public about the rules or flow of the meetings. In at least one planning meeting that we attended, the commissioners and other participants did not use the hearing room's microphones, which made it difficult to hear them.

We also found that PUC rarely made paper copies of agendas, staff briefing papers, or other key materials available to the public at the meetings. Links to these materials are available on the PUC website or on eDockets for agenda meetings, but not most planning meetings. The Open Meeting Law requires PUC to make at least one copy of any printed meeting materials being discussed by the commission available for the public to review during that meeting.[21] In at least one planning meeting that we attended, PUC did not make some printed meeting materials available to the

> The lack of use of everyday language in the process can prevent those without a strong high school or college-level education from comprehending the proceedings. This makes it difficult for the public to not only participate in the process but to even understand what the process is about.
>
> — A Member of the Public

[20] State v. Hensel, 901 N.W.2d 166 (Minn. 2017).

[21] Open Meeting Law, *Minnesota Statutes* 2019, 13D.01, subd. 6.

public. Further, in at least one planning meeting that we attended in which PUC did make printed materials available to the public, those materials were not located at the entrance to the hearing room, but rather at the front table where the commissioners sit and where the public may not see them.

RECOMMENDATION

The Public Utilities Commission should adopt practices to make its meetings more accessible to the general public.

PUC should adopt practices that would make it easier for members of the public to observe, follow, and otherwise participate in its meetings. For example, PUC could provide brief, plain-language introductions to agenda items, define acronyms and key terms in briefing papers, or provide a glossary of key terms or a "frequently asked questions" page on its website. PUC could also provide a few paper copies of agendas, briefing papers, or other important handouts at the entrance to the hearing rooms. It could also use microphones at planning meetings to make it easier for the public to hear.

Finally, PUC could consider reserving the first portion of Tuesday planning meetings for public comments about non-pending matters. As one stakeholder said, "We find it necessary to resort to protests and other outside activities because PUC, while ostensibly offering a forum, does not listen to us…."


THE GREAT SEAL OF THE STATE OF MINNESOTA
L'ETOILE DU NORD
1858

Chapter 5: Line 3 Pipeline Project

The Legislative Audit Commission selected this topic for evaluation, in large part, because of concerns about how the Public Utilities Commission (PUC) handled public participation in the Line 3 pipeline case. As a result, in this chapter, we look more closely at that case.

We begin the chapter with a brief description of the Line 3 pipeline project. In the remainder of the chapter, we describe the chronology of the major public participation opportunities offered during the case, from the early public meetings and hearings that PUC's partner agencies led, to the agenda meetings where the PUC commissioners voted to approve the project. We also discuss participation issues that we identified and offer recommendations for changes.[1]

Project Background

Enbridge, a Canadian corporation, owns a set of pipelines that deliver crude oil through Minnesota. These pipelines mostly run parallel to one another from the North Dakota border, through a number of northern Minnesota cities and counties, between the White Earth and Red Lake American Indian reservations, through the Leech Lake and Fond du Lac American Indian reservations, to Superior, Wisconsin.[2]

In 2013, Enbridge submitted an application to PUC to construct a new pipeline, called Sandpiper.[3] Unlike its other pipelines in Minnesota, the company proposed to have the Sandpiper pipeline travel through a largely new corridor.[4] In 2015, while the Sandpiper application was pending before PUC, Enbridge submitted another application, this time to replace one of its existing pipelines, called Line 3. Enbridge proposed to replace its Line 3 pipeline with a larger one and locate it—not in the existing corridor—but in the same one proposed to hold the Sandpiper line.

Among other things, the route that Enbridge proposed for the Line 3 pipeline crossed 12 counties and the watersheds containing the headwaters to the Mississippi River and

[1] The purpose of this chapter is to discuss PUC's public participation processes in the Line 3 case. In this chapter, we do not evaluate the merits of arguments made by parties to the case nor do we evaluate PUC's regulatory decisions in this case. We also do not provide a comprehensive chronology of events in the case, such as the various lawsuits related to the case.

[2] The pipeline corridor also crosses territory ceded by tribes in treaties with the U.S. Government, on which certain tribes assert "usufructuary" rights to hunt, fish, and gather. In this report, we use the term "tribe" when referring to any of the six bands that compose the Minnesota Chippewa Tribe or any of the other federally recognized American Indian tribes whose reservations are located within Minnesota's borders. For more about usufructuary rights, see *Minnesota et al. v. Mille Lacs Band of Chippewa Indians et al.*, 526 U.S. 172 (1999).

[3] Williston Basin Pipeline LLC, a wholly owned subsidiary of Marathon Petroleum Corporation, was a partner with Enbridge in the Sandpiper project and application.

[4] The portion of the pipeline proposed to be built in a new corridor ran between the cities of Clearbrook and Carlton.

Lake Superior.[5] Although it avoided any tribal reservations, it crossed land ceded by American Indian tribes in treaties with the U.S. Government, on which some tribes maintain certain rights. Exhibit 5.1 shows Enbridge's existing pipeline corridor, the new Line 3 route proposed by Enbridge, and the new Line 3 route that PUC ultimately approved.

Because the Sandpiper and Line 3 pipeline cases were pending at the same time and involved the same corridor, PUC combined certain aspects of the two cases. When Enbridge later withdrew the Sandpiper application, the Line 3 application moved forward on its own. Because the cases were connected for a period of time, we discuss how some public participation issues in the Sandpiper case affected participation in the Line 3 case.

Approval Needed

Enbridge needed the following approval from PUC before it could construct the Line 3 pipeline.

- Certificate of Need: PUC would need to certify whether the pipeline was needed.
- Route Permit: If the commission determined the pipeline was needed, then it had to approve a route for the pipeline.

To build the Line 3 pipeline, Enbridge needed PUC to approve two applications: (1) an application for a "certificate of need," which would affirm that the pipeline was needed, and (2) an application for a "route permit," which would determine where the pipeline could be located.[6] PUC was required to grant the certificate of need if the application met a variety of criteria enumerated in law.[7] Before PUC could approve either the certificate of need or route permit, it had to approve whether an environmental review conducted by the Department of Commerce adequately summarized the potential impacts associated with each application.[8] In addition, PUC was required by law to refer the case to an administrative law judge within the Office of Administrative Hearings.[9] The administrative law judge held "contested case" hearings to develop the record for the case.[10]

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[5] The route proposed by Enbridge crossed Aitkin, Carlton, Cass, Clearwater, Crow Wing, Hubbard, Kittson, Marshall, Pennington, Polk, Red Lake, and Wadena counties. The existing Line 3 pipeline also crosses Beltrami, Itasca, and St. Louis counties, but not Wadena or Crow Wing counties.

[6] *Minnesota Statutes* 2019, 216B.243, subd. 2; 216B.2421, subd. 2(4); and 216G.02, subd. 2.

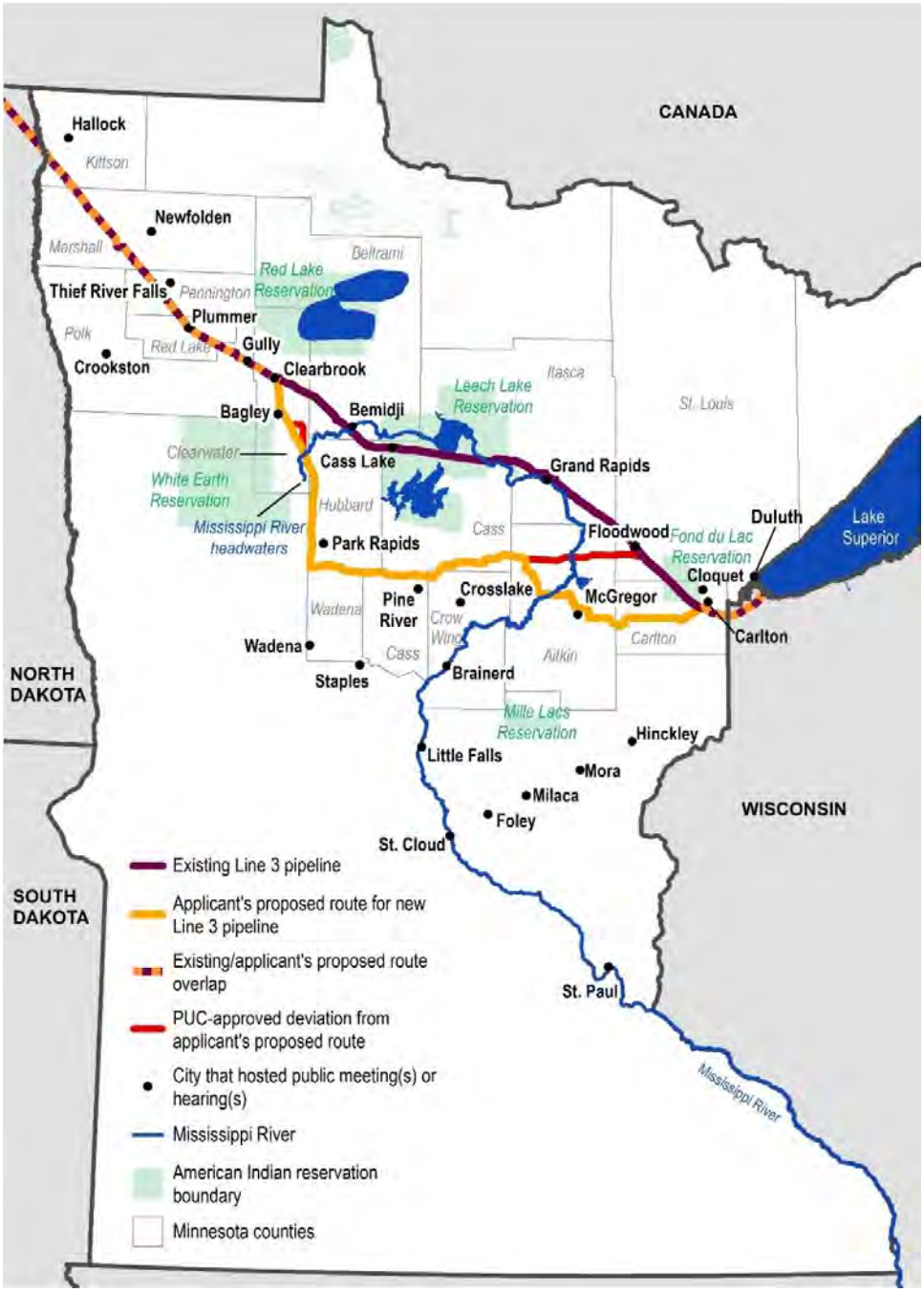
[7] To obtain a certificate of need, the project needed to meet various criteria in law, including those listed in *Minnesota Statutes* 2019, 216B.243; *Minnesota Rules*, 7853.0130, published electronically November 13, 2003; and others. To obtain a route permit, the project needed to meet criteria in *Minnesota Statutes* 2019, 216G.02, subds. 2 and 3(4); *Minnesota Rules*, 7852.1900, published electronically August 21, 2007; and others.

[8] We use the term "environmental review" generically to refer to a number of different types of environmental reviews. Environmental reviews consider potential impacts to the natural environment, as well as potential economic, employment, and sociological impacts. In the Line 3 case, PUC combined the environmental reviews for the certificate of need and route permit applications into a single review, which resulted in an "environmental impact statement." We use the term "environmental report" to refer generically to the written environmental impact statement. Minnesota Environmental Policy Act, *Minnesota Statutes* 2019, 116D.04, subds. 2a-2b; and *Minnesota Rules*, 4410.4400, subps. 1 and 24, published electronically November 30, 2009; and 7852.1500, published electronically August 21, 2007.

[9] *Minnesota Statutes* 2019, 216B.243, subd. 4; and 216G.02, subd. 3(b)(3); and *Minnesota Rules*, 7852.1700, published electronically August 21, 2007; and 7853.0200, subp. 5, published electronically November 14, 2003.

[10] "Contested case" hearings are a specific type of proceeding in which an administrative law judge develops the record for a case. As defined in *Minnesota Statutes* 2019, 14.02, subd. 3, "'contested case' means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing."

Exhibit 5.1: The existing Line 3 pipeline and the proposed new route both traverse northern Minnesota.



NOTES: This map shows the cities that hosted at least one public meeting and/or hearing as part of the Public Utilities Commission's (PUC's) Line 3 proceedings. Most of these cities are located along the applicant's proposed route (shown on the map) or along a proposed alternative route (not shown on the map). Some of the cities shown on this map also hosted a public meeting and/or hearing during PUC's Sandpiper proceedings. The city of McIntosh (not shown) hosted a public meeting as part of the Sandpiper proceedings, but not as part of the Line 3 proceedings. The city of St. Cloud was scheduled to host a Line 3 hearing, but that hearing was canceled; the city hosted a Sandpiper hearing. This map does not show all of the American Indian reservations in Minnesota; it shows only the reservations of the tribes that were parties to the Line 3 case.

SOURCE: Office of the Legislative Auditor.

Proceedings with Partner Agencies

Many of the public participation opportunities in the Sandpiper and Line 3 cases were administered by or with PUC's partner agencies—the Department of Commerce and the Office of Administrative Hearings.[11] We describe those opportunities in this section.

Public Meetings

The Department of Commerce's Energy Environmental Review and Analysis (EERA) unit was responsible for conducting the environmental reviews for the Sandpiper and Line 3 projects on behalf of PUC.[12] As part of those reviews, the unit was required to solicit input from the public for PUC about the potential impacts of the projects.[13]

Between 2014 and 2017, the Department of Commerce held dozens of public meetings related to the environmental reviews of Sandpiper and Line 3.

Public Meetings

The public meetings for Line 3 involved:

1. An open house
2. An open-mic portion

During both parts, members of the public could ask questions and provide comments regarding the environmental review.

The Department of Commerce held 56 public meetings in 26 municipalities to gather input during the environmental reviews of Sandpiper and Line 3; 49 of those public meetings related to Line 3.[14] Some of the meetings officially were led both by Department of Commerce *and* PUC staff, while others were officially led only by Department of Commerce staff.[15] For those held jointly with PUC, a purpose of the meetings was for PUC to provide information to the public about the review process and the proposed project and to answer questions from the public.[16]

Each of the public meetings involved (1) an open house and (2) an "open-mic" portion. During the open house, attendees could view information displayed by the applicant and state agencies about the proposed projects and the state's approval processes. Attendees could also ask questions of the applicant and of state officials. In addition, attendees could provide written comments about how the projects could impact them, their communities, or the environment.[17] Department of Commerce officials told us the open

[11] See Chapter 2 for more about PUC's relationship with its partner agencies.

[12] Under the law, PUC is technically the "responsible government unit" in charge of the environmental reviews of pipeline projects.

[13] *Minnesota Rules*, 4410.2100, subp. 3B, published electronically August 20, 2018; 4410.2600, subp. 2; 4410.2800, subp. 2; and 4410.4400, subp. 24, published electronically November 30, 2009.

[14] Throughout this report, we use the term "public meeting" generically to refer to various types of meetings that PUC or the Department of Commerce hold to provide information to the public or to receive information from the public as part of the process for reviewing energy facility applications.

[15] PUC's commissioners typically do not attend public meetings such as these.

[16] *Minnesota Rules*, 7852.1300, published electronically August 21, 2007.

[17] Members of the public could also submit written comments outside of the public meetings during a "public comment period."

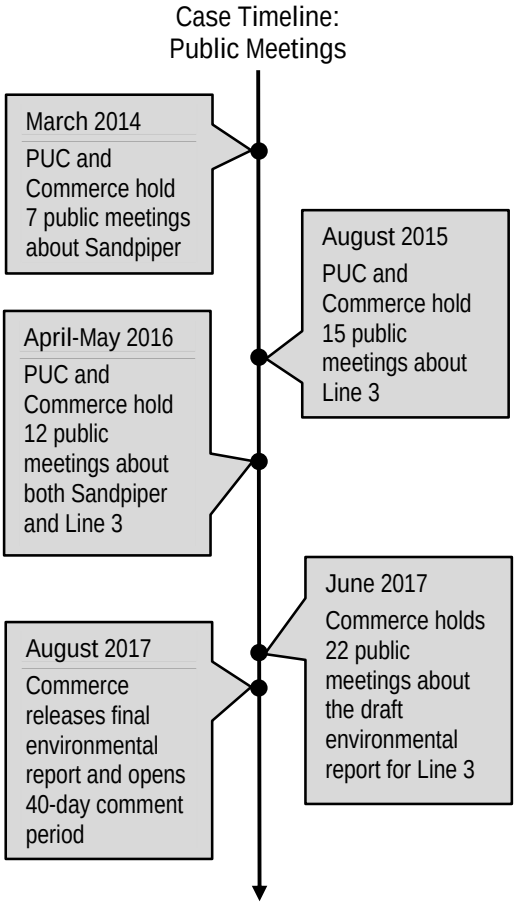
houses provided an important opportunity for attendees to learn about the proposed project and ask questions without having to speak in front of a large crowd.

At the start of the open-mic portion of the meetings, officials announced some "ground rules," which we show in the box at right. The applicant and state officials also gave presentations about the project and the state's review processes. Then, attendees could stand up and ask questions or provide comments.[18] Department of Commerce officials told us that attendees were usually allotted about five minutes to speak and, in general, could speak in the order in which they signed up. But, officials said they asked attendees who had spoken at previous meetings to wait to speak again until all new attendees had a chance to do so. Officials said, if there was still time available, they allowed attendees a second opportunity to speak at a given meeting.

"Ground Rules"

At the early meetings, Commerce representatives announced "ground rules" for attendees, which included:

- Not obstructing attendees' views
- Not carrying signs on sticks
- Turning cell phones to vibrate
- Being respectful
- Not addressing the audience
- Not interrupting the speaker
- Being quiet so the court reporter making the transcript and others could hear



Department of Commerce officials said they did not impose security checks (such as metal detectors, pat-downs, or bag searches) at these meetings, with the exception of one in Bemidji.[19] Officials told us no attendees were turned away from the meetings due to room-capacity constraints. They also said, with the exception of one meeting, there was sufficient time for all who wanted to speak to do so. (We were not, however, able to independently verify officials' recollections about these meetings.)

The public meetings occurred in four stages, as the timeline at left shows. In the following sections, we discuss each of those stages and some of the issues that occurred over the course of them. Exhibit 5.1 shows the cities that hosted the public meetings.

Sandpiper Public Meetings, 2014

The first set of seven public meetings occurred in March 2014.[20] The purpose of these meetings was to provide information about the proposed Sandpiper project and

[18] As we discuss later, at the last set of meetings, all of the available time was dedicated to receiving comments; time was not reserved for answering questions.

[19] Department of Commerce officials told us the venue in Bemidji required the use of metal detectors.

[20] Officially, Department of Commerce and PUC staff were jointly in charge of these meetings.

the state's review process, answer questions, and gather input about the scope of the environmental review. The meetings took place in cities across northern Minnesota along the applicant's proposed route for the Sandpiper pipeline.[21]

We heard a number of concerns about these meetings. For example, officials told us some attendees were confused about why the Department of Commerce was responsible for handling the environmental review, as opposed to the Minnesota Pollution Control Agency or the Department of Natural Resources. Some people were upset that none of the meetings were held on tribal lands, given the project's likelihood to impact several tribes. And, some people were frustrated that the state had not formally consulted with the tribes.

Other critiques we heard stemmed from the fact that both the Department of Commerce and PUC delegated certain logistical responsibilities to applicants (which we discussed in Chapter 2). For example, among other things, Enbridge reserved and rented the venues for the public meetings. State officials and stakeholders told us this caused a number of issues and frustration among stakeholders. Notably, some stakeholders told us they were not allowed to set up display materials in the open houses alongside the applicant's and state agencies' display materials. In Chapter 2, we recommended that PUC stop delegating logistical responsibilities for public meetings to the applicant because it gives the applicant too much actual or perceived control over the state's processes.

Members of the public could submit project alternatives, but this was not an easy task.

In the public meetings, attendees could submit alternatives for the Department of Commerce to study in the environmental review. For example, they could suggest alternatives to the project, such as using alternative shipping methods, using existing pipelines instead of building a new one, or using alternative routes. Participants submitted a variety of alternatives. For example, one group submitted a route alternative that paralleled existing highway corridors to avoid the headwaters to the Mississippi River.

But, it can be challenging for members of the public to submit viable alternatives. PUC may only consider route alternatives that meet specific criteria in law.[22] For example, when members of the public submit route alternatives, they must submit aerial photographs or maps and data and analysis of the potential impacts to the proposed alternative. These requirements, which are in law, can be both technically challenging and resource intensive.

[21] These seven meetings took place in Carlton, Clearbrook, Crookston, McGregor, McIntosh, Park Rapids, and Pine River. Later, in January 2015, an administrative law judge from the Office of Administrative Hearings held five public hearings as part of PUC's review process for the Sandpiper project. Those hearings took place in Bemidji, Crookston, Duluth, St. Cloud, and St. Paul. We discuss the role of administrative law judges later in this chapter.

[22] *Minnesota Rules*, 7852.1400 and 7852.2600-7852.2700, published electronically August 21, 2007.

Line 3 Public Meetings, 2015

The second set of public meetings occurred in August 2015.[23] The purpose of these 15 meetings was the same as for the previous set, except that they related to the Line 3 project, not Sandpiper.[24]

Department of Commerce officials told us that, in response to issues they encountered at the first set of Sandpiper meetings, they made adjustments to their practices for this set of Line 3 meetings. For example, they more than doubled the number of meetings that they held (15 compared to 7) and held two of the meetings on tribal reservations. They allowed stakeholder groups (not just the applicant and state officials) to set up display materials during the open houses. They also provided better information to the public about how to participate in the process by organizing folders with handouts that contained information about how to submit a route alternative, comment forms, and maps of the applicant's proposed route and the route alternatives suggested during the Sandpiper public meetings, among other things.

Despite these changes, officials said tensions continued to run high during the public meetings. Stakeholders on various sides of the issue told us they felt intimidated by stakeholders on opposing sides. Some stakeholders told us they felt that their technical comments were lost in the "for" or "against" dichotomy that emerged in the case. And, some stakeholders told us they felt that the comments they submitted were ignored by PUC.

Sandpiper and Line 3 Public Meetings, 2016

The third set of public meetings, which took place in April and May of 2016, related to *both* Sandpiper and Line 3. The Department of Commerce and PUC held an additional 12 public meetings after PUC combined the environmental reviews for the two projects. The purpose of these meetings was the same as for the previous two sets.[25]

Department of Commerce officials told us that, given the feedback they received and the issues they encountered, they continued to make adjustments for this third set of meetings. For example, this time they hired a facilitator. They also asked staff from the Minnesota Pollution Control Agency and the Department of Natural Resources to attend the meetings and explain their roles, which they did. And, officials said they asked the applicant, which they said typically brought numerous representatives to the meetings, to bring fewer. Some stakeholders said they found these large contingents of representatives intimidating.

As the public meetings progressed, Department of Commerce officials also began conducting formal consultation and outreach to several tribes that were directly affected

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[23] These 15 meetings took place in Bagley, Carlton, Clearbrook, Gully, Hallock, McGregor, Newfolden, Park Rapids, Pine River, Plummer, and Thief River Falls. Some cities hosted more than one meeting.

[24] Officially, Department of Commerce and PUC staff were jointly in charge of the meetings.

[25] These 12 meetings took place in Bagley, Bemidji, Carlton, Crookston, Hinckley, Little Falls, McGregor, Park Rapids, St. Paul, and Thief River Falls. Some cities hosted more than one meeting. Officially, Department of Commerce and PUC staff were jointly in charge of the meetings.

by the projects.[26] We did not evaluate the Department of Commerce's efforts to consult with affected tribes.

Although Enbridge eventually withdrew its Sandpiper application, the Department of Commerce used the information that it collected during the 2014, 2015, and 2016 public meetings to define the scope of the environmental reviews for Line 3. As part of the scoping process, Department of Commerce officials summarized and presented to PUC some of the alternatives that members of the public had submitted during the public meetings. PUC's commissioners directed department staff to study a subset of these alternatives in the environmental review.

In May 2017, the Department of Commerce released to PUC and the public a draft report of its environmental review for Line 3.

Line 3 Public Meetings, 2017

In June 2017, following the release of the draft environmental report, the Department of Commerce held a final set of 22 public meetings to solicit input about that draft report.[27] This time, it held some of the public meetings along the route alternatives proposed by the public and approved for review by PUC, in addition to along the route proposed by Enbridge.

The Department of Commerce made even more changes to its practices for this last set of public meetings. Notably, it contracted with technical consultants with specific experience handling public engagement in controversial energy projects. The consultants facilitated the public meetings and handled the logistics, such as choosing and renting the venues and coordinating with local law enforcement to provide security.

Also, instead of using some of the open-mic portion of the meetings to respond to questions, the Department of Commerce dedicated all of the available time to receiving public comments. Department of Commerce officials told us they had mixed feelings about this decision. On one hand, they said this format did not allow the meetings to function as an exchange of information. As a result, they thought some attendees left the meetings misinformed about the pipeline project or the state's process. On the other hand, this format allowed more time for public comments.

In addition, the Department of Commerce provided a second court reporter who sat outside of the meeting room to take oral comments from members of the public. One official told us this provided a valuable opportunity for individuals to submit comments into the record without having to speak in front of a large, tense crowd.

In August 2017, the Department of Commerce released the final draft of the environmental report.[28] The lengthy report included attachments with the written

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[26] Department of Commerce officials reached out to the Fond du Lac, Mille Lacs, Leech Lake, Red Lake, and White Earth tribes. In Chapter 2, we discuss PUC's work with tribal governments.

[27] These 22 meetings took place in Bagley, Bemidji, Brainerd, Cass Lake, Cloquet, Floodwood, Foley, Grand Rapids, Gully, Hallock, Hinckley, Little Falls, McGregor, Milaca, Mora, Newfolden, Thief River Falls, Park Rapids, Plummer, St. Paul, Staples, and Wadena. Officially, only Department of Commerce staff led these meetings, but PUC staff attended them and provided support.

[28] The Department of Commerce later revised the final environmental report.

comments and transcripts of oral comments that the public had provided during the last set of public meetings and the associated public comment period. That month, PUC opened a 40-day comment period for the public to submit comments about the adequacy of the final draft of the environmental report.

Contested Case Hearings

The Office of Administrative Hearings oversaw the next major opportunity for the public to actively participate in the Line 3 case. This opportunity came in the form of contested case hearings. Contested case hearings are a specific type of proceeding that involve disputed facts and some government action that has the ability to affect individuals' rights.[29] An administrative law judge from the Office of Administrative Hearings presides over contested case hearings. During the hearings, parties and other members of the public may help develop the record for a case. PUC then must base its decision on that record. In this section, we describe the three stages of the Line 3 contested case hearings: (1) prehearing activities, (2) public hearings, and (3) evidentiary hearings.

Prehearing Activities

Before the public and evidentiary hearings began, the administrative law judge assigned to the Line 3 case made a series of decisions about how they would be conducted. During prehearing conferences or through written comments to the judge, stakeholders could and did provide input about various issues, such as the format and location of the upcoming hearings.

At this stage, the judge also ruled on petitions to intervene in the case.[30] The judge granted numerous petitions to intervene and denied several others, ruling that petitioners' interests were already represented by others, or that their petitions did not meet legal or procedural requirements. Five tribes, a pair of landowners, two labor organizations, and several environmental groups (including three that formed in response to the Sandpiper and/or Line 3 cases) successfully intervened in the case,

[29] "Contested case" hearings are a specific type of proceeding in which an administrative law judge develops the record for a case. As defined in *Minnesota Statutes* 2019, 14.02, subd. 3, "'contested case' means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing."

[30] As we discussed in Chapter 1, "intervention" is the process by which a person or entity may petition to become a party to a case.

among some others. Many of these intervenors also intervened in the Sandpiper case. Several intervenors represented themselves without the aid of legal counsel.

In addition to these intervenors, two units within the Department of Commerce with very different roles also participated in the contested case hearings. The department's Energy Environmental Review and Analysis unit participated because it produced the environmental report of the project. The department's Energy Regulation and Planning unit intervened as a party to the case, which is its right in law.[31] As we discussed in Chapter 2, this second unit analyzes whether proposed energy facility projects are needed and in the public interest.

In advance of the hearings, the judge asked all of the parties to prefile testimony and documents into the record. Enbridge submitted testimony about why it needed to replace the existing Line 3 pipeline. Intervenors submitted testimony and documents about various issues. For example, among other things, the Fond du Lac Band of Lake Superior Chippewa submitted testimony about how the proposed project could affect the band's cultural practices with wild rice and rights guaranteed by treaties with the U.S. Government. The organization, Friends of the Headwaters, submitted testimony about how the new pipeline corridor could affect the sensitive lakes that form the headwaters to the Mississippi River. Two labor organizations submitted testimony about how the proposed project could affect the state's construction industry.

The Department of Commerce's Energy Regulation and Planning unit submitted testimony that Enbridge did not meet the burden of proof to show that the pipeline was needed or in the public interest; the unit concluded that the potential costs to the public outweighed the benefits. The Department of Commerce's Energy Environmental Review and Analysis unit submitted the environmental report.

Public Hearings

After the parties submitted prefiled testimony and documents into the record, the administrative law judge held a series of public hearings.

In 2017, an administrative law judge held 16 public hearings for the Line 3 case.

In September and October of 2017, the administrative law judge held public hearings in northern Minnesota along the applicant's proposed route and some of the proposed route alternatives.[32] At the hearings, members of the public could submit oral or written testimony into the record. For example, they could testify about why they thought the pipeline was needed or not needed, why PUC

An estimated

5,500

people attended the public hearings for Line 3.

[31] *Minnesota Statutes* 2019, 216A.07, subd. 3, gives the Department of Commerce the right to intervene in any PUC case.

[32] The hearings were scheduled to take place in northern Minnesota, in the cities of Bemidji, Crosslake, Duluth, Grand Rapids, Hinckley, McGregor, Thief River Falls, and St. Cloud, as well as in St. Paul. Exhibit 5.1 shows the locations of these cities. Each city was scheduled to host two public hearings.

should choose one route over another, or why the environmental review was adequate or inadequate.[33]

The judge used a lottery system to determine the speaking order of attendees at the public hearings, which prevented the need for attendees to show up early to stand in line. The judge also asked attendees who had spoken at previous hearings to wait to speak until new speakers had an opportunity to do so. According to the judge's report, an estimated 5,500 people attended the hearings and 724 people spoke at them, resulting in around 2,600 pages of transcripts.[34] PUC's commissioners typically do not attend public hearings, although some told us they did attend some of these hearings.

The notices for the Line 3 public hearings were not easily accessible and did a poor job explaining how the public could be involved in the process.

State law requires PUC to issue a notice when it orders a contested case hearing.[35] As required by law, PUC issued two sets of notices for the Line 3 hearings—one in 2015 that pertained to the certificate of need portion of the hearings and another in 2016 that pertained to the route permit portion of the hearings.[36] The law required PUC to include certain information in the 2016 notice about how the public could participate in the

[33] Although the public was able to testify about the adequacy of the environmental report during the public hearings, the scope of the issues under the judge's purview was limited to whether or not PUC should grant a certificate of need and a route permit. PUC had asked a second administrative law judge to review and write a report about whether or not PUC should find the environmental review that the Department of Commerce produced in August 2017 as adequate. This second administrative law judge did not hold public or evidentiary hearings in association with that report, which was released in early November 2017. However, parties were able to submit written briefs to the second administrative law judge about the adequacy of the environmental review; they could also submit written exceptions to the judge's report. Then, when PUC considered whether or not to find the environmental review adequate, parties were able to make oral arguments to PUC in an agenda meeting in December 2017. See State of Minnesota, Office of Administrative Hearings, "In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need and a Routing Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border: Report of the Administrative Law Judge," Docket Nos. 14-916 and 15-137, November 1, 2017.

[34] State of Minnesota, Office of Administrative Hearings, "In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need and a Routing Permit for the Line 3 Project in Minnesota from the North Dakota Border to the Wisconsin Border: Findings of Fact, Conclusions of Law, and Recommendation," Docket Nos. CN-14-916, CN-15-340, and PPL-15-137, April 23, 2018, p. 59.

[35] *Minnesota Rules*, 1400.5600, published electronically August 6, 2013, enumerates the information that PUC must provide in hearing notices for pipeline certificate of need cases, while *Minnesota Rules*, 1405.0500, published electronically August 21, 2007, enumerates the information that PUC must provide in notices for hearings in pipeline route permit cases. These two sets of rules contain different requirements. The latter requires PUC to provide more information about how the general public may participate in the hearings. See also *Minnesota Rules*, 7852.1700, published electronically August 21, 2007; and 7853.0200, subp. 5, published electronically November 14, 2003.

[36] Minnesota Public Utilities Commission, "In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border: Order Finding Application Substantially Complete and Varying Timelines; Notice of and Order for Hearing," Docket No. 14-916, August 12, 2015. Minnesota Public Utilities Commission, "In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Routing Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border: Notice of Hearing," Docket No. 15-137, February 1, 2016.

hearings, as the box at right shows.[37] In 2017, a few weeks before the hearings began, PUC issued a subsequent notice that pertained to both parts of the case.[38]

Among other things, the law requires public hearing notices for certain types of cases to contain:

- ✓ A description of the proposed project
- ✓ A list of the existing parties with their contact information
- ✓ The date, time, and place for each prehearing conference and hearing, including when members of the public and parties may testify and question testifiers
- ✓ Information about the right to intervene, a description of the responsibilities of intervenors, the procedures with which intervenors must comply, and how the rights of intervenors differ from those of other participants
- ✓ A statement advising all persons, not just parties, that they may be represented by legal counsel
- ✓ The place where persons may review materials, including prefiled testimony, and the date when it will be available
- ✓ The name, contact information, and function of the public advisor
- ✓ The name and contact information for the administrative law judge assigned to the case
- ✓ The name and contact information of the PUC regulatory analyst assigned to the case
- ✓ The name and contact information for the staff person at the Attorney General's office who may be contacted for advice on PUC's procedures

— Minnesota Rules, 1405.0500

Although the notices for the hearings contained most information required by law, they did a poor job educating the public about how to effectively participate in the hearings. First, the initial 2015 and 2016 hearing notices that PUC issued were published within larger PUC orders that were posted in eDockets, not in plain language on PUC's web calendar or in a press release.[39] As required, the 2016 notice contained important information about how the public could participate in the hearings, such as about the right to intervene. But, as we discussed in Chapter 3, it can be challenging for the general public to find information in eDockets. As a result, this information was not as accessible, and thus not as helpful, as it could have been in facilitating participation in the hearings.

Second, although PUC published the 2017 notice in a location that was likely more accessible to the general public (PUC's web calendar), this notice poorly described how the public could effectively participate in the hearings. For example, the notice stated: "The purpose of the public hearing is to compile a full record for the Commission to consider in making a final decision on the Line 3 Project certificate of need and route permit applications." This statement does not identify the criteria that the commission must use to make its decisions, which should be the basis for public testimony. It also does not identify what kind of testimony or evidence would be within or outside of the scope of the hearings. When we asked state officials from PUC and the Department of Commerce about the

[37] *Minnesota Rules*, 1405.0500 and 7852.1700, published electronically August 21, 2007.

[38] Minnesota Public Utilities Commission, "Notice of Public and Evidentiary Hearings for the Proposed Line 3 Replacement Project," Dockets No. CN-14-916 and PPL-15-137.

[39] "eDockets" is an electronic system that houses the commission's case records and is available to the public through the Department of Commerce's website.

scope of the testimony or evidence that the public could provide, they gave us conflicting responses.

The 2017 notice also did not contain some relevant information that was provided in the 2016 notice, such as the name and contact information for PUC's public advisor (which had changed since the initial notice went out) or for a staff person at the Attorney General's office who could provide advice on PUC's procedures. State rules do not explicitly require PUC to include in amended notices all of the information required in prior notices. But, expecting the public to be aware of and seek out earlier notices in eDockets in order to learn how to participate in the process does not facilitate informed participation.

One of the Line 3 public hearings was disrupted by protestors.

When the Line 3 public hearings took place in 2017, tensions were extremely high among the various participants. One of the last scheduled hearings took place during the evening at a convention center in Duluth. Local law enforcement was present at that hearing, although neither PUC nor the administrative law judge assigned to the case arranged for law enforcement to provide security at the public hearings.

The judge's report to PUC stated that some attendees protested during that Duluth hearing and acted in a "loud, threatening, and boisterous manner." About two hours into the hearing, some attendees approached the tables where the judge, court reporter, Department of Commerce staff, and Enbridge representatives sat, and one attendee confiscated a microphone. Having lost control of the hearing, the judge adjourned it early.

After this incident in Duluth, the judge held two more hearings in the city of Crosslake. According to PUC, city officials canceled the last two hearings that were scheduled to occur in St. Cloud due to security concerns.

Evidentiary Hearings

In November 2017, after the public hearings concluded, the judge held a 12-day evidentiary hearing over the course of three weeks in a PUC hearing room in St. Paul. During the evidentiary hearing, the parties made oral arguments and cross-examined each other's witnesses. The evidentiary hearing was open for the public to attend.

After the conclusion of the evidentiary hearing, the parties submitted briefs to summarize their positions. Then, the judge issued a 368-page report.[40] The report summarized for PUC the public comments provided during the hearings and provided findings of facts, conclusions, and a recommendation. PUC then opened a 15-day

[40] State of Minnesota, Office of Administrative Hearings, "In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need and a Routing Permit for the Line 3 Project in Minnesota from the North Dakota Border to the Wisconsin Border: Findings of Fact, Conclusions of Law, and Recommendation," Docket Nos. CN-14-916, CN-15-340, and PPL-15-137, April 23, 2018.

comment period, as required by law, in which parties could submit exceptions to the judge's report.[41]

Agenda Meetings

The next stage of the Line 3 proceedings was a series of agenda meetings. As we discussed in Chapter 4, in agenda meetings, PUC's five commissioners publicly deliberate and make decisions about the cases before them.

In this section, we describe the timeline of the final Line 3 agenda meetings. Then, we discuss various participation issues that we identified in those agenda meetings. We conclude with some recommendations for PUC.

Timeline

By the time the contested case hearings for Line 3 concluded and the administrative law judge's report was released, PUC's commissioners had already discussed the Line 3 case in 16 different agenda meetings. In those agenda meetings, which started in 2015, PUC made various procedural or substantive decisions about the case.

From late 2017 through early 2018, PUC made a series of key decisions that prepared it to make final decisions about the case. In December 2017, PUC met and found the environmental review that the Department of Commerce had released in August to be inadequate. Then, in February 2018, the Department of Commerce released a revised environmental report and PUC opened a 15-day period for the public to comment on it. The following month, PUC met again and found the revised environmental report to be adequate. Then, in May 2018, the Department of Commerce released a sample route permit; PUC opened a ten-day period in which parties could provide comments on the sample permit. Next, PUC was ready to decide (1) whether to grant the certificate of need, and (2) which route to approve in the route permit. PUC considered these remaining issues in June 2018 over the course of five days, spanning a two-week period.

During the June 2018 agenda meetings, the parties made oral arguments to the commissioners (an opportunity required by rule) and the commissioners asked the parties questions.[42] Members of the general public did not have an opportunity to address the commissioners during these agenda meetings.[43] On the last day of the June 2018 agenda meetings, PUC granted both the certificate of need and the route permit.

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[41] *Minnesota Statutes* 2019, 14.61, subd. 1, requires PUC to provide parties to a contested case an opportunity to file exceptions to an administrative law judge's report before PUC makes its final decision in the case. *Minnesota Rules*, 7829.2700, subp. 1, published electronically June 14, 2016, requires parties to file those exceptions within 15 or 20 days after the administrative law judge's report is released, depending on the type of case.

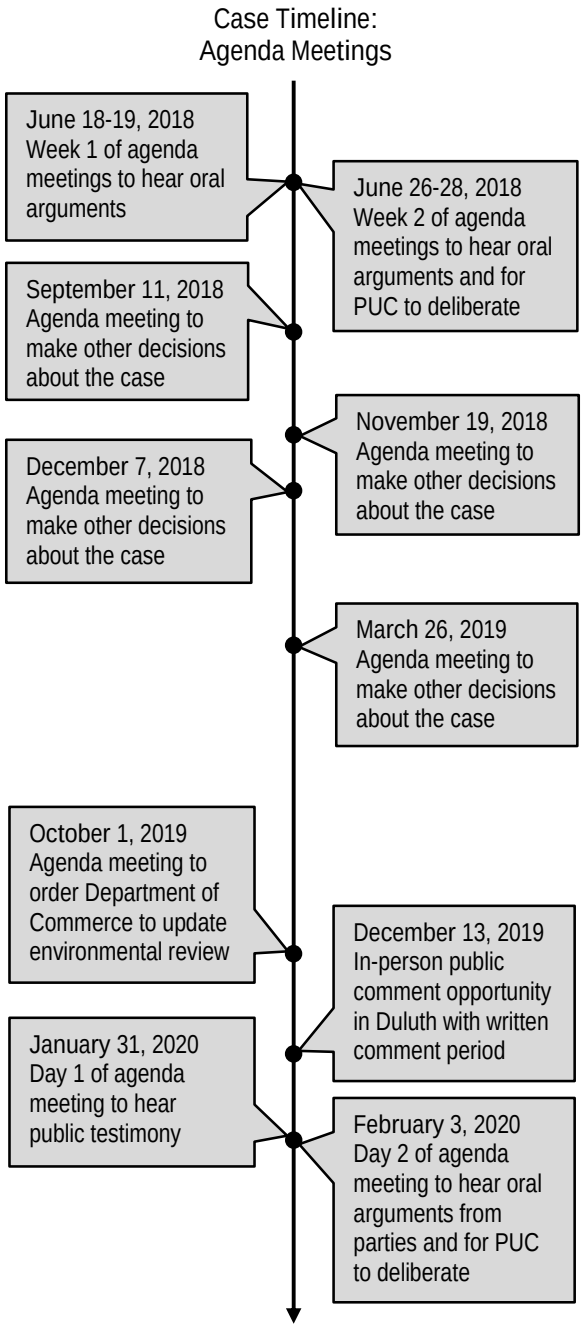
[42] *Minnesota Rules*, 7829.2700, subp. 3, published electronically June 14, 2016.

[43] As we discussed in Chapter 4, members of the public typically do not have an opportunity to address the commission during agenda meetings.

Over the next several months, PUC held four more agenda meetings to make other decisions in the case. For example, the commissioners discussed permit conditions and petitions from intervenors to reconsider the commission's decisions in the case.

In early 2019, several intervenors appealed PUC's decisions to the Minnesota Court of Appeals. In June 2019, the court ruled that the environmental report that the Department of Commerce had conducted and that PUC had approved was inadequate, overturning PUC's decision. As a result, in October 2019, PUC met in another agenda meeting to direct the Department of Commerce to supplement the parts of the environmental report that the court had found inadequate.

Then, in early December 2019, the Department of Commerce released an updated environmental report. Later that month, PUC held what it called a "public comment opportunity," in which members of the public could provide input about the revised environmental report at a public meeting in Duluth. An administrative law judge presided over the event for the commission.



In early 2020, PUC held another agenda meeting over the course of two days to make final decisions about the case. Contrary to its normal practice, PUC set aside the first day of the agenda meeting to hear public comments. On the second day of the agenda meeting, PUC once again heard oral arguments from the parties. PUC then voted to approve the revised environmental report and again grant the certificate of need and route permit.

Participation Issues

Many of the concerns we received from stakeholders throughout this evaluation related to PUC's practices during the Line 3 agenda meetings that took place from mid-2018 through early 2020. In particular, stakeholders expressed frustration about the venue that PUC used for the meetings, PUC's security practices, its admission-ticket procedures, and various other procedures or rules that PUC staff imposed. We discuss these concerns below; we also discuss the extent to which PUC's leadership provided adequate planning and oversight of the meetings.

Venue and Security

PUC typically holds its agenda meetings on the third floor of the Metro Square Building in downtown St. Paul. The Metro Square building, which is owned by Ramsey County, houses several state or county agencies, including PUC's office space and two PUC hearing rooms. PUC's "Large Hearing Room" seats a total of 173; its "Small Hearing Room" seats a total of 71.

Despite the large amount of public interest in the case, the Public Utilities Commission chose not to use a larger venue for most of the Line 3 agenda meetings.

Given the large number of parties and the significant public interest in the case, we asked PUC officials if they considered using a larger venue for the Line 3 agenda meetings. PUC officials told us they considered using an alternative venue for the June 2018 agenda meetings, but ultimately chose not to. They told us they chose to use PUC's Large Hearing Room because (among other reasons) it provided PUC commissioners and staff with easy access to documents related to the case.

An estimated 60 percent of the seats in the Large Hearing Room were reserved for the many parties to the case, PUC staff, members of the press, or others; only around 70 seats were available for members of the general public. PUC used its Small Hearing Room and an auditorium on the building's lower level (which seats 240) for overflow seating. The overflow rooms each contained a screen that livestreamed the agenda meetings for attendees seated there. Members of the public could also livestream the meetings remotely on PUC's website.

> In part, some of this could have been alleviated if the commission had chosen a larger venue. But, even having seen the problems at the first meeting, the commission chose to continue using the same venue throughout. This was not lost on the public.
>
> — A PUC Staff Member

Because of the limited seating, PUC used no-cost tickets to manage general admission to the June 2018 agenda meetings (and most of the subsequent Line 3 meetings).[44] Numerous stakeholders, including agency staff, indicated that they thought PUC could have avoided many of the problems it experienced—including issues with the tickets—if it had used a larger venue.

> …for the vast majority of these meetings we all had to wait outside. On the sidewalk. In the cold. In the rain. For hours and hours and hours. Folks on both side[s] were willing to do all that to be a witness to a 'public' process.
>
> By limiting access to this process, the PUC pitted us against each other and made many of us question why they were limiting access. The entire experience was competitive, stressful and inaccessible.
>
> It was a tinderbox that could have essentially been avoided by PUC staff getting a large venue and making the public welcome.
>
> — A Member of the Public

PUC officials told us they asked the Minnesota Department of Public Safety to provide security for the June 2018 agenda meetings but the department declined to do so because PUC is not located within the capitol complex. As a result, PUC officials contracted with the St. Paul Police Department to provide security.

After PUC approved the certificate of need and route permit in June 2018, PUC met again in September 2018 to discuss other issues in the case. Protestors disrupted the September 2018 meeting, and the chair had to adjourn it before the commission could vote. As a result, PUC moved the subsequent Line 3 meeting (in November 2018) to a hearing room in the Minnesota Senate Building. Because that meeting was held within the capitol complex, the Minnesota State Patrol and Capitol Security were able to provide security, in coordination with the Senate Sergeant at Arms. The Senate hearing room not only provided greater security, but also slightly greater capacity than PUC's Large Hearing Room, at 190 seats. We estimate that roughly half of that capacity was available for the general public; the remainder was reserved for parties to the case, PUC staff, members of the press, or others.

PUC returned to its own space for the December 2018 and March 2019 Line 3 agenda meetings, but used the Minnesota Senate Building again for the October 2019 and January/February 2020 meeting.

General Admission Tickets

As we noted earlier, because limited seating was available in PUC's Large Hearing Room, PUC used tickets to manage admission to most of the Line 3 agenda meetings, starting with the meetings that took place in June 2018. Officials told us the Line 3 case was the first and only case to-date in which it has used admission tickets.

The ticketing procedures that the Public Utilities Commission used during the Line 3 agenda meetings caused a number of problems.

Because the limited tickets were available on a first-come, first-served basis, attendees lined up outside of the Metro Square Building early each morning to get them. For at least one of the meetings, once let into the building, attendees queued in the building's

[44] PUC used tickets to manage admission for all of the Line 3 agenda meetings that occurred from June 2018 through February 2020, except for the September 2018 meeting.

third-floor foyer and down the back stairwell as they waited for the meetings to begin at 9:30 a.m. PUC staff told us this disrupted some of the building's other tenants, and a few attendees reported feeling unsafe waiting in the stairwell.

> Sometimes there was a ticketing process, other times [it was] purely first-come-first-serve. This created an unnecessary competition to see who could get there earlier—to the point that people were lining up outside (in the winter) before sunrise—hours before the hearings began.
>
> — A Member of the Public

PUC officials told us that attendees on "both sides" of the case began "gaming" the ticket procedures. For example, PUC officials (as well as attendees) told us that they observed pipeline proponents arrive early in the morning to stand in line, obtain tickets, enter the hearing room, and then promptly exit with their tickets—leaving their seats empty for the rest of the day. PUC officials also told us they observed both pipeline opponents and proponents controlling or "brokering" stacks of tickets.

PUC initially encouraged attendees to swap tickets with one another to ensure that the hearing room was full. The PUC notice describing the ticket procedures for the June 2018 meetings clearly allowed this practice. It stated:

> A particular public ticket is transferable—if the holder wishes to pass the ticket to another member of the public, then that recipient may use the ticket.[45]

But, PUC officials told us they became frustrated when attendees held more than one ticket at a time. The ticket procedures for the June 2018 meetings, however, did not explicitly prohibit this. The procedures stated only, "There will be only one ticket *granted* per person present" [emphasis added].[46] Some pipeline opponents told us they passed tickets off to an organizer when they left for the day. Others said they stood in line for those who could not arrive early enough to get a ticket, such as those driving down from northern Minnesota each morning.

> Sometimes people were allowed to leave temporarily to use the restroom, other times doing so meant forfeiting your seat for the day.... The bottom line here is that the process for attending the hearings, and the rules at the hearings themselves, were blatantly unfair and only increased tension between the two sides and with the PUC staff. And most of that could have been avoided if the staff had been more transparent, and chosen a more consistent, fair structure.
>
> — A Member of the Public

We also heard concerns about and observed problems with how PUC handled the tickets. Attendees told us that PUC staff used inconsistent practices regarding the tickets. For example, they said some PUC staff would allow them to leave the room for a break and then reenter using their tickets, while other staff would not. At a Line 3 agenda meeting that we attended in early 2020, we observed numerous reserved seats go unfilled. We also observed that PUC did not have clear plans in place for how staff would handle certain ticket procedures, such as how they would readmit attendees after the commission took a lunch break. In the January 2020 meeting, the chair asked attendees in the main hearing room to consider leaving after they spoke to allow those seated in

[45] Minnesota Public Utilities Commission, "Notice of Oral Argument and Deliberation Procedures for Proposed Line 3 Replacement Project Certificate of Need and Route Permit Decisions," June 8, 2018, 5.

[46] *Ibid*., 4.

the overflow room to move to the main hearing room; yet, PUC staff did not have a plan in place to seat them. PUC did, however, provide staff with some written guidance for these later meetings, and some stakeholders told us they thought the meetings in early 2020 went better.

Reserved Party Tickets

PUC also used tickets to manage admission into the Line 3 agenda meetings for the many parties to the case.

Each party in the Line 3 case did not have access to the same number of tickets.

Ahead of the June 2018 meetings, PUC sent out individualized notices to each of the parties in the case. The notices described the ticket procedures for parties generally and specified the number of reserved party tickets that the recipient of the notice would receive.

PUC allotted five reserved party tickets to most, but not all, parties. As the box at right shows, Enbridge received ten tickets. A PUC official told us the agency gave the applicant more tickets because it was likely to receive more questions from PUC commissioners than any of the other parties. The White Earth and Red Lake bands, which were two separate parties, received only five tickets total—not each. PUC officials told us they combined the bands' ticket allowances because, at that point in time, the bands were represented by the same attorney. Similarly, the Dyrdals, a pair of intervening landowners, were offered only two tickets total. Although the Department of Commerce has the right to intervene in PUC proceedings, two different units within it have important and distinct roles in the proceedings. This has the effect of the department acting as two parties. According to PUC, the Department of Commerce pressed PUC to provide it with more tickets; ultimately it received nine total for its two units.

PUC offered parties to the case an unequal number of tickets to the June 2018 agenda meetings.

Party	Number of Tickets Offered
Enbridge	10 total
Dyrdals	2 total
Red Lake and White Earth bands	5 total
Department of Commerce's two separate units	9 total
Other parties	5 each

Like with the general admission tickets, PUC staff told us they observed a number of problems with the reserved party tickets during the first week of the June 2018 meetings. For example, they said many of the seats reserved for parties went unoccupied. Some PUC staff told us they thought certain parties abused their reserved tickets by distributing them to individuals that staff did not consider to be party representatives, such as children. But, during the June 2018 Line 3 meetings, PUC did not have an agency-wide policy that defined who should be considered a representative of a party. Rules state only that "parties" include parties' "attorneys, agents, or representatives."[47]

[47] *Minnesota Rules*, 7845.7000, subp. 8, published electronically January 5, 2010.

In response to problems that they observed or perceived, PUC staff changed the party ticket procedures midway through the June 2018 meetings. Ahead of the second week of June 2018 meetings, PUC staff e-mailed new ticket procedures to each party. The new procedures indicated that parties would receive the same number of tickets as in the previous week (five for most parties). But, this time, the parties had to submit in advance the names of the individuals who would be using the parties' reserved tickets on each day of the meetings. The notice described who should have access to the party tickets:

> Tickets for official parties are intended to be provided to individuals who will address the Commission and to experts needed to answer questions posed by the Commissioners. This may include, but is not limited to, subject matter experts, additional legal counsel, environmental experts, economists, and others with expertise that could be needed to address questions from the Commissioners.[48]

The notice for the second week of the June 2018 meetings also indicated that, if a party did not need all five tickets, the remainder would be redistributed for general admission. Officials said they made this change after seeing numerous seats for reserved party seats go unused during the first week of meetings.

In addition to reserved party tickets, PUC officials distributed badges and wrist bands for party representatives to prevent them from passing their tickets on to individuals that staff considered to be members of the general public. The procedures that PUC used during the second week meant that parties were not allowed to swap tickets among their representatives throughout the day.

In theory, these ticketing procedures could affect the ability of parties to make their case in oral arguments or to defend their case when questioned by commissioners. One of the parties, the Youth Climate Intervenors, was an unaffiliated group of 13 persons under the age of 25. The group was not represented by an attorney and had no paid staff. Rather, members of the group divvied up the responsibilities of intervening amongst themselves, with each becoming an expert on specific topics. They also recruited ten expert witnesses to volunteer their time. Because the group of 23 was allotted only five tickets, one of its leaders told us the group had to guess which issues the commissioners might discuss on a given day, and allot their tickets accordingly. The rest of the group's members and experts had to try to obtain general admission tickets.

In later meetings, Public Utilities Commission staff controlled which specific party representatives had access to reserved party tickets.

For the November 2018, December 2018, and March 2019 agenda meetings, PUC changed the party ticket procedures yet again.[49] In individualized letters sent to parties in advance of those meetings, PUC named the specific party representatives who could

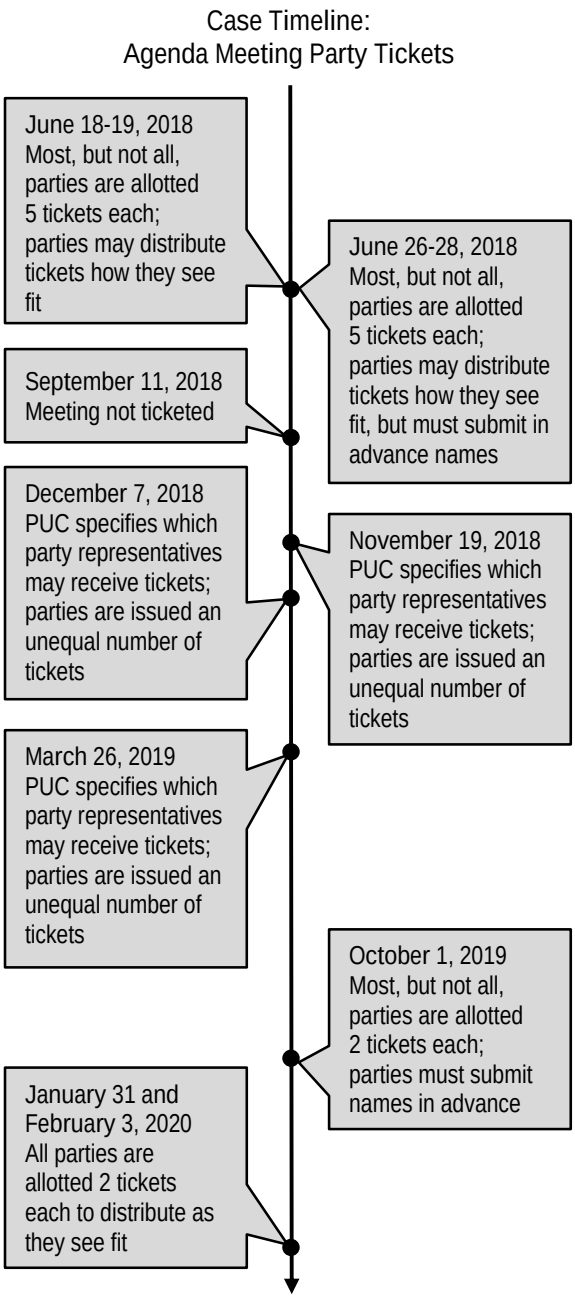
[48] Public Utilities Commission, e-mail attachment to individual parties, "Revised Procedures for Official Parties for Hearings on Proposed Line 3 Replacement Pipeline Project," June 21, 2018.

[49] PUC did not use tickets at the September 2018 Line 3 agenda meeting.

have access to the reserved party tickets. PUC staff told us they allotted the tickets only to the individuals who had represented the party during the contested case proceedings. But, by the November 2018 agenda meeting, the contested case proceedings had occurred a year earlier.

Some of the parties' representatives had changed by the time these three meetings took place. For example, the Department of Commerce—whose job was to advocate on behalf of the public interest—had to request a party ticket for one of its representatives who was not named in the letter. The Sierra Club, an intervenor that had hired outside counsel, was not able to obtain a party ticket for its attorney's main organizational contact, who was not named in the letter. Our review of PUC records shows that staff were inconsistent about whether or how they allowed parties to obtain party tickets for other representatives who were not named in the letters.

In addition, because some parties had more representatives during the contested case proceedings than others, those parties were allotted more tickets than others. For example, Enbridge had access to three reserved tickets, while the intervenor, Northern Water Alliance of Minnesota, had access to only one.



For the October 2019 Line 3 agenda meeting, PUC changed the party ticket procedures once again. For this meeting, PUC said it allotted the reserved tickets to the individuals who had represented the parties before the Minnesota Court of Appeals. Further, according to PUC officials, all parties had access only to two tickets each. However, we found that two intervening parties that shared attorneys with other parties at the time received only one ticket each. (We were not able to confirm how many tickets all other parties received.)

For the January/February 2020 Line 3 agenda meeting, PUC offered each party two tickets. According to PUC, the agency did not restrict to whom the parties could distribute the tickets, and parties did not have to send the names of the representatives who would be using them in advance.

Other Attendee Rules

In addition to the ticket rules, PUC imposed other special rules on attendees during the Line 3 agenda meetings.

The rules that the Public Utilities Commission imposed during the Line 3 agenda meetings changed over time and staff enforced them inconsistently.

> Arbitrary rules about liquids, clothing, tickets, in-out privileges, and more were imposed and were constantly being changed.
>
> — A Member of the Public

In Chapter 4, we explained that PUC has traditionally imposed rules—called "attendee protocols"—on attendees at agenda meetings to maintain decorum and ensure that its business can be conducted. During the Line 3 agenda meetings, PUC imposed special rules on attendees. We found a number of issues with these special rules.

The Public Utilities Commission inconsistently notified the public about the special rules it used during Line 3 agenda meetings.

Agenda Meeting	Posted to Web Calendar	Posted to eDockets
June 18-28, 2018		
Special attendee protocols	✓	✓
Special ticket procedures	✓	✓
September 11, 2018		
Special attendee protocols	×	×
Special ticket procedures	Not ticketed	Not ticketed
November 19, 2018		
Special attendee protocols	✓	×
Special ticket procedures	×	×
December 13, 2018		
Special attendee protocols	✓	×
Special ticket procedures	×	×
March 26, 2019		
Special attendee protocols	✓	×
Special ticket procedures	×	×
October 1, 2019		
Special attendee protocols	✓	✓
Special ticket procedures	×	✓
January 31/February 3, 2020		
Special attendee protocols	✓	✓
Special ticket procedures	✓	✓

First, the rules that PUC imposed during the Line 3 agenda meetings changed from meeting to meeting. For example, in some meetings, coats or briefcases were allowed; in others, they were not.[50]

Second, PUC did a poor job notifying the public about the special rules that it imposed, including the ticket procedures. For some meetings, PUC posted the special rules on its web calendar and in eDockets; for others, it posted them in one location but not the other; and for others, it posted them in neither location.[51] The box at left shows how PUC notified the public about the various iterations of the special rules that it imposed.

Even when PUC did notify the public about the special rules, those rules were not readily apparent. For example, the special rules imposed on the public during the June 2018 meetings were published on page three of a document titled, "Notice of Oral Argument and Deliberation Procedures." PUC labeled subsequent notices more clearly, with titles such as, "IMPORTANT! ATTENDEE MEETING PROTOCOLS." However, these special rules conflicted with the rules posted on PUC's website.

Further, PUC did not always notify the public when it changed the rules that were posted. For example, when PUC stopped allowing attendees to

[50] In agenda meetings in which briefcases were not allowed, exceptions were made for party representatives.

[51] We discuss the eDockets system in Chapter 3 and PUC's web calendar in Chapter 4.

swap tickets with one another during the June 2018 meetings, it did not issue a notice about this change. Rather, the only notice that described the ticket procedures explicitly stated that PUC *allowed* ticket swapping.

Numerous attendees told us they were frustrated by the rules imposed at the Line 3 agenda meetings, particularly their ever-changing nature, the inconsistent enforcement of posted rules, and the enforcement of rules that were not posted. For example, according to internal documents, staff were instructed to prohibit umbrellas, even though umbrellas were not prohibited in posted notices. The fact that PUC prohibited members of the general public from bringing water into some meetings—including some that lasted all day—was particularly frustrating for some attendees. Some attendees said they felt that PUC staff unfairly enforced rules for certain attendees but not others.

> …every day that I showed up it seemed like the rules were different. Sometimes we could switch out the people in line, sometimes we couldn't. Sometimes we could bring water bottles in, the next we day we couldn't. It was impossible to keep up and it felt like these rules were being made on the fly….
>
> — A Member of the Public

> At times, staff volunteers did not understand [or] know [how] to enforce the changing informal procedures.
>
> — A PUC Staff Member

PUC staff acknowledged that they did not always enforce the rules consistently. They told us they made changes to the rules in response to problems they encountered in a dynamic environment; they said they were trying to continuously improve the process. We discuss these issues further in the following section.

Planning and Oversight

We also reviewed the extent to which PUC planned for and facilitated public participation in the Line 3 agenda meetings.

The Public Utilities Commission was not adequately prepared to administer the Line 3 agenda meetings. It did not provide its staff with adequate guidance, support, or oversight, which resulted in inconsistent practices and frustration among attendees—and staff.

To understand how PUC planned for and oversaw the Line 3 agenda meetings, we individually interviewed each of the PUC commissioners, the executive secretary, and other PUC employees who staffed the Line 3 agenda meetings; we also surveyed all PUC staff.[52] In our communication with PUC officials, we had a hard time determining the extent to which PUC leadership was involved in the administration of the Line 3 agenda meetings or which staff were in charge of what. We heard differing accounts from different officials.

[52] Some staff did not respond to our survey. We surveyed 49 staff and received an 82 percent response rate.

A number of PUC staff told us they did not receive adequate training to administer the Line 3 agenda meetings. Although St. Paul Police provided PUC staff training on de-escalation ahead of the June 2018 meetings, some staff told us this training alone was not sufficient to prepare them for the Line 3 agenda meetings. Staff from across the agency were asked to volunteer to perform tasks that fell well outside of their normal job duties, such as managing crowds or inspecting attendees' bags. Various PUC staff told us they were uncomfortable being put in such positions. Staff told us they needed better training on a variety topics, including their roles in the meetings and protocols for working with tribal officials or members. They also said they were doing their best under trying circumstances, but were overwhelmed.

> I do not appreciate being put in a position where I do not have the training nor the background to deal with safety and security measures for meetings such as these.
>
> — A PUC Staff Member

> In hindsight, it was unfair to put staff in that position.
>
> — A PUC Commissioner

In the absence of clear guidance, staff used their discretion to handle issues that arose during the meetings. In some cases, staff made questionable decisions. For example, records show that staff attempted to restrict representatives from certain parties from being near the general admission line in the public Metro Square building; party representatives said this would have affected their ability as employees of community organizations to organize volunteers.

> Overall, PUC staff were unequipped to be crowd control at the hearings. Staff should not have been put in a position to make these types of determinations or deal with members of the public. We are not crowd control experts.
>
> — A PUC Staff Member

For the November 2018 meeting, PUC imposed a new rule prohibiting attendees from wearing coats in the hearing room. Staff told us they created this rule out of a concern that attendees would hide objects in their coats that could be used to disturb the meetings. PUC imposed the no-coats rule again for the December 2018 meeting. That day, one attendee wore snow pants to stay warm as she waited in line outside of the building to get a ticket. When she was let into the building, a PUC official told her she would not be allowed into the hearing room while wearing her snow pants because they were considered a "coat." Although the attendee told the official that she was only wearing long underwear under her snow pants, the official would not admit her unless she removed them, which she ultimately did.

Several individuals—including party representatives—were removed or banned from the meetings for non-safety-related issues.

One area of significant confusion involved PUC's authority to remove disruptive attendees. The commission—namely the chair—was in charge of what was going on *inside* the hearing room. But, most of the issues we heard about occurred *outside* of the hearing room—in the lines and overflow rooms—as people were trying to get into the meeting. PUC staff were in charge of these areas.

PUC's executive secretary at the time of the June 2018 meetings told us he directed staff to inform law enforcement if they observed safety-related concerns. He said staff did not receive direction about whether they could remove attendees. But, PUC staff told us—and records show—that staff barred attendees from the meetings for violating what the staff perceived to be the ticket rules, not for safety reasons.

We also found that police removed two individuals from the Metro Square building for non-safety-related reasons upon the request of PUC staff. Both of these individuals were removed when they were waiting outside of the hearing room. One of the removed individuals had been listed in PUC files as a party representative for the intervenor, Northern Water Alliance of Minnesota, and had been granted a party badge. The other was also a party representative—the primary organizational contact for the outside counsel hired by the Sierra Club, another intervenor.[53]

> We are deeply concerned about the intimidation and eviction of intervening parties and restrictions that have been arbitrarily placed on their participation….
>
> …the rules have been consistently inconsistent…these "rules" are being enforced arbitrarily and without any proper notice or explanation of how and when alleged violations have taken place…. …[I]ntervening parties are left confused, frightened, and paralyzed about where they are allowed to be and what they are allowed to do.
>
> We want clear rules in writing, direction to PUC staff that violation of rules be put in writing, and that police be used as a last line of enforcement.
>
> Sierra Club, Letter to PUC, June 2018

Staff alleged that the party representatives who were removed violated PUC's ticket procedures because they were holding more than one ticket at a time. The individuals dispute this claim; they also say they were not told why they were removed. Regardless, as we noted earlier, the rule that staff allege was violated was not stated in any notice and did not relate to safety.

The Public Utilities Commission did not have a standardized process in place to handle complaints during the Line 3 agenda meetings, which made it difficult for attendees to resolve their concerns.

PUC has formal processes for handling certain types of complaints, such as complaints about utilities from utility customers or allegations of *ex parte* communication violations. But, during the Line 3 agenda meetings (and throughout our evaluation), PUC did not have standardized processes in place to ensure that complaints from members of the general public about PUC staff or processes were centrally documented, elevated to PUC leadership, or resolved appropriately.

Several attendees told us they tried to file complaints about various issues that occurred during the Line 3 agenda meetings but could not figure out who to contact. Even Sierra Club and Northern Water Alliance of Minnesota (parties to the case) struggled to complain after their representatives were removed from the building (and initially barred from reentry). The parties first tried to complain to commission staff, and then

[53] According to rules, a party includes an intervenor's "attorneys, agents, or representatives." *Minnesota Rules*, 7845.7000, subp. 8, published electronically January 5, 2010.

filed a written letter in eDockets. When the commission chair chose not to address the concerns raised in the letter, Sierra Club's outside counsel made an irregular oral objection during an agenda meeting to alert the commission to the fact that her client's representative had been denied access to the proceedings as a party representative.

Recommendation

PUC officials told us the Line 3 case was an anomaly and that the agency's practices, which they believe generally work well, should not be judged on this one case alone. However, the uniqueness of the Line 3 case does not negate the problems that the participants experienced in the case. We have no reason to doubt that there will be significant public interest in future PUC cases, and we believe the agency should be prepared for such occasions. In this last section, we recommend how PUC can improve its public participation processes in future agenda meetings.

RECOMMENDATION

The Public Utilities Commission's leadership should provide more oversight of the agency's public participation processes and better prepare for cases with significant public interest.

> [T]he Commission could more clearly communicate, preferably in advance, what rules will be in place in the hearing rooms. For example, members of the public were taken by surprise that they were not allowed to bring water into the hearing room for the day-long meetings. It's not clear whether reasons for banning water were communicated to the public.
>
> — A State Official

First and foremost, PUC's leadership should take a more active role in overseeing the public participation processes associated with agenda meetings, particularly in cases with significant interest like Line 3. For example, senior leadership, not individual staff, should make decisions and set agency-wide policies about important issues, such as who should be considered a party representative and how many reserved tickets each party should get (if tickets are necessary). PUC leadership should provide clear, written guidance to staff about the scope of their responsibilities, such as whether or not they may have someone removed from a meeting. PUC leadership should also establish a consistent set of written attendee protocols so staff and attendees alike clearly understand the rules that are sanctioned by the agency.

PUC leadership should also conduct more planning in advance of high-interest cases like Line 3. For example, leadership should establish a plan for using a larger venue when needed. Many of the issues that we heard about could have been avoided if the agency had used a larger venue instead of a ticketing system. PUC also could have avoided some of the problems that it experienced with the tickets if it had developed clear procedures ahead of time and ensured that staff were trained to consistently use those procedures. Additionally, PUC should either hire and properly train staff who can perform security and crowd-control functions, contract for those services, or ensure that whatever venues it uses can perform them.

We recognize that PUC staff will always need some flexibility to handle new issues that arise at agenda meetings. We also recognize that they may struggle to maintain order in highly controversial cases. However, the variation in rules and enforcement that occurred during the Line 3 meetings left many attendees confused and frustrated. Some of these issues could have been avoided through additional planning and clear, consistent, and well-publicized policies.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List of Recommendations

- The Public Utilities Commission should formalize its coordination efforts with partner agencies to reduce variation across its public participation processes. (p. 22)
- The Public Utilities Commission should not delegate logistical responsibilities related to its public participation processes to applicants. (p. 22)
- The Public Utilities Commission should do more to help the public understand the roles of its partner agencies in energy facility proceedings. (p. 22)
- The Public Utilities Commission should regularly consult with each tribe. (p. 27)
- The Legislature should require tribal notification whenever notification of affected units of government is required. (p. 27)
- The Public Utilities Commission should work with the Department of Commerce to improve the usability of the eDockets system. (p. 31)
- The Public Utilities Commission should include more and better information on its website to facilitate public participation. (p. 32)
- The Public Utilities Commission should provide educational resources about intervening to members of the general public. (p. 36)
- The Public Utilities Commission should provide better information to the public about how its staff can support public participation. (p. 37)
- The Public Utilities Commission should provide clearer guidance to staff about their responsibilities to ensure consistent treatment of the public. (p. 39)
- The Public Utilities Commission should do a better job educating the public about the role of the public in its agenda and planning meetings. (p. 43)
- The Public Utilities Commission should make its planning meetings more accessible and transparent to the public. It should also ensure that its meeting notices comply with state law. (p. 45)
- The Public Utilities Commission should record all votes taken at planning meetings, as required by law. It should also consider making planning meeting records more accessible to the public. (p. 47)
- The Public Utilities Commission should adopt practices to make its meetings more accessible to the general public. (p. 51)
- The Public Utilities Commission's leadership should provide more oversight of the agency's public participation processes and better prepare for cases with significant public interest. (p. 78)


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Laws Governing Energy Facility Permitting in Minnesota

APPENDIX A

Minnesota Statute	Relevant Regulatory Purview
Administrative Procedure Act, Chapter 14	• Governs how administrative law judges conduct public hearings • Rules establish special procedures for hearings on energy facilities
Minnesota Environmental Rights Act, Chapter 116B	• Establishes that "each person" is entitled to and responsible for environmental protection • Provides each person the right to intervene in a state proceeding to protect the environment
Minnesota Environmental Policy Act, Chapter 116D	• Requires environmental reviews "where there is potential for significant environmental effects resulting from any major governmental action" • Rules outline public participation processes for environmental reviews • Rules explicitly mandate environmental reviews for large power plants, transmission lines, and pipelines
Minnesota Public Utilities Act, Chapter 216B	• Requires a certificate of need in order to construct a large energy facility • Requires gas and electric utilities to develop long-term plans outlining the resources they will use to meet the needs of customers, which must include conservation methods and renewable energy
Energy Planning and Conservation, Chapter 216C	• Establishes statewide policies on energy conservation, renewable energy development, and energy security
Power Plant Siting Act, Chapter 216E	• Governs the siting of power plants and the routing of transmission lines • Establishes environmental review procedures that override those required by the Minnesota Environmental Policy Act
Wind Energy Conversion Systems, Chapter 216F	• Governs the siting of wind-energy projects • Rules exempt wind-energy site permits from some of the environmental review requirements in the Minnesota Environmental Policy Act and the Power Plant Siting Act
Pipelines, Chapter 216G	• Governs the routing of pipelines • Rules require PUC to conduct an alternative type of environmental review for pipeline route permits, called a comparative environmental analysis
Greenhouse Gas Emissions, Chapter 216H	• Sets statewide greenhouse gas emission-reduction goals • Prohibits PUC from approving large energy facilities that would contribute to carbon dioxide emissions unless: the emissions are offset, the facility is essential for the long-term reliability of Minnesota's electric system, or the facility's absence would cause a substantial burden on ratepayers

NOTES: "PUC" refers to the Public Utilities Commission. We use the term "environmental review" generically here.

SOURCES: Minnesota Statutes 2019, chapters 14, 116B, 116D, 216B, 216C, 216E, 216F, 216G, 216H; and Minnesota Rules, chapters 1400, 1405, 4410, and 7848 through 7855.


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MINNESOTA
PUBLIC UTILITIES COMMISSION

July 22, 2020

Judy Randall
Deputy Legislative Auditor
Room 140 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Ms. Randall:

Thank you for the opportunity to comment on the Office of the Legislative Auditor's (OLA) report and recommendations on the Public Utilities Commission's (Commission) public engagement processes. In particular, the Commission appreciates the dedicated work of OLA staff to understand the complex work of the agency. As the agency manages through the COVID-19 pandemic and is using different tools to interact with the public in a remote environment, the OLA report is well-timed.

The Commission regulates electric, natural gas, and telecommunications service, and reviews applications for siting and routing permits of large energy facilities. In practice, this means considering over 700 unique decisions (or dockets) on an annual basis, on a range of issues from locating large energy facilities, to approving utility investments, to setting electricity rates. Public engagement is a critical part of this work, and it can be hard for the public to participate given the inherently complex nature of the issues, Minnesota's regulatory laws, and the wide range of dockets that come before the Commission. Moreover, the Commission is a quasi-judicial agency that must make its decisions by applying the evidence in the record to the law. The Commission is also bound by ethics rules that limit when, how, and who can engage with the public. This already-complicated process can be confusing because other state agencies often interact with the public on behalf of the Commission. The Commission believes that its existing process has provided an opportunity for the public to engage, but recognizes that it can be confusing for the public and appreciates that the OLA has helped identify some areas for further improvement.

Before identifying many of the improvements already underway, we wanted to provide some additional context. The Line 3 proceeding, which was a driver of this program evaluation, has generated a level of interest and controversy that has not been seen at the Commission for decades. There were 67 public meetings, 12 days of evidentiary hearings, and more than 20 Commission agenda meetings for Line 3. The agency opened more than 10 comment periods covering more than 400 days over the span of 5 years. Thousands of Minnesotans attended these meetings, and the Commission received thousands of comments that were included in the record of the case. The OLA accurately concluded that there were many opportunities for the public to

participate in the Line 3 case. That said, this proceeding presents a good opportunity to identify strategies for improvement. Many improvements were made during the course of the Line 3 proceeding as lessons were learned.

Over the past year, the Commission has been working diligently to make changes aimed at improving public engagement, some of which are identified in this report. Specifically:

- In early 2020, the Commission adopted a Tribal Engagement and Consultation Policy and appointed a tribal liaison to improve communication with tribal governments. The Commission looks forward to strengthening these relationships in the years ahead.

- The Commission is currently engaged in an effort to rebuild its website to provide more and better information, including, as noted in this report, information about how the public can participate in its proceedings, and about the role of partner agencies like the Department of Commerce and the Office of Administrative Hearings.

- The Commission is working with the Department of Commerce to update the eDockets program to make it easier to navigate and search for relevant documents.

- The Commission has recently added a position of Public Engagement Regulatory Analyst to expand the agency's outreach, and is in the process of filling an Assistant Executive Secretary position that will have oversight over the agency's public affairs work.

- Specific to Line 3, additional public comment opportunities were provided in December 2019 and January 2020, using the Senate Office Building that could better accommodate large crowds.

More importantly, the Commission's leadership has committed to providing more oversight of public participation in general, and particularly for cases that have a significant level of public interest. Leadership at the agency has changed significantly in recent years, including a new Commission Chair, a new Executive Secretary, a new General Counsel, a new Business Unit Manager, and, as noted above, shortly a new Assistant Executive Secretary. Improved public engagement is a priority for the new leadership team, and this report provides some important recommendations to incorporate into our ongoing efforts.

Thank you again for the opportunity to comment on the report.

Sincerely,

Katie Sieben	Joseph K. Sullivan	John Tuma	Matthew Schuerger	Valerie Means
Commission Chair	Commission Vice Chair	Commissioner	Commissioner	Commissioner

Recent OLA Evaluations

Agriculture
Pesticide Regulation, March 2020
Agricultural Utilization Research Institute (AURI), May 2016
Agricultural Commodity Councils, March 2014
"Green Acres" and Agricultural Land Preservation Programs, February 2008

Criminal Justice
Safety in State Correctional Facilities, February 2020
Guardian ad Litem Program, March 2018
Mental Health Services in County Jails, March 2016
Health Services in State Correctional Facilities, February 2014
Law Enforcement's Use of State Databases, February 2013

Economic Development
Minnesota Investment Fund, February 2018
Minnesota Research Tax Credit, February 2017
Iron Range Resources and Rehabilitation Board (IRRRB), March 2016

Education, K-12 and Preschool
Compensatory Education Revenue, March 2020
Debt Service Equalization for School Facilities, March 2019
Early Childhood Programs, April 2018
Minnesota State High School League, April 2017
Standardized Student Testing, March 2017
Perpich Center for Arts Education, January 2017
Minnesota Teacher Licensure, March 2016

Education, Postsecondary
Preventive Maintenance for University of Minnesota Buildings, June 2012
MnSCU System Office, February 2010
MnSCU Occupational Programs, March 2009

Energy
Public Utilities Commission's Public Participation Processes, July 2020
Renewable Energy Development Fund, October 2010
Biofuel Policies and Programs, April 2009
Energy Conservation Improvement Program, January 2005

Environment and Natural Resources
Public Facilities Authority: Wastewater Infrastructure Programs, January 2019
Clean Water Fund Outcomes, March 2017
Department of Natural Resources: Deer Population Management, May 2016
Recycling and Waste Reduction, February 2015

Government Operations
Office of Minnesota Information Technology Services (MNIT), February 2019
Mineral Taxation, April 2015

Government Operations (continued)
Councils on Asian-Pacific Minnesotans, Black Minnesotans, Chicano/Latino People, and Indian Affairs, March 2014
Helping Communities Recover from Natural Disasters, March 2012

Health
Office of Health Facility Complaints, March 2018
Minnesota Department of Health Oversight of HMO Complaint Resolution, February 2016
Minnesota Board of Nursing: Complaint Resolution Process, March 2015
Minnesota Health Insurance Exchange (MNsure), February 2015

Human Services
DHS Oversight of Personal Care Assistance, March 2020
Home- and Community-Based Services: Financial Oversight, February 2017
Managed Care Organizations' Administrative Expenses, March 2015
Medical Assistance Payment Rates for Dental Services, March 2013
State-Operated Human Services, February 2013
Child Protection Screening, February 2012
Civil Commitment of Sex Offenders, March 2011

Housing and Local Government
Economic Development and Housing Challenge Program, February 2019
Consolidation of Local Governments, April 2012

Jobs, Training, and Labor
State Protections for Meatpacking Workers, 2015
State Employee Union Fair Share Fee Calculations, July 2013
Workforce Programs, February 2010

Miscellaneous
Minnesota Department of Human Rights: Complaint Resolution Process, February 2020
Minnesota State Arts Board Grant Administration, February 2019
Board of Animal Health's Oversight of Deer and Elk Farms, April 2018
Voter Registration, March 2018
Minnesota Film and TV Board, April 2015
The Legacy Amendment, November 2011

Transportation
MnDOT Measures of Financial Effectiveness, March 2019
MnDOT Highway Project Selection, March 2016
MnDOT Selection of Pavement Surface for Road Preservation, March 2014
MnDOT Noise Barriers, October 2013
Governance of Transit in the Twin Cities Region, January 2011

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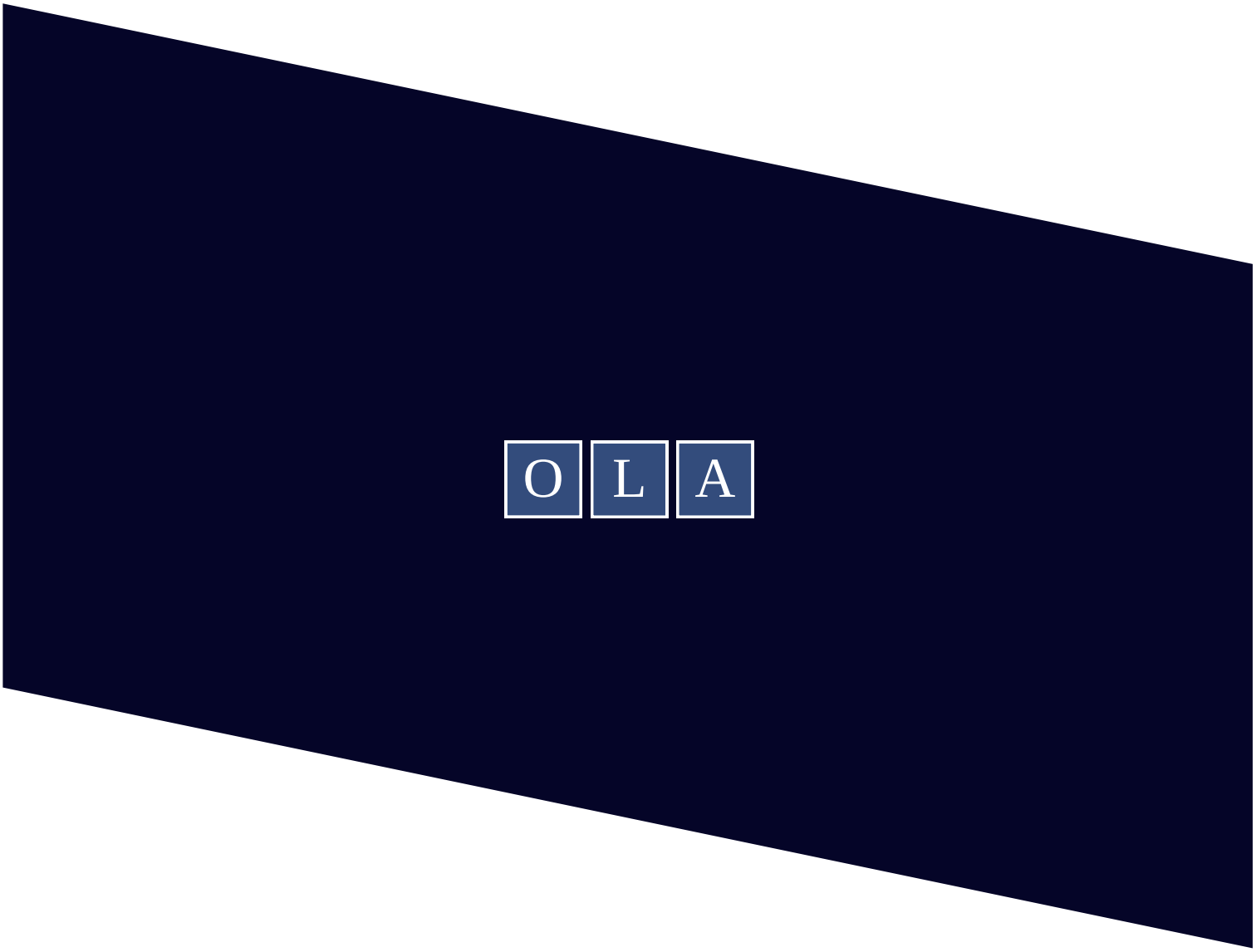

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