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# Summary

## Public Utilities Commission's Public Participation Processes

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### 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.**

## 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.

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**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.**

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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.<sup>1</sup> 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.

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

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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

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

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<sup>1</sup> *Minnesota Statutes* 2019, 216E.08, subd. 2.

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

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

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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.

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

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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.

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

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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.

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

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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.**

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

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

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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.

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

## 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."*

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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](http://www.auditor.leg.state.mn.us/ped/2020/puc2020.htm)