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

The PUC has an approval process that stacks the deck against the public.

By DAVID MORRIS

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

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

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

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

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

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

A formal proceeding, such as a judicial proceeding, involves the cross-examination of witnesses. In many proceedings, utilities again tax their customers by using ratepayer money to acquire a transcript. One would think that since the transcript is in electronic form, the PUC would post it and make it freely available to the public. Astonishingly, the PUC rules state that court reporters own the transcript! Citizens and other intervenors must pay for their own copies of transcripts, which, for controversial projects, could mean \$5,000 to \$10,000 per copy.

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

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

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

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