



117 South First Street • Montevideo, MN 56265

March 11, 2024

Chair Ginny Klevorn
House State and Local Government Finance and Policy Committee
Room 10, State Office Building
100 Rev Dr Martin Luther King Jr Boulevard.
St Paul, MN 55155

Re: HF 4354

Dear Chair Klevorn and Committee Members,

My name is Hudson Kingston and I am the Legal Director for CURE. CURE is a rurally based, non-profit organization dedicated to protecting and restoring resilient towns and landscapes by harnessing the power of the people who care about them. CURE strongly supports HF 4354 and writes today to explain why this is a necessary and common-sense amendment to Minnesota law.

The Minnesota Public Utilities Commission is at the center of Minnesota's clean energy evolution; it regulates electric utility monopolies that produce, transport, and deliver most of electricity used in the state. It cannot do its job equitably and rationally without taking full input from rural residents and leaders because these rural communities are where the vast majority of clean energy and transmission infrastructure will be built. Additionally, the Commission is the main regulator and oversight agency for hazardous liquid, compressed gas, and oil pipelines proposed to be built in this state, and nearly every mile of pipeline will be proposed in rural areas. Without a full view of rural concerns and impacts, the Commission cannot make permitting decisions in a rational and non-arbitrary fashion.

While the Commission is an independent agency, this merely means that it is independent of direct control from the state's executive branch. No agency is independent of the U.S. Constitution. No agency is independent of treaties that bind the country. All agencies must engage in common-sense decision making that takes into account our avowed duties to Tribal Nations who preceded Minnesota's founding, and who retain rights over their lands that cannot be ignored when an energy project is being sited or a power line or pipeline is being routed. We have learned from the Line 3 process and the findings of the Legislative Auditor¹ that the Commission has fallen down regarding

¹ A summary of the OLA's findings is available at <https://www.auditor.leg.state.mn.us/ped/pedrep/puc2020sum.pdf>.

full public participation, and it has a continuing duty to improve its interactions and consultations with rural communities, especially and foremost Tribal Nations and their members.

For these reasons, it is beyond time for the Commission to be subject to Minnesota Statute 10.65, a historic and necessary acknowledgement that state agencies must consult with Tribal Nations on any projects or policies that may impact their interests. Tribes have a right to decide how planned clean or dirty energy projects are handled, and they have invaluable expertise and insight that will aid the Commission in moving our energy system to carbon-free sources in an equitable and just way. Tribal consultation early and throughout relevant permitting and policy decisions is the only way that the Commission can fully benefit from these land stewards' great knowledge and experience with the land. It is also the only way that state agencies can avoid making illegal decisions that land them in federal courts for violations of treaty law. There is no reason to exempt the Commission from Minnesota Statute 10.65, and indeed doing so would endanger the clean energy transition as well as climate justice efforts that will only become more important as the climate becomes more unstable.

It is notable and commendable that the Commission already has made strides in consulting with Tribal Nations, having had a public meeting to discuss Tribes' concerns with carbon dioxide pipelines proposed across treaty lands and ceded territories. Additionally, the Commission has written and updated its own tribal consultation policy without yet being bound by Minnesota Statute 10.65. The Commission has effectively "opted in" to the concept of tribal consultation. However, such consultation is not optional—the U.S. Constitution, Article VI, Clause 2, clearly states that treaties are "the supreme Law of the Land"—and it is necessary for Minnesota law to reflect this important and binding legal fact in state law, so that no future Commission can shirk its consultation duty when it may be politically or bureaucratically more convenient to do so.

We urge the passage of HF 4354 and its companion in the Senate. Thank you for the opportunity to comment.

Sincerely,

/s/ Hudson B. Kingston
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