April 8, 2024

Senator Marty
Chair Senate Finance Committee
Minnesota Senate Building
Room 3235
95 University Ave W
Saint Paul, MN 55103

Senator Frentz
Chair Senate Energy, Climate and Environment Committee
Minnesota Senate Building
Room 3109
95 University Ave W
Saint Paul, MN 55103

Re: S.F. 4784

Dear Chair Marty and Chair Frentz:

The undersigned groups fully support the transition to clean energy and support evaluating permitting processes to identify efficiencies and remove redundancies. We've appreciated the opportunity to talk with the author and legislative staff, and very much appreciate some of the changes made.

However, several significant concerns remain in the third engrossment of SF 4784. These concerns fall into two overarching themes:

I. **Not narrowly tailored for solar, wind and clean energy storage**: In contrast to the bill's companion in the House, SF 4784 makes it easier to permit all forms of energy infrastructure projects, including fossil fuel projects.

II. **Policy, process, and timeline changes favor industry applicant over community needs:** Although many parts of our current permitting statutes protect communities and the environment, these processes are imperfect. Removing these provisions weakens protections further in two key ways:

    a. Prioritizing industry needs over community interests leads to less robust engagement and project design that compromises the quality of the outcome. In many cases (but not always) industry and community interests become aligned when projects are mutually beneficial rather than simply extractive. Giving a statutory advantage to industry lessens the applicants' responsibility to listen and respond to communities with plans and benefit packages that will work for the impacted community.

    b. Limited opportunities for meaningful community engagement can make project development more contentious and time-consuming.

In addition to these overarching themes, below is a list of specific concerns the undersigned groups have with the 3rd engrossment of SF 4784:

1) **Removing the environmental protection policy that balances human and environmental health with energy needs.**

The proposed language removes 216E.02 (subd.1), which reads:

> "The legislature hereby declares it to be the policy of the state to locate large electric power facilities 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."

We are concerned this change prioritizes infrastructure at the expense of environmental protection, does not require alternatives that result in less harm, and is inconsistent with MN Environmental Rights Act and the Minnesota Environmental Protection Act.

2) Changing definitions that apply streamlined permitting beyond electricity transmission to fossil fuels and pipelines.

Several new definitions work with other elements of the proposed language to open the door to infrastructure that facilitates the burning of fossil fuels:

Large Energy Infrastructure Facility: The proposed language replaces the term "large electric power facilities" with "large energy infrastructure facility," which is defined to include "any associated facility." The definition of "associated facility" includes "other physical structure that is necessary to operate a large energy infrastructure facility." This opens the door for fossil fuel infrastructure (coal, natural gas, peaker plants, carbon capture, pipelines) and more to be subject to the reduced review and timelines proposed throughout the remaining bill.

Associated facility: This new language defines an "associated facility" as including "other physical structure that is necessary to operate a large energy infrastructure facility."

Energy Storage System: Although the bill does not change the definition of an "energy storage system" in existing law, it nonetheless is impacted by the new definition of "associated facility." Because "associated facility" is broadly defined to include fossil fuel-generating power plants, "energy storage system" could now include the storage of fossil-fuel-generated electricity.

3) Changing Certificate of Need criteria to make it easier to approve petroleum pipelines.

The bill proposes to make a small but significant change to the certificate of need evaluation criteria in 216B.243, subd. 3(3) so that it incorporates *regional* energy needs into the need criteria. This change applies to Certificates of Need for many projects including petroleum pipelines. Currently, Certificate of Need criteria for petroleum pipelines evaluates *state* need only. The change to *regional needs* would potentially make it easier to approve a petroleum pipeline.

We can understand that there are benefits to looking at electricity supply and transmission from a regional perspective. Language should be crafted to ensure that the criteria assessing regional

energy needs is for renewable electricity generation and transmission only.

4) Reducing the project details applicants must provide in permitting applications.

A. Replacing "engineering and operational designs" with "design concepts":

Under current law, project applications must include provision of "engineering and operational designs at each of the proposed sites." The new language adds the word "concepts" which significantly reduces the amount of detail required to be provided, while also deleting the need to provide the information for each of the proposed sites.

B. Deleting the need to identify the "size and type of the facility":

The proposed language deletes critical existing language from the Application Contents outlined in Minnesota Rule 7850.1990, Subpart 1(D) which requires:

> "A description of the proposed large electric power generating plant and all associated facilities, *including the size and type of the facility*."

The bill only retains language that requires "a description of the proposed large energy infrastructure facility and all associated facilities."

C. Deleting the need to identify plans for pipelines or extra energy:

The proposed language also deletes 7850.1990, Subpart 1(J) which requires:

> "identification of transportation, pipeline, and electrical transmission systems that will be required to construct, maintain, and operate the facility."

The bill proposes to delete this important information that ensures consideration of all aspects of the proposed project.

5) Narrowing opportunities and timelines for participation, especially regarding environmental review.

The 3rd Engrossment has improved the original language by removing strict time limits for certain aspects of the process. However, there are a few more areas where we believe it would be beneficial to remove or adjust those time limits for the purpose of encouraging greater participation by the public, tribes, or state agencies:

- Line 8.7: remove "30 days" and reinstate existing "90 days" language in Minn. Stat. § 216E.03, subd. 3a, which describes required project notice;
- Line 14.10: insert "at least" before "20 days," to provide additional flexibility in the time allowed for public comment following the public hearing under the Major Review process;
- Line 16.1: delete "up to" and replace with "for at least," to provide additional flexibility in the time allowed for public comment following the public hearing under Standard Review process.

6) Requiring applicants to prepare their own Environmental Assessment [Lines 15.7-15.14].

While we understand that this provision is intended to save time, we believe it is detrimental for an applicant to write its own Environmental Assessment (EA) for several reasons.

A. A legal challenge to the Public Utilities Commission's permitting decision could force the Department of Commerce to defend an inadequate EA that it did not prepare, since there appears to be no requirement for the Department to review or confirm the correctness of the EA. This would waste considerable resources and encourage litigation that the government is more likely to lose.

B. The public perception of having the applicant complete its own environmental review will be understandably very negative. The public is more likely to see this as corrupting the environmental review process given the interest an applicant would have in minimizing the perceived environmental harm from its project.

C. Although an addendum to the EA can be added, it's not required and the bill lacks a mechanism for members of the public, other state agencies or tribes to request one.

We recommend retaining the language as it currently exists in Minn. Stat. § 216E.04, subd. 5: "For the projects identified in subdivision 2 and following these procedures, the commissioner of the Department of Commerce shall prepare for the commission an environmental assessment."

If the language allowing applicants to prepare their own EA remains in the bill, then we would recommend that the bill be amended to strengthen the addendum provisions and:

(i) allow state agencies, tribes, and members of the public to request an addendum;
(ii) make a request for an addendum nondiscretionary if it comes from a state agency or a tribe; and
(iii) create a standard for how much evidence merits an addendum (i.e. "substantial evidence") when members of the public request an addendum so that the Commission has some direction on when to grant one.

7) Creating loopholes that allow fossil fuel and other polluting energy facilities to conduct minimal environmental review and showings of need.

Given the intent of last year's 100% Law, and the stated intent of this bill to help speed up permitting of qualifying renewable and carbon-free projects, we believe the bill should remove all fossil fuel-generating facilities and facilities that burn fuel to generate electricity (i.e., coal, oil, natural gas, and biomass) from the new "Standard" review (previously called "Alternate Review").

Specifically, we would suggest

A. Adding the following to Line 14.28: "(1) large electric power generating plants with a capacity of less than 80 megawatts that are not fueled by natural gas, coal, oil, or biomass, or that are a nuclear power plant."[1]

B. Deleting Line 14.29 and renumbering the remaining items accordingly.

8) Moving environmental review responsibilities from the Department of Commerce-EERA to the Public Utilities Commission.

Shifting the environmental review duties from the purview of the Department's EERA office to the Commission would apply to all projects and applicants who come before the Public Utilities Commission, including petroleum and other hazardous material pipelines. This move would reduce the transparency that comes from inter-agency communication and coordination and would diminish independence of the environmental review process. While this may have been a recommendation included in the Permitting Reform Stakeholder Report, it did not receive consensus approval. Furthermore, environmental justice and Indigenous communities had no representation within that group and their concerns about this provision have not been taken into consideration.

9) Removing the Certificate of Need for all "carbon free" energy resources, which also has the effect of removing the moratorium on new nuclear energy in Minnesota.

Proposed language exempts energy resources that meet the definition of "carbon-free" from the Certificate of Need process. This would be a change from existing law, which currently only applies to wind and solar intended to meet those obligations (Minn. Stat. § 216B.243, subd. 9).

Nuclear is commonly understood to meet the definition of "carbon-free" under 216B.1691, subd. 1(b). Proposed language would effectively eliminate the requirement for a Certificate of Need for nuclear plants because the existing nuclear moratorium is a moratorium on the PUC issuing a Certificate of Need for a new nuclear plant (Minn. Stat. § 216B.243, subd. 3b(a)).
If there *is no requirement* for a new nuclear facility to obtain a Certificate of Need, then an entity could seek and obtain a site permit for a new nuclear plan without violating the nuclear moratorium.

We understand that Senator Frentz is working on language to clarify that it is not the intent of this language to undo the nuclear moratorium. We look forward to reviewing that new language, but still believe it is best to remove the language that creates this uncertainty.

[1] Adding nuclear is necessary to the extent that this senate bill deletes the requirement for a Certificate of Need for any carbon-free energy source, including nuclear power. Without this clarification, this bill will not only end the nuclear moratorium without significant debate, it will also streamline the site permit process for the newly-allowed nuclear power plants.

Still, even with language clarifying the status of new nuclear facilities, the bill would still allow for the expedited approval of all other forms of "carbon-free" energy. The question of what constitutes "carbon-free" energy in Minnesota is one that is open before the Public Utilities Commission as we speak and could potentially include any number of speculative and contested technologies including "blue" hydrogen, Carbon Capture and Storage, and industrial biomass. Exempting these unknown and potentially controversial energy sources from the Certificate of Need process would be dangerously premature.[2]
[3]

To avoid this problem, we suggest that Lines 26.27 to 27.2 be deleted and replaced with the following:

> Subd. 9. **Renewable energy standard facilities.** This section does not apply to ~~a~~ wind energy conversion system or a solar electric generation facility that is that is intended to be used to meet the obligations of section 216B.1691, subdivision 2a or 2g; provided that, after notice and comment, the commission determines that the facility is a reasonable and prudent approach to meeting a utility's obligations under that section. When making this determination, the commission must consider:"

9) Limiting the role of State Historic Preservation Office

Currently, Minn. Stat. § 138.665 requires the Public Utilities Commission to bring in the State Historic Preservation Office's expertise when historic properties are affected, including a process about what to do if these agencies do not agree on a course of action.

While the adopted A13 amendment is an improvement on initially proposed language, the new language still replaces a clear process with ambiguity about the role of the State Historic Preservation Office.

> c) The Minnesota State Historic Preservation Office ~~must comply with the requirements of~~ shall participate in the commission's siting and routing activities as 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.

This new language suggests something unspecified but less than full dispute resolution required by existing law is "resolution."

Thank you again for your careful consideration of this topic and for your willingness to listen to our concerns. If you have any questions, please feel free to contact us below.

[2] For example, a recent comment in the relevant Commission docket argues that satellites beaming down concentrated microwaves is "carbon free" energy if the satellites collect solar energy. This example demonstrates how broadly the definition of "carbon free" might be defined, and how some technologies should undergo full environmental reviews even if they claim to be able to produce energy without greenhouse gas emissions.

Sincerely,

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