

State of Minnesota
Campaign Finance and Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

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Issued to: Annie Levenson-Falk
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ADVISORY OPINION 465

SUMMARY

Lobbying occurs when individuals attempt to influence the application of administrative rules by the Minnesota Public Utilities Commission regarding rate setting, power plant and powerline siting, and granting of certificates of need under Minnesota Statutes section 216B.243, or attempt to influence the Minnesota Public Utilities Commission's adoption, amendment, or repeal of administrative rules. Registration as a lobbyist is required if an individual is compensated more than \$3,000 in a year to directly communicate with public or local officials, and the purpose of the communication is to influence an official action by the public or local official.

Facts

On behalf of the Citizens Utility Board of Minnesota, CenterPoint Energy, Community Power, the Environmental Law & Policy Center, Fresh Energy, the Institute for Local Self-Reliance, the Minnesota Center for Environmental Advocacy, the Minnesota Energy Resources Corporation, Minnesota Interfaith Power & Light, Minnesota Power (ALLETE, Inc.), and the Minnesota Solar Energy Industries Association (organizations), you request an advisory opinion from the Campaign Finance and Public Disclosure Board. The request is based on the following facts:

1. The organizations participate in regulatory proceedings before the Minnesota Public Utilities Commission (PUC).
2. All but one of the organizations are represented by lobbyists registered with the Board, and report to the Board as lobbyist principals.¹
3. The organizations are aware that the definition of "lobbyist" provided in Chapter 10A requires, in part, that an individual register as a lobbyist if the individual is compensated

¹ See [Minn. Stat. § 10A.01, subd. 33.](#)

more than \$3,000 in a year from all sources for the purpose of influencing the official action of a public official.²

4. The organizations are aware that lobbying to influence “administrative action”³ generally does not include the application or administration of an adopted rule by a state agency, board, or commission, but does include the application by the PUC of administrative rules that apply to rate setting, power plant and powerline siting, and granting of certificates of need under Minnesota Statutes section 216B.243.

Issue One

Are there any forms of advocacy before the PUC that must be reported as lobbying that are in addition to advocating on rate setting, power plant and powerline siting, and granting of certificates of need under Minnesota Statutes section 216B.243?

Opinion One

Yes. The PUC has promulgated thirty-four chapters of administrative rules under Minnesota Statutes Chapter 14.⁴ An attempt to influence the content of rules that the PUC may adopt, amend, or repeal is an attempt to influence “administrative action” and therefore is defined as lobbying. Lobbying on PUC administrative rules begins when the PUC takes the first formal action required by Chapter 14 to begin the rulemaking process.⁵

Lobbying of the PUC regarding administrative rules is reported by the lobbyist as administrative lobbying, and is not included in the disclosure of lobbying the PUC on rate setting, power plant and powerline siting, and granting of certificates of need. The disclosure required includes the name of the agency, board, or commission promulgating administrative rules, the Revisor of Statutes number assigned to the rules (if available when the report is filed), the applicable general lobbying category, and the specific subjects of interest within the rules that were the focus of the lobbying effort.

Issue Two

The request presents four scenarios in which individuals take action related to dockets before the PUC regarding rate setting, power plant and powerline siting, and granting of certificates of need. The request asks if the actions described in the scenarios require the individual to register and report as a lobbyist.

² [Minn. Stat. § 10A.01, subd. 21 \(1\).](#)

³ [Minn. Stat. § 10A.01, subd. 2.](#)

⁴ revisor.mn.gov/rules/agency/138

⁵ [Minn. R. 4511.0800, subp. 1.](#)

In evaluating the scenarios, the Board applies the definition of lobbyist provided in Minnesota Statutes section 10A.01, subdivision 21. Generally, paragraph (1), clause (i) of this subdivision requires an individual to register as a lobbyist if three conditions are met: 1) the individual is compensated more than \$3,000 from all sources in a year; 2) the compensation is for attempting to influence legislative or administrative action, or the official action of a political subdivision; and 3) the attempt to influence was made by directly communicating with a public or local official.⁶ In both enforcement actions and advisory opinions the Board has looked for all three factors before concluding that an individual was a lobbyist.^{7 8}

- A. An advocate is party to a general rate case before the PUC. The rate case is referred to the Office of Administrative Hearings for a contested case proceeding. The advocate pays an independent contractor more than \$3,000 to prepare expert witness testimony to be filed in the rate case docket. The independent contractor also testifies in an evidentiary hearing before an administrative law judge overseeing the contested case. Do these actions require the independent contractor to register and report lobbying activities to the Board?

Opinion: Yes. With one exception expert testimony provided to influence administrative action is considered lobbying. The exception is provided in Minnesota Statutes section 10A.01, subdivision 21, paragraph (b), clause (8), which excludes from the definition of the term lobbyist “a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony”. In this scenario the independent contractor does not qualify for the exception because their testimony was not requested by the administrative law judge conducting the contested case hearing. The expert witness is being compensated more than \$3,000 in a year to provide direct communication with public officials in an attempt to influence an act by the PUC, and therefore will need to register and report as a lobbyist. Termination of a lobbyist registration may occur at any time after the lobbyist is no longer engaged in lobbying.

- B. A utility files a certificate of need application with the PUC.⁹ The utility pays an external consultant more than \$3,000 to work on the environmental review section of the certificate of need application. The consultant does not file testimony in the consultant’s name, and does not testify at any evidentiary, public, or PUC hearing about the

⁶ The Board notes in [Laws of 2024, Chapter 112, Article 4, section 4](#), the requirement to register as a lobbyist when urging others to communicate with public or local officials in an attempt to influence official actions was eliminated.

⁷ See, e.g., [Advisory Opinion 409 \(Aug. 3, 2010\); Findings and Order in the Matter of the Complaint by Karl Bremer regarding The Conach Group and Mike Campbell \(Aug. 16, 2011\)](#).

⁹ For purposes of this opinion, the Board presumes that the certificate of need application in question is submitted pursuant to Minnesota Statutes section 216B.243.

certificate of need. Given this activity, does the consultant need to register and report as a lobbyist?

Opinion: No. The consultant was compensated over \$3,000, but did not directly communicate with public officials through written or verbal testimony in an attempt to influence the PUC. In some cases, the name of the consultant that completed the environmental review section may be identified on the document. However, the consultant does not provide expert testimony, written or in person, at any hearing on the certificate of need application. The environmental review is submitted in the name of the utility as support for the utility's lobbying effort to receive a certificate of need. The cost of the environmental review, including the payment to the consultant, must be included in the disbursements made to lobby the PUC reported by the utility on the annual lobbyist principal report.¹⁰

- C. A utility files a petition for a general rate increase under section 216B.16. The utility pays an internal employee more than \$3,000 (determined by multiplying the employee's hourly salary by the number of hours spent on the filing) to help with drafting the petition. The employee signs the petition as the utility employee responsible for the content of the filing. The employee does not file testimony with the PUC in the employee's name, or testify at any evidentiary, public, or PUC hearing about the rate case. Given this activity does the employee need to register and report as a lobbyist?

Opinion: Yes. The employee was compensated more than \$3,000 for working on the application petition needed to bring the rate increase request to the PUC. Unlike scenario B, the employee who is responsible for the petition must be identified to the PUC, and is required under PUC administrative rules to provide the PUC with contact information.¹¹ If the employee's role in accumulating the statements of facts, expert opinions, substantiating documents, and required exhibits for the petition¹² is just administrative, then the utility may wish to consider if the employee is the appropriate person to be listed as "responsible for the filing" of the petition. By identifying the employee to the PUC, and providing the employee with a stated role in the effort to secure the rate increase, the utility has assigned tasks to the employee that will require registration and reporting as a lobbyist.

- D. A registered lobbyist who, as part of their paid work on behalf of the principal they represent, contributes feedback that will be used to strengthen comments that are filed in a PUC proceeding. The comments filed with the PUC qualify as lobbying. However, neither the lobbyist nor the principal signs the comments filed with the PUC. Must the

¹⁰ See [Minn. Stat. §10A.04, subd. 6 \(c\) \(2\)](#).

¹¹ See [Minn. R. 7829.1300, subp. 3](#), providing that a filing must contain "the signature, electronic address, and title of the utility employee responsible for the filing".

¹² See [Minn. Stat. §216B.16, subd. 1](#).

lobbyist and/or the principal track and report their time providing feedback to the comments as a lobbying expense or activity?

Opinion: Yes. Unlike the previous three scenarios, the question here is not whether an individual will need to register as a lobbyist. The question is whether the work of the lobbyist is a reportable lobbying activity. The fact that the comments are filed by another entity does not change the purpose of the work done by the lobbyist on behalf of the principal. The lobbyist's review and feedback on comments is done in order to improve the effectiveness of the comments, and through the comments, attempt to lobby the decision of the PUC regarding the proceeding. The principal is compensating the lobbyist for the work done to improve the comments submitted to the PUC. The compensation is a lobbying disbursement that is disclosed to the Board on the annual lobbyist principal report. If the lobbyist is only representing the principal before the PUC, then the total compensation paid to the lobbyist is disclosed on the annual lobbyist principal report as a disbursement to influence the PUC. If the lobbyist also represents the principal by seeking to influence legislative action, lobbying a political subdivision, or lobbying a state agency regarding administrative rules, then the lobbyist will need to monitor their time spent on each type of lobbying. The information from the lobbyist is used by the principal to comply with Minnesota Statutes section 10A.04, subdivision 6, which requires the principal to report "a reasonable good faith estimate of the portion of all salaries and administrative overhead expenses attributable to activities of the principal for that type of lobbying in this state."

The lobbyist's use of the comments to influence the action of the PUC regarding the proceeding is reported as required by Minnesota Statutes section 10A.04, subdivision 4, paragraph (f), which provides, "A lobbyist must report the Public Utilities Commission project name for each rate setting, power plant and powerline siting, or granting of certification of need before the Public Utilities Commission that the represented entity sought to influence during the reporting period."

Issued November 6, 2024



David Asp, Chair
Campaign Finance and Public Disclosure Board