

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Beverly Heydinger
J. Dennis O'Brien
David C. Boyd
Phyhs A. Reha
Betsy Wergin**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**In the Matter of Application for a Route Permit
for the CapX 2020 Hampton-Rochester-LaCrosse
High Voltage Transmission Project**

MPUC: E002/TL-09-1448

**LAYMEN FOR CHRIST, INC. AND WOODLAND CAMP
COMPLAINT OF ATTEMPTED INDIRECT EX PARTE COMMUNICATIONS
OF
ORONOCO TOWNSHIP**

(a) Complainant:

Laymen for Christ, Inc., owner/operator of Woodland Camp
39814 – 573rd Street
Zumbro Falls, MN 55991

(b) Complainant's Counsel:

Carol A. Overland
Attorney for Laymen for Christ, Inc., owner/operator of Woodland Camp
Legaletric
1110 West Avenue
Red Wing, MN 55066

(c) Respondents:

Oronoco Township (as governmental unit to which OPAC reports)
Oronoco Township Planning Advisory Commission
Oronoco Township Planning Advisory Commission Member Javon Bea

(d) Respondents' Counsel:

Phillip R. Krass
Attorney for Respondent Oronoco Township
Malkerson Gunn Martin LLP
220 So. 6th St., Suite 1900
Minneapolis, MN 55402

(e) Facts Constituting Allegation:

Oronoco Township solicited indirect ex parte contact regarding Reconsideration by requesting through the Olmsted County Journal that “as a town” they need to contact the Commissioners directly asking that the Commission Reconsider its decision to route the CapX 2020 Hampto-Rochester-La Crosse transmission line through Oronoco Township. It is unknown whether ex parte contact was solicited through other means or if direct ex parte contact was made by Oronoco Township, its agents or representatives.

Statements to Commissioners regarding a pending Motion for Reconsideration, and the basis for reconsideration, are material issues and are prohibited ex parte contact. Minn. Stat. §216A.037, Subdivision 1(a)(1); Minn. R. 7845.7200 Subp. 1(A); regarding Reconsideration, see also Ex Parte Contact In the Matter of the Application of Northern States Power Company for Authority to Increase Its Rates for Electric Service in Minnesota Docket No. E-002/GR-87-670.¹ This project is “pending” because under the statute:

A contested case is pending from the time the commission refers the matter to the Office of Administrative Hearings until the commission has issued its final order, and the time to petition for reconsideration has expired or the commission has issued an order finally disposing an application for reconsideration, whichever is later.

Minn. Stat. 216A.037, Subd. 1(c).

Indirect contact was solicited by the township at an Oronoco Township Planning Advisory Commission meeting. From the Olmsted County Journal, April 23, 2012:

Commission member Javon Bea took the lead on the matter stating, “This move goes against the recommendation of the Excel Energy advisers and The Department of Commerce. What we need to do as a town is work on getting the commission to agree to reconsider their decision, if not we will go to an appellate court. We want everyone who is affected to please send a written letter asking for reconsideration, also send a copy to their email addresses. It’s very important for them to hear our own individual stories.”

The specific indirect attempt at ex parte communication was made through Javon Bea’s statement soliciting ex parte contact at the Planning Advisory Commission meeting, and

¹ Report of prohibited ex parte contact regarding Motion for Reconsideration in docket E-002/GR-87-670, available online at http://www.puc.state.mn.us/portal/groups/public/documents/puc_pdf_orders/001511.pdf

provision of names and email addresses for three individual Commissioners, and a home, business or Commission mailing address for each, and encouragement to contact them individually. This information was provided in the article with the following solicitation, published in the Olmsted County Journal on April 23, 2012², which stated:

Anyone with an opinion is asked to correspond with any of the following Commission Members:

•David Boyd
Email: David.C.Boyd@state.mn.us
Dept. of Chemistry, Mail# OSS 402
2115 Summit Ave.
St. Paul, MN 55105

•Phyllis Reha
Email: Phyllis.Rea@state.mn.us
121 7th Place East, Suite 350
St. Paul, MN 55101

•Betsy Wergin
Email: Betsy.Wergin@state.mn.us
14021 311th Ave
Princeton, Mn 55371-3717

Attachment A, Cap X 2020 news dominates Oronoco Planning Advisory Commission Meeting. April 23, 2012³. Not long after publication of the article, the first commentor, dubbed “AlKeno,” noted that the article was urging ex parte communication and cited the statute, but as of this writing, the article remains available, unchanged, soliciting indirect ex parte contact.

The published statements by Javon Bea, a member of the Oronoco Township Planning Commission, at a meeting of the Planning Advisory Commission⁴, and the published urging by the township via Bea to contact Commissioners is an attempt at indirect ex parte contact. There may have been actual ex parte contact by members of the Planning Advisory Commission, Township officials, or members of the public, but that is unknown because there are no filings or other communications posted in eDockets. A business address for David Boyd, and a personal address for Betsy Wergin were used. It is unknown whether any communications were sent directly to these addresses⁵.

² It is unknown whether other such ex parte solicitations were made, whether in other newspapers, public meetings or through private communications.

³ There is no explanation why Commission O’Brien was not named in the article.

⁴ The Planning Advisory Commission has a history of acting independently, beyond its advisory capacity. During the evidentiary hearing, the Township introduced a new route, Hearing Exhibit 89, that had been hatched at a Planning Advisory Commission the evening before. The Town Board did not act to approve offering of this exhibit or route. Despite these independent acts, the town board is responsible for actions of the PAC.

⁵ The addresses used by the Oronoco Planning Advisory Commission for PUC Commissioners Boyd and Wergin are not available on the Commission’s website, and therefore some effort was made to find these addresses.

The township's solicitation of ex parte contact is an attempt, which is a violation of the ex parte statute and rule. Minn. Stat. §216A.037, Subdivision 1(a)(1); Minn. R. 7845.7200 Subp. 1(A).

(e) Sanctions Sought:

Laymen for Christ, Inc. and Woodland Camp seek equitable sanctions sufficient to put the township on notice regarding ex parte rules and to prevent any advantage Complainants may seek through these efforts:

1. Disclosure and filing in eDockets of any and all ex parte staff and/or Commissioner reports, memos, or emails regarding Oronoco Township direct and/or indirect ex parte contact in this docket, to be filed in eDockets with "Ex Parte Contact" identification in the area for document name;
2. Declaratory Order that Oronoco Township, the Oronoco Township Planning Advisory Commission, and OPAC member Javon Bea have violated the statutory and regulatory ex parte provisions; and
3. Order that communications to the Public Utilities Commission by the Oronoco Township Planning Advisory Commission, its individual members, and Oronoco Township residents regarding Reconsideration be stricken from the record, retaining for consideration by the Commission only those legitimate Oronoco Township filings by and through its counsel.
4. Such other sanctions deemed appropriate.

Respectfully submitted,

June 29, 2012



Carol A. Overland #254617
Attorney for Complainant
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Carol A. Overland certifies that on June 29, 2012, she filed a true and correct copy of the attached filing of the Laymen for Christ, Inc., owners and operators of Woodland Camp, by filing on eDockets on the PUC's website and served by U.S. Mail to those not designated for eFiling, the Department, Residential Utilities Division of the Office of the Attorney General, all Respondents.



June 29, 2012

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(http://www.rochesterolmstedcrimestoppers.org/)

(http://www.allstarbasements.com/)

(http://www.superiorfinancialc.com)

OLMSTED COUNTY JOURNAL

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Cap X 2020 news dominates Oronoco Planning Advisory Commission meeting (./single.php?article_id=1334)



By Patrick Shumaker
patrick@olmstedcountyjournal.com (mailto:patrick@olmstedcountyjournal.com)
Mon, Apr 23rd, 2012
Posted in Oronoco Government (./index.php?town=oronoco&category=government)
Comments(3) (./comments.php?article_id=1334)

On Monday evening March 16, The Oronoco Township Planning Advisory Commission approved the placement of business signage for the recycling facility located at 3584 81st Street N.W.

Jeremiah Watson spoke on behalf of the business and agreed to the removal of a temporary sign after the permanent signs are installed.

Commission Member Richard Lyke brought the topic of fracking into discussion. "These big mining companies will come in and obtain a conditional use permit, without many restrictions on it. What happens with these is the permits stay with the property; they don't end if it's sold. A license to run the sand pits rather than the conditional use permit may be the option here. This would require it being renewed yearly."

The Commission advised a transportation impact study addressing the issues of increased traffic of large trucks and equipment on the area. There will also be further studies regarding zoning legalities, and how neighboring counties are dealing with fracking issues. The topic will be addressed again at the next Oronoco Planning Advisory Meeting.

The hot topic of the town and the meeting was The Minnesota Public Utility Commissions ruling on the Cap X 2020 high voltage power lines. In a last minute decision, the Commission Judge switched the Cap X power line project from the Zumbro Power Dam Route to the White Bridge Route. The change would bring the project directly through Oronoco Township.

Commission member Javon Bea took the lead on the matter stating, "This move goes against the recommendation of the Excel Energy advisers and The Department of Commerce. What we need to do as a town is work on getting the commission to agree to reconsider their decision, if not we will go to an appellate court. We want everyone who is affected to please send a written letter asking for reconsideration, also send a copy to their email addresses. It's very important for them to hear our own individual stories."

The meeting then shifted focus to the matter of why Oronoco residents were not heard at the March 12 Utility Commissions hearing. "We were not there because no one had filed an exception to the determination of the Administrative Law Judge that the Power Dam's Crossing alternative should be used. The White Bridge alternative requires the power line to zig zag both north and south of Highway 12 throughout an area more densely populated with people," added Bea.

Concerned Oronoco residents in attendance were in unison on the feeling that they were negatively affected by Cap X. The need for continued electrical upgrades to the grid withstanding, they agreed that this was not a good location for the project. Penny Robinson a long time Oronoco resident who lives on part of the land that the proposed power lines would go through said, "I'm very disappointed that the P.U.C. apparently did not do the job that we the tax payers pay them to do. I would have the power line within approximately 290 feet from

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my home. A major concern that I have is protecting this area. Property values for myself and neighbors are also an issue here. Oronoco is a beautiful place to live and we feel that this will have a negative impact for us."

Anyone with an opinion is asked to correspond with any of the following Commission Members:

- David Boyd
Email: David.C.Boyd@state.mn.us (mailto:David.C.Boyd@state.mn.us)
- Dept. of Chemistry, Mail# OSS 402
2115 Summit Ave.
St. Paul, MN 55105
- Phyllis Reha
Email: Phyllis.Rea@state.mn.us (mailto:Phyllis.Rea@state.mn.us)

Is the private sector doing fine as indicated by President Obama?

- Yes, things are moving in the right direction.
- No, not as far as I can see.

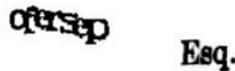
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- 121 7th Place East, Suite 350
St. Paul, MN 55101
- Betsy Wergin
Email: Betsy.Wergin@state.mn.us (mailto:Betsy.Wergin@state.mn.us)
- 14021 311th Ave
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Your comment submission is also an acknowledgement that this information may be reprinted in other formats such as the newspaper.

5:16:22, Apr 26th 2012

158

Alkeno says:

A reporter probably should not be urging citizens to violate Minnesota Statutes 216a.037 (exparte communication).

The PUC didn't make a last minute decision to put the capx2020 route down White Bridge Road, instead of the Zumbro Dam. These were always the options and were decided when the project reached the natural point of decision making. One must take into consideration that the ALJ judge's Findings of Fact were in error.

Javon Bea was incorrect in stating that the White Bridge Road citing went against the Excel Energy advisors and The Department of Commerce recommendations. In fact, it was the Excel Energy advisors and Commerce that made statements correcting the incorrect Finds of Fact, thus making it obvious that the Zumbro Dam citing would not be in compliance with Minnesota routing criteria and non-proliferation policy. The White Bridge Road citing was always the preferred route versus the Zumbro Dam. In addition, The Zumbro Dam cite was strenuously opposed by the DNR, several times, for many reasons.

Contrary to Bea's urging, when the decision process reaches this level the appeal

process is not another opportunity to review the case or participate in argumentative discourse. The ONLY appeals that will receive serious consideration are those which correct facts.

I think articles which report opinions, over facts, to be misleading and detrimental. Municipal Commission members that distort facts, promote worthless effort and take part in conflicts of interest are criminal. Hopefully no Commission member will vote to spend taxpayers money where they have a personal conflict of interest. Commission members that advocate for the advantages of development as a privilege can't have it both ways. Advocating for future development goes hand in hand with corridors of utilities and transportation.

8:03:26, Apr 26th 2012

160

lakeshore says:

Thank you for the news from the Oronoco meeting, I live nearby and was glad to see the coverage. Alkeno's comments are downright sad and do show how the pen is mightier than the sword, calling us the people of Oronoco criminal is slanderous! The online information here states that anyone can respond to the P.U.C. on either side of the issue and the coverage was indeed very accurate to the meeting that I also attended. Calling for sensorship here is totally absurd!

8:07:07, Apr 27th 2012

168

Gary says:

Thank God we live in a country where you can write a letter, call, or email. It's sad to see someone twisting laws to support how they think things should be done. Listing public information is not illegal and it's not illegal to write a letter of concern, if it were to be that way Alkeno would not be here spreading his outlandish accusations. Thanks to the soldiers who fought for these freedoms we enjoy.

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