

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

Beverly Heydinger
Phyllis Reha
Dr. David C. Boyd
J. Dennis O'Brien
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

**In the Matter of the Application by Xcel
Energy for a Route Permit for the
Hampton-Rochester-La Crosse 345-kV
Transmission Line Project**

**OAH 3-2500-21181-2
PUC No. E002/TL-09-1448**

**ANSWER OF RESPONDENTS
ORONOCO TOWNSHIP, ORONOCO
TOWNSHIP PLANNING ADVISORY
COMMISSION, AND ORONOCO
TOWNSHIP PLANNING ADVISORY
COMMISSION MEMBER JAVON BEA
TO COMPLAINT OF LAYMEN FOR
CHRIST, INC. AND WOODLAND
CAMP**

(a) Respondents:

Oronoco Township
Oronoco Township Planning Advisory Commission
Oronoco Township Planning Advisory Commission Member Javon Bae
(collectively "Oronoco")

(b) Respondents' Counsel

Phillip R. Krass
Malkerson Gunn Martin LLP
220 South Sixth Street, Suite 1900
Minneapolis, MN 55402

(c) Complainant:

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

(d) Complainant's Counsel:

Carol A. Overland
Legalelectric
1110 West Avenue
Red Wing, MN 55066

(e) Facts Constituting Response:

Laymen for Christ, Inc./Woodland Camp ("Woodland") are not parties to the above-captioned contested-case proceeding before the Minnesota Public Utilities Commission ("Commission"). Woodland has filed a response to Oronoco's Petition for Reconsideration, and Oronoco has made a motion to strike Woodland's response, since Woodland does not have standing under Minnesota law to file a response. Oronoco incorporates its motion to strike Woodland's response herein by reference. For precisely the same reason and rationale, Oronoco requests that the Commission strike Woodland's Complaint and give it no further consideration.

Woodland's Complaint alleges that Oronoco "solicited indirect ex parte contact regarding Reconsideration[.]" (Woodland's Compl., ¶ (e) at first unnumbered paragraph.) To begin with, neither Minnesota Statutes nor Minnesota Rules prohibit the solicitation of a contact. Minn. Stat. § 216A.037, subd. 1 specifically states:

The ex parte rules may prohibit only ex parte communications, directly or indirectly, between a commissioner and a participant or party under the commission's rules of practice and procedure related to: ..."

(emphasis added.)

Woodland's Complaint at page 4, first unnumbered paragraph, states as follows:

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).

This statement is made with absolutely no support in the statute, in the rules or in the law. There are certainly areas of the criminal law in which "solicitation" of a crime itself constitutes a crime.

Minn. Stat. § 216A.037 is not a criminal statute, does not reference or relate to criminal activity, and certainly never mentions the word “solicitation.” The Complaint attempts to create violation of statute which, in fact, does not even exist.

Indeed the statute authorizing the rules makes no mention and does not prohibit any solicitation, nor indeed does it authorize rules relating to an “attempt” at an ex parte communication. The authorizing statute is crystal clear. The only thing prohibited is an actual ex parte communication, nothing more.

The Complaint further alleges the “solicitation” was regarding a pending motion for reconsideration. (Woodland’s Compl., ¶ (e) at second unnumbered paragraph.) At the time the alleged solicitation took place (on April 23, 2012, per the Olmsted County Journal newspaper article attached to Woodland’s Complaint), there was, in fact, no motion or petition for reconsideration before the Commission. Oronoco’s Petition for Reconsideration was filed much later on June 19, 2012. Consequently, there was no pending motion or petition for reconsideration as incorrectly alleged in Woodland’s Complaint.

The alleged “solicitation” referred to in the Complaint, was in fact, a newspaper article attached to the Complaint. The newspaper article was a reporter’s rendition of the alleged “solicitation,” and at the end of the newspaper article, there is a statement that, “Anyone with an opinion is asked to correspond with any of the following Commission members:” (giving e-mail and home addresses for three commissioners.) This statement, set forth in quotation marks in the previous sentence to identify it as coming from the article, does not have quotation marks in the article itself. So, who is making the request for correspondence to the Commissioners? Is it the reporter or the newspaper? The attachment to the Complaint certainly does not make that clear.

To the extent that the “solicitation” requests communication with Commissioners through their e-mail addresses, any such communications, which go through the Commission, certainly are not ex parte. Such communications, if accepted, are made part of the record and filed by the Commission’s staff for all the world to see. Clearly, the intent of the statute and the rules are to prohibit surreptitious communication with Commissioners about which other parties could have no knowledge. Sending e-mails to the Commission can hardly qualify as surreptitious communications meant to be kept from the eyes of other parties or the public.

As quoted above, Minn. Stat. § 216A.037, the statute authorizing the ex parte communication rules indicates that the rules may “prohibit only ex parte communications[.]” (emphasis added.) To the extent that the rules promulgated by the Commission, and specifically Rule 7845.7200, subp. 1, preclude an “attempt” at communication, those rules exceed the authority given to the Commission in Minn. Stat. § 216A.037. As in the “solicitation” section above, there are many criminal statutes in which an “attempt” to engage in a crime is, in fact, criminal even if the attempt is unsuccessful. Again, Minn. Stat. § 216A.037 is not a criminal statute and does not enjoin unsuccessful attempts.

(f) Sanctions Sought:

Woodland can read the law and the rules as easily as Oronoco, the Commission, or any other party. Woodland clearly understands that neither “solicitation” nor “attempts” are prohibited by the statute. Minn. Stat. § 216A.037, subd. 4(i) provides:

If the administrative law judge finds the complainant’s allegations of an ex parte violation was interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of the proceedings, the judge may recommend that the commission issue an appropriate sanction against the complainant.

This is precisely what has occurred here. Woodland has attempted to create a nonexistent violation of the ex parte communication statute to harass and cause needless expense to Oronoco. Alleging a nonexistent violation, which requires Oronoco to respond, is clearly done for an improper purpose.

Accordingly, Oronoco respectfully requests that the Commission dismiss Woodland's Complaint of the alleged "solicitation" for an "attempt" at improper communication.

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the party against whom the allegations in this pleading are asserted.

Respectfully submitted,

Dated: July 6, 2012

MALKERSON GUNN MARTIN LLP

/s/ Phillip R. Krass

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