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February 2, 2007

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: Comments and Recommendations of the Minnesota Department of Commerce
Energy Facility Permitting Staff
Docket No. PL5/PPL-05-2003

Dear Dr. Haar:

Attached are the comments and recommendations of the Minnesota Department of Commerce
Energy Facility Permitting Staff in the following matter:

In the Matter of the Application of the Minnesota Pipe Line Company for a Routing
Permit for a Crude Oil Pipeline

The Department is providing you with DOC EFP staff:

- A. Comments and Recommendations.
- B. Attachments 1 through 13, which includes a proposed pipeline routing permit, the final Agricultural Impact Mitigation Plan and Appendix and a set of pipeline route maps.

Staff is available to answer any questions the Commission may have.

Sincerely,

/s/ LARRY B. HARTMAN
DOC EFP Staff

Enclosures

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS AND RECOMMENDATIONS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
ENERGY FACILITY PERMITTING STAFF**

DOCKET No. PL-5/PPL-05-2003

Meeting Dates: February 13, 2007 (Oral Argument) Agenda Item # _____
February 15, 2007 (Deliberations) Agenda Item # _____

Company: MinnCan Project/Minnesota Pipe Line Company

Docket No. **PUC Docket Number: PL-5/PPL-05-2003**

In the Matter of the Application to the Minnesota Public Utilities Commission for a Pipeline Routing Permit for a 303 mile, 24-inch diameter steel, high-pressure (1,462 pounds per square inch gauge) underground crude oil pipeline and associated aboveground facilities (e.g. pump stations, meter stations) originating at Minnesota Pipe Line Company's Clearbrook Station in Clearwater County and terminating at the Flint Hills Resources refinery in Dakota County.

Issue(s): Should the Commission issue a route permit to Minnesota Pipe Line Company, LLC for a crude oil pipeline. If so, how should the designated route be defined in terms of width in which the proposed pipeline and associated facilities may be located and what conditions should be placed in the pipeline routing permit for right-of-way preparation, construction, cleanup and restoration?

DOC Staff: Larry B. Hartman 651-296-5089
Deb Pile 651-297-2375
Karen Hammel, Legal Counsel 651-297-1852

The enclosed materials are work papers of the Department of Commerce Energy Facility Permitting Staff. They are intended for use by the Public Utilities Commission and are based on information already in the record unless otherwise noted.

RELEVANT DOCUMENTS

<u>Relevant Documents</u>	<u>Date Received</u>
1) Findings of Fact, Conclusions and Recommendation of the Administrative Law Judge	November 17, 2006
2) Transcripts (June 29, 2006) and Public Hearing Transcripts (Volumes 1 through 17).....	September 20 and 25, 2006
3) Pipeline Routing Permit Application (Revised)	January 5, 2006
4) Environmental Assessment Supplement to the Pipeline Routing Permit Application	January 5, 2006
5) Pipeline Route Maps with Revised Corridor	September 28, 2006
6) Minnesota Pipe Line Company, LLC Exceptions to the Findings of Fact, Conclusions and Recommendations of the Administrative Law Judge	December 4, 2006
7) Jason Giesen, Belle Plaine, MN, Exceptions, Proposed Findings of Fact, Conclusions and Order.....	December 4, 2006
8) Reinhardt Exceptions to ALJ Report, Objection to Improper Notice, Objection to Department's Withholding of Public Information, Request to Vacate Easement Agreements, and Request to Reopen Record of Proceeding	December 4, 2006
9) *Scott County Environmental Health Department's Exceptions to the Administrative Law Judge Report	December 5, 2006
10) *The Minnesota Public Interest Research Group's Exceptions to the ALJ Report.....	December 6, 2006
11) *MPL comments objecting to the exceptions to the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendation Filed by Laura and John Reinhardt, Jason Giesen, Allen Frechette and Minnesota Public Interest Research Group.....	December 11, 2006
12) *Jason Giesen in Response to Objections by MPL Regarding Giesen Exceptions filed on December 4, 2006.....	December 13, 2006

-Continued-

Relevant Documents (continued)

Date Received

- 13) *Reinhardt letter response to December 11, 2006 letter from Eric Swanson seeking to exclude exceptions from non-parties.....December 15, 2006
- 14) *Paula Goodman Maccabee on behalf of Atina and Martin Diffley and Individual Landowners S. Allen Friedman and Daly Edmunds January 10, 2007
- 15) *Letter from Alan M. Albrecht on behalf of Daniel Moehring and Gordon Grimm (correcting exhibit)..... January 18, 2007

***Note: Some exceptions were received after the December 4, 2006 deadline for filing exceptions. Other documents were received in response to filed exceptions. Although there is no provision in the Commission’s November notice that allows an opportunity to respond to exceptions, and Commission rules do not permit such when the proceeding is subject to statutory deadlines, these documents are included as relevant documents and discussed herein should the Commission choose to consider them.**

--END OF RELEVANT DOCUMENTS--

This document can be made available in alternative formats; i.e. large print or audio tape by calling (651) 201-2202 (Voice) or 1-800-627-3529 (TTY relay service).

ATTACHED DOCUMENTS

1. Pipeline Routing Permit Schematic
2. Overview Map of MinnCan Pipeline Project
3. Minnesota Rules Part 4415.0100 Criteria for Pipeline Route Selection
4. MinnCan Project Summary of Environmental Permits and Approvals
5. List Environmental Mitigation Plans
6. Plan for Unanticipated Historic Properties and Human Remains in Minnesota
7. Pipeline Safety: Pipeline Operator Public Awareness Program, Federal Register / Vol. 70. No. 96 / Thursday, May 10, 2005 / Rules and Regulations, pages 28833-28842.
8. Sample Safety Brochure required by Pipeline Operator Public Awareness Program
9. Anthrax Mitigation Plan for Scott County
10. Letter from MinnCan to Michael Sobota, Community Development Director, Scott County, dated December 12, 2006
11. Proposed Pipeline Routing Permit
12. Agricultural Impact Mitigation Plan and Appendix: Mitigative Actions for Organic Agricultural Land, September 2006
13. Pipeline Route Maps, January 5, 2007

Attached Documents (Enclosed in Commission Packet, unless otherwise noted) See eDockets (05-2003) or the PUC website for the documents attached at:
<http://energyfacilities.puc.state.mn.us/Docket.html?Id=18339>

Table of Contents

	Page
STATEMENT OF THE ISSUES.....	1
DOC EFP STAFF OVERVIEW.....	2
<i>MinnCan Project Description and Land Requirements.....</i>	<i>3</i>
<i>Procedural Background.....</i>	<i>4</i>
<i>Environmental Review</i>	<i>5</i>
<i>Agricultural Impact Mitigation Plan Requirements</i>	<i>6</i>
DOC EFP STAFF ANALYSIS AND RECOMMENDATIONS	7
<i>The Administrative Law Judge's Report</i>	<i>7</i>
1. General Exceptions	9
2. Exceptions Related to Evaluation of Alternatives	13
3. Exceptions Concerning Impact on the Environment and the Environmental Assessment.....	14
4. Findings and Conclusions Related to Pipeline Safety Issues.....	24
5. Exceptions Related to Impact on Landowners Whose Property Crossed by the Pipeline.....	26
6. Notice to Landowners	36
7. Route Designation.....	40
8. Other Conditions Recommended by the ALJ in Her Conclusions	42
<i>Other Issues</i>	<i>52</i>
<i>Proposed Pipeline Routing Permit</i>	<i>53</i>
COMMISSION DECISION OPTIONS	54

STATEMENT OF THE ISSUES

If the PUC grants a Certificate of Need for the MinnCan pipeline project, it must also consider the Minnesota Pipeline Company, LLC's ("MPL" or the "Applicant") application for a route permit for the proposed project (the "MinnCan Project").

When the PUC issues a pipeline routing permit for the construction of a pipeline and associated facilities, the PUC shall designate a route for the pipeline type and maximum size specified in the application, conditions for right-of-way preparation, construction, cleanup, and restoration contained in Minn. R. 4415.0195, and any other appropriate conditions relevant to minimizing environmental and human impact. See Minn. R. 4415.0175. The PUC decision shall be made in accordance with Minn. R. 4415.0100.

Before the Commission addresses the pipeline routing permit, DOC EFP staff would like to provide the Commission with an overview of A) the MinnCan Project; B) DOC EFP activities in this proceeding since Commission acceptance of the Pipeline Routing Permit application in February 2006; and C) other project related activities and issues associated with this proceeding that the Commission should be aware of prior to making a decision in this proceeding.

First, staff provides for ease of reference certain definitions used in the pipeline routing rules in Minn. R. 4415.0010:

Subd. 7. Associated facilities. "Associated facilities" means all parts of those physical facilities through which hazardous liquids or gas moves in transportation, including but not limited to pipe, valves, and other appurtenances connected or attached to pipe, pumping and compressor units, fabricated assemblies associated with pumping and compressor units, metering and delivery stations, regulation stations, holders, breakout tanks, fabricated assemblies, cathodic protection equipment, telemetering equipment, and communication instrumentation located on the right-of-way.

Subd. 12. Construction. "Construction" means any clearing of land, excavation, or other action for the purpose of constructing new pipeline that would adversely affect the natural environment of a pipeline route. Construction does not include changes needed for temporary use of a route for purposes of maintenance, repair, or replacement of an existing pipeline and associated facilities within existing rights-of-way, or for the minor relocation of less than three-quarters of a mile of an existing pipeline or for securing survey or geological data, including necessary borings to ascertain soil conditions.

Subp. 31. Right-of-way. "Right-of-way" means the interest in real property used or proposed to be used within a route to accommodate a pipeline and associated facilities.

Subp. 32. Route. “Route” means the proposed location of a pipeline between two end points. A route may have a variable width from the minimum required for the pipeline right-of-way up to 1.25 miles.

Subp. 33. Route segment. “Route segment” means a portion of a route.

In addition to these definitions, other significant terms used in this proceeding include the following:

Milepost (MP): The maps provided by MPL indicate the proposed pipeline route referenced by milepost numbers chronologically beginning at the northernmost point of interconnection in Clearwater County.

Greenfield: The Applicant referred to the portion of the proposed route after milepost 119 which would traverse a proposed route segment that has no existing pipeline as a Greenfield route. The first 119 miles involves an existing right-of-way owned by the Applicant where the proposed pipeline will parallel the existing crude oil pipeline(s).

DOC EFP STAFF OVERVIEW

Minnesota Pipe Line Company, LLC (hereinafter referred to as “MPL,” the “Company,” or the “Applicant”) in order to meet continued growth in crude oil consumption in Minnesota and elsewhere in the upper Midwest is proposing to bring available Western Canadian crude oil to Minnesota’s refineries by the addition of a new pipeline to its existing pipeline system in Minnesota (the MinnCan Project). However, in order to build a 24-inch diameter pipeline approximately 300 miles in length, MPL must obtain two state authorizations from the Minnesota Public Utilities Commission.

To obtain the first of these authorizations, a Certificate of Need, MPL must establish that there is a need for the proposed project. Second, MPL must obtain a pipeline routing permit, which authorizes construction of the pipeline in a specific route, with conditions in the permit to minimize human and environmental impacts.

In January 2006, MPL filed two applications with the PUC; the first for a Certificate of Need (CON) (PUC Docket No. PL-5/CN-06-02) on January 3, 2006; and the second, for a pipeline routing permit (PUC Docket No. PL-5/PPL-05-2003) on January 6, 2006. Each docketed application was accepted by a PUC Order dated February 16, 2006. The two applications were consolidated and referred to the OAH for a contested case proceeding.

Department of Commerce review of the need and routing proceedings were undertaken separately within the framework established by the Administrative Law Judge (“ALJ”). Review of the pipeline routing permit application took place pursuant to the requirements of Minnesota Statutes Chapter 116I (now codified as Chapter 216G) and the Pipeline Route Selection Procedures in Minn. R., parts 4415.0045 to 4415.0100. Attachment 1, in the Commissioner’s

packet, illustrates the procedural steps required by rule for the pipeline routing permit review process. All of these steps have been completed, except for the last one, which is a Commission decision to designate a route and issue a pipeline routing permit, if the Certificate of Need is granted.

MINNCAN PROJECT DESCRIPTION AND LAND REQUIREMENTS

MPL is proposing the construction of a new 24-inch diameter crude petroleum pipeline originating at the existing interconnection between the applicant's pipeline system and Enbridge's (formerly Lakehead Pipeline) crude oil pipeline system in Clearbrook, Minnesota, located in Clearwater County in northwestern Minnesota. See Attachment 2 in the Commissioner's packet.

The MPL preferred route for the MinnCan Project generally follows (parallels) and uses a portion of MPL's existing 65 to 70 foot wide pipeline right-of-way southward from the Clearbrook Station for about the first 119 miles in the counties of Clearwater, Hubbard, Wadena, Todd and Morrison. Near Cushing, Minnesota in Morrison County, the MPL preferred route leaves the existing multiple line crude oil pipeline right-of-way, which then requires a new permanent easement (right-of-way) approximately 50 feet in width, within MPL's initially proposed 1.25 mile wide route for another 184 miles generally west and south of the Twin Cities metropolitan area, in the counties of Stearns, Meeker, Wright, McLeod, Carver, Sibley, Scott and Dakota.

The project terminates at the Flint Hills Resources refinery in Rosemount, Minnesota, in Dakota County. The Rosemount terminus will provide a direct interconnection with the Flint Hills Resources refinery and a direct interconnection through existing pipeline facilities with the Marathon Petroleum Company's St. Paul Park Refinery. In addition, two new pump stations will be constructed; one in Clearbrook and the other near the mid-point of the pipeline route near Milepost (MP) 153, now in northern Stearns County.

Construction of the proposed project is anticipated to require a 100-foot wide construction right-of-way at most locations. Where new permanent easements are required, MPL is planning to maintain a right-of-way 50 feet in width.

In addition to the permanent 50 foot wide easement or right-of-way and 50 feet of temporary construction space, extra space is also needed at locations where the project will cross features such as waterbodies, roads, railroads, side slopes, and other special circumstances. Temporary workspace will be allowed for construction activities including, but not limited to, staging equipment and stockpiling spoil material to facilitate construction of the pipeline. The table below provides the typical dimensions of the additional temporary workspace that will be used for construction of the project. These dimensions will vary depending on site-specific conditions.

Typical Dimensions of Temporary Extra Workspaces for the Proposed Pipeline	
Feature	Dimensions On Each Side of Feature ^{a/}
Open-cut Road Crossings	100' X 175' and 50' X 175'
Bored Road and Railroad Crossings	100' X 175' and 50' X 175'
Foreign Pipeline and Utility Crossings	50' X 100' and 50' X 100'
Pipeline Crossovers	~100' X 100'
Waterbody Crossings >50' wide	100' X 300' and 50' X 300'
Waterbody Crossings <50' wide	75' X 200' and 50' X 200'
Horizontal Directionally Drilled Waterbody Crossings	50' X 200'
^{a/} Areas are in addition to the 100-foot-wide construction right-of-way	

The proposed crude oil petroleum pipeline will have an outside diameter of 24 inches with a nominal wall thickness of 0.350 inches. The maximum allowable operating pressure will be 1,462 pounds per square inch gauge (psig). The proposed pipeline and associated facilities (with two pump stations) will have an initial design capacity ranging from 60,000 to 165,000 barrels per day, with an ultimate capacity of 350,000 barrels per day if additional pumping stations are installed.

PROCEDURAL BACKGROUND

Commission acceptance of the pipeline routing permit application on February 16, 2006, allowed Department of Commerce Energy Facility Permitting (“EFP”) Staff to implement the procedural requirements of Minnesota Rules, parts 4415.0045 through 4415.0095 as shown in Attachment 1 in the Commissioner’s packet and discussed herein. Department EFP staff had no interaction with the Department’s Energy Division staff working on the Certificate of Need application, other than to address procedural issues.¹

Between February 26 and March 4, 2006, the Department of Commerce EFP staff held 13 public information meetings, one in each county crossed by the proposed MinnCan pipeline alignment. Published notice of these meetings appeared in 18 newspapers and information on the meetings was provided to more than 50 media outlets (newspapers, radio and TV stations). Notice was also published in the *EQB Monitor* and appeared on the PUC web page. The Company mailed notice to 1,499 landowners on initially the proposed alignment and to 1,127 adjacent landowners in the proposed route.

In conjunction with the Department’s public information meetings in 13 counties, MPL held an open house prior to each meeting to provide interested persons with an opportunity to find out more about the project and respond to questions. MPL also provided county maps showing its preferred route, copies of the proposed Agricultural Impact Mitigation Plan, upland and wetland mitigation practices and other project-related information available to interested persons.

¹ Staff further notes that these separate divisions of the Department, with separate responsibilities in the two dockets, also have different roles and separate legal counsel. The separate roles of the two staff groups were explained at each of the combined hearings (the evidentiary hearings for the route permit were combined with the public hearings for the CON docket).

The meetings were well attended and there continues to be significant public interest in this project based on the volume of e-mails and phone calls received by EFP and PUC staff. Approximately 925 people attended the information meetings/open houses and around 500 people signed up to be added to the Department's project mailing list.

Additional route proposals were due on May 30, 2006. On June 29, 2006, the Commission considered additional route proposals.

On July 19, 2006, the Commission issued its Order Accepting Alternative Route Segment Proposals at the Contested Case Hearing. In its Order the Commission approved of route alternatives outside of the MPL proposed route in the Staples area in Todd and Wadena counties and the Belle Plaine alternative in Scott County and a proposal by the Gardens of Eagan in Dakota County that presented a different alignment within the MPL proposed route. The PUC also rejected a route alternative that would have required consideration of MPL's existing route from milepost 119 in Morrison County to the Koch Refinery, primarily through the northeastern side of the metropolitan area.

After the PUC took action to determine what routing options would be considered at the public hearing, DOC EFP staff in consultation with the PUC staff and the ALJ in this proceeding scheduled and noticed the public hearings for the Certificate of Need and Pipeline Routing Permit proceedings. Between August 9, 2006, and September 6, 2006, notice of the hearing was published in 19 different newspapers and mailed to more than 1,200 persons on the Department's MinnCan project mailing list.

From August 24, 2006, to September 14, 2006, 16 public hearing were held in 14 different counties along the proposed pipeline route. More than 100 different people spoke or asked questions at the public hearings.

On September 15, 2006, an evidentiary hearing was held at the Commission hearing room in St. Paul. All testimony and cross-examination was completed on that date.

On September 22, 2006, the public comment period closed. The ALJ received several hundred public comments, which are summarized in the ALJ report.

On November 17, 2006, the ALJ report was filed with the Commission and interested persons had an opportunity to file exceptions by December 4, 2006. Exceptions were filed by both parties and participants and they are addressed at the appropriate place in this document.

ENVIRONMENTAL REVIEW

In 1989 the EQB approved the pipeline routing rules (Minn. R. Chapter 4415) as a substitute form of environmental review (Minnesota Rules 4410.3600) for pipelines. The EQB approved of the review process established for pipelines in Chapter 4415 requires that a detailed

Environmental Assessment Supplement be submitted with the pipeline application and fulfills the intent and requirements of the Minnesota Environmental Policy Act (“MEPA”), Minn. Stat. Chapter 116D, and Minn. R. parts 4410.0200 to 4410.6500. Consequently, a separate EAW or EIS is not prepared for pipeline projects in Minnesota.

After routes are authorized by the Commission for consideration at the public hearing and prior to the public hearing, a comparative environmental analysis must be prepared by EFP staff or by the applicant and reviewed by the staff and submitted as prefiled testimony as required by Minn. Rule, part 1405.1900.

AGRICULTURAL IMPACT MITIGATION PLAN REQUIREMENTS

With the transfer of permitting authority from the EQB to PUC in July 2005, other legislative changes were made in the permitting of both electric energy facilities and pipelines. The Legislature amended Minn. Stat. § 116C.61, subd. 3, to include language that requires an applicant for a permit for a transmission line, power plant and pipeline to address agricultural concerns:

Section 116C.61, Subd. 3. An applicant for a permit under this section or under chapter 116I shall notify the commissioner of agriculture if the proposed project will impact cultivated agricultural land, as that term is defined in section 116I.01, subdivision 4. The commissioner may participate and advise the commission as to whether to grant a permit for the project and the best options for mitigating adverse impacts to agricultural lands if the permit is granted. The Department of Agriculture shall be the lead agency on the development of any agricultural mitigation plan required for the project.

See 2005 Minn. Laws 505 Chapter 97, Article 3, Section 10.

The Applicant and the Minnesota Department of Agriculture are coordinating actions on this requirement. The Applicant included a Draft Agricultural Impact Mitigation Plan (AIMP) in the Environmental Assessment Supplement to the Pipeline Routing Permit Application. The Draft AIMP was made available as a separate document for review by interested persons. The Draft AIMP is a working document and subject to change based on review and comment by the public and what actions will best mitigate impacts to agricultural lands.

The Agricultural Impact Mitigation Plan (AIMP) was developed by MPL in consultation with the Minnesota Department of Agriculture (MDA), and a January 2006 draft was submitted as part of the application. During the summer of 2006, an Appendix to the AIMP containing mitigative actions for organic land was developed jointly by the MDA, MPL, and Gardens of Eagan. In a letter to the ALJ dated September 5, 2006, the MDA recommended amendment of the AIMP to add the Appendix, and recommended incorporation by reference of the amended AIMP into the routing permit. Subsequently, MPL prepared an updated AIMP dated September 2006 that included the changes recommended by the MDA.

The AIMP was modeled upon the AIMP for the pipeline routing permit issued by the Environmental Quality Board to the city of Hutchinson (Hutchinson Utilities Commission) in 2002. The Hutchinson Pipeline AIMP was, in turn, modeled upon the 1997 Agricultural Impact Mitigation Agreement (AIMA) among the states of Minnesota and Iowa and Alliance Pipeline, L.P. The AIMA was developed for Federal Energy Regulatory Commission (FERC) consideration of the Alliance Pipeline, a 36 inch-diameter interstate natural gas pipeline running from northeastern British Columbia and northwestern Alberta to Illinois. The AIMA was incorporated into the environmental impact statement for the project. Much of the content and the basic form of the AIMA was adapted from AIMAs developed by the Illinois Farm Bureau and the Illinois Department of Agriculture.

A final Agricultural Impact Mitigation Plan (“AIMP”) and Appendix to Agricultural Mitigation Plan: Mitigative Actions for Organic Agricultural Land (September 2006) is proposed to be included as one of the conditions in a pipeline routing permit issued by the Commission. See Attachment 12 in the Commissioner’s packet.

DOC EFP STAFF ANALYSIS AND RECOMMENDATIONS

As stated above, the authority to construct the proposed pipeline requires the procurement of two items: a certificate of need and a pipeline routing permit. This document addresses only the pipeline routing permit.

THE ADMINISTRATIVE LAW JUDGE’S REPORT

The ALJ’s report in PUC Dockets PL-5/CN-06-02 (Certificate of Need) and PL-5/CN-05-2003 addresses both need and siting as it relates to the CON Proceeding and the Pipe Line Routing Permit for MPL’s proposed MinnCan project. The ALJ’s report consists of 338 findings of fact, 31 conclusions and two recommendations: (1) that the PUC grant a CON, (2) that the PUC approve MPL’s Application for a Routing Permit for a crude oil pipeline, including the Staples Alternative, Belle Plaine Alternative and GOE Stipulation, and other conditions.

When the ALJ’s report was received (November 17, 2006), the ALJ noted that “exceptions to this Report, if any, by any party adversely affected must be filed according to the schedule which the Commission will announce” and that “Exceptions must be specific and stated and numbered separately.” The Commission required exceptions to be filed by December 4, 2006.

The ALJ also noted that the Commission may, at its own discretion, accept or reject the Administrative Law Judge’s recommendations and that the recommendations have no legal effect unless expressly adopted by the Commission in its final Order.

As allowed by the Commission's November Notice, exceptions were filed by both parties and participants in the proceeding. The following persons filed exceptions:

- A. Minnesota Pipe Line Company,
- B. The Minnesota Public Interest Research Group (MPIRG),
- C. Allen Frechette, Community Development Division Environmental Health Department, for Scott County,
- D. Jason Giesen, resident in Belle Plaine, and
- E. John and Laura Reinhardt.

In addition to the exceptions identified above, the following additional documents were received in response to the filed exceptions:

- F. Jason Giesen (second letter),
- G. Reinhardt's (second letter),
- H. MPL letter objecting to exceptions from non-parties,
- I. Paula Maccabee (letter on behalf of Atina and Martin Diffley, interveners in the routing permit proceeding as the Gardens of Eagan organic farm, and individual landowners S. Allen Freedman and Daly Edmunds),
- J. Allen M. Albrecht on behalf of Daniel Moehring and Gordon Grimm correcting exhibit number.

The exceptions and comments filed by parties and participants, and other issues germane or of interest to the Commission are grouped by subject areas.

The findings and conclusions included in the following discussion retain the same numbering used in the ALJ's report. Amendments, changes, deletions and additions to the ALJ findings are shown by strikethrough and underlining.

Although the Commission's notice did not expressly allow for documents received after the December 4, 2006, deadline for exceptions, and Commission rules do not provide for replies to exceptions for proceedings with a statutory deadline, the Department EFP staff takes no position on the acceptability of such documents for Commission consideration. Thus, the discussion below incorporates these filings and the Commission may consider them if it varies Minn. R. 7829.2700, subp. 2, to allow for such consideration.

1. GENERAL EXCEPTIONS

Department EFP Staff believes the exceptions in this section are not controversial.

A. ALJ FINDING 1:² MPL Exception concerning legal name.

1. The Minnesota Pipe Line Company (MPL) has applied for a certificate of need (CON) and a routing permit to construct a new 24-inch diameter crude oil pipeline known as the MinnCan Project, originating at MPL's existing interconnection with the Enbridge crude oil pipeline system in Clearbrook, Minnesota, located in Clearwater County, and running to Flint Hills Resources in Rosemount, Minnesota.³

Exception: MPL commented that Finding 1 be modified to refer to MPL by its full proper legal name, Minnesota Pipe Line Company, LLC. It also noted that the Company has completed a conversion to an LLC and indicated that the Permittee for both the Certificate of Need and Routing Permit is "Minnesota Pipe Line Company, LLC."

EPF Staff Analysis: Staff concurs with this recommendation and proposes to amend Finding 1 to read as follows:

1. ~~The Minnesota Pipe Line Company, LLC (MPL)~~ ("MPL" or "Company") has applied for a certificate of need (CON) and a routing permit to construct a new 24-inch diameter crude oil pipeline known as the MinnCan Project, originating at MPL's existing interconnection with the Enbridge crude oil pipeline system in Clearbrook, Minnesota, located in Clearwater County, and running to Flint Hills Resources in Rosemount, Minnesota.

B. ALJ FINDING 46: MPL exception related to mid-point.

46. The project will also include two new pump stations, one inside the originating station at Clearbrook Minnesota, and a mid-point pump station to be constructed between proposed Mileposts 140 and 146 in Morrison County.⁴

Exception: MPL commented that the numerous alignment modifications they have agreed to have lengthened the pipeline by several miles, meaning the approximate mid-point of the line is likely to be in northern Stearns County; therefore the pump station location will move from southern Morrison County to northern Stearns County.

² Footnotes are included in the quoted findings and conclusions, but omitted in the EFP staff's suggested modification, unless otherwise noted. However, the footnote numbering from the ALJ's report is not carried over.

³ Ex. 7 at 4.

⁴ Ex. 1.

EFP Staff Analysis: Staff agrees with MPL’s comment and is proposing to amend Finding 46 as follows:

46. The project will also include two new pump stations, one inside the originating station at Clearbrook Minnesota, and ~~a mid-point pump station to be constructed between proposed Mileposts 140 and 146 in Morrison County.~~ one at the approximate mid-point of the pipeline (MP 153) in northern Stearns County.

C. ALJ FINDING 54: MPL exception on corporate structure.

54. MPL does not operate its pipelines. Its assets are operated by Koch Pipeline Company, with northern operations headquartered in Rosemount.⁵ MPL, Koch Pipeline Company and Flint Hills Resources are all wholly owned subsidiaries of Koch Industries, Inc.⁶

Exception: MPL noted that MPL is a separate company, rather than a wholly-owned subsidiary of Koch Industries.

EFP Staff Analysis: Staff agrees with MPL’s comment and is proposing to amend Finding 54 as follows:

54. MPL does not operate its pipelines. Its assets are operated by Koch Pipeline Company; (“KPL”), with northern operations headquartered in Rosemount. ~~MPL, Koch Pipeline Company~~ KPL and Flint Hills Resources are ~~all~~ wholly owned subsidiaries of Koch Industries, Inc.

D. ALJ FINDING 201: MPL suggested language to address concern about the Red River Ox Cart Trail Network.

201. Michael R. North was concerned that the pipeline could cross the Red River Ox Cart Trail Network near MP 93 and was uncertain if an adjustment to the alignment would avoid it.⁷ It is not clear from the record if MPL was aware of Mr. North’s concerns.

Exception: MPL noted that this concern was investigated and that it will be addressed in the cultural resources survey. MPL proposed that Finding 201 should be modified.

⁵ Ex. 7 at 4.

⁶ T. 17 at 17 (Van Horn).

⁷ Ex. 66.

EFP Staff Analysis: A cultural resources survey is routinely prepared for such a project and is also required in the proposed pipeline routing permit at condition V.G. Staff agrees with MPL's suggestion with one minor modification as proposed below:

201. Michael R. North was concerned that the pipeline could cross the Red River Ox Cart Trail Network near MP 93 and was uncertain if an adjustment to the alignment would avoid it. ~~It is not clear from the record if MPL was aware of Mr. North's concerns.~~ The Ox Cart Trail was investigated and will be discussed in the cultural resources survey report prepared for this project..

E. ALJ FINDING 207: MPL suggestion related to Xcel Route Permit language.

207. In its Pipeline Routing Permit for a Natural Gas Pipeline in Dakota and Ramsey Counties Issued to Northern States Power Company d/b/a/ Xcel Energy, PUC Docket No. G002/GP-05-1706, the PUC included as a Permit Condition: "The Permittee shall clear the right-of-way only to the extent necessary to ensure suitable access for construction, safe operation and maintenance. Windbreaks or tree rows will be crossed by using boring or directional drilling techniques that preserve the trees and surround (sic) area, unless otherwise negotiated with the affected landowner."⁸ The record is unclear whether MPL would be able to safely construct and maintain its proposed pipeline with such a condition.

Exception: MPL noted that this condition was included in a short Xcel Energy pipeline project and that the ALJ noted "that the record was "unclear," on whether such a condition could reasonably be applied to this Routing Permit." The ALJ did not make a recommendation to include this condition in the permit, nor is it mentioned in the ALJ's Conclusions. MPL suggests deleting the Finding.

EFP Staff Analysis: Staff agrees that there is little or no information in the record to support language in the permit; however, staff would note that the finding is correct as it reads. Staff recommends no modification to Finding 207.

F. ALJ FINDING 267 AND FOOTNOTE 332: Friedman correction.

267. Sharon and Alan Friedman have three of MPL's existing pipelines crossing their property in Hubbard County and have built their house and garage and drilled their well at a safe distance from the existing

⁸ Ex. 102 at 4; *but see*, Ex. 103 at 4 ("Shelterbelts and trees must be protected by the Permittee to the extent possible in a manner compatible with the safe operation, maintenance, and inspection of the pipeline.")

pipelines. The proposed alignment will be within 50' of their house and less than 25' from the well. The Friedmans requested that MPL run the pipeline further to the west side of their property, but MPL would not agree.⁹

Exception: The spelling of Mr. Friedman's name is incorrect and should be corrected to read "S. Allen Friedman" in Finding 267 and the accompanying footnote.

EFP Staff Analysis: Staff agrees and proposes to amend Finding 267 as follows:

267. Sharon and ~~S. Alan~~ S. Allen Friedman have three of MPL's existing pipelines crossing their property in Hubbard County and have built their house and garage and drilled their well at a safe distance from the existing pipelines. The proposed alignment will be within 50' of their house and less than 25' from the well. The Friedmans requested that MPL run the pipeline further to the west side of their property, but MPL would not agree.

G. ALJ CONCLUSION 3: EFP Staff-suggested correction.

3. Public hearings were conducted in 14 locations along the proposed pipeline route. MPL gave proper notice of the public hearings, and the public was given the opportunity to appear at the hearings or to submit public comments. All procedural requirements for the CON and Routing Permit were met.

This conclusion should be corrected as shown below to clarify that the hearing notice was not the sole responsibility of the Company. The notice was prepared by the Department of Commerce and the Public Utilities Commission, with the approval of the ALJ. MPL at the request of DOC staff placed the hearing notice in 19 newspapers. The Department of Commerce placed the hearing notice in the *EQB Monitor* and distributed the notice of public hearing to all persons on the DOC distribution list for the project. The PUC staff also provided a copy of the notice to all persons on its service list for the need and routing proceeding. MPL provided information from the hearing notice on its web site and newsletter. The proposed language more accurately reflects that notice is not the sole responsibility of MPL.

3. Public hearings were conducted in 14 locations along the proposed pipeline route. The Department of Commerce, Public Utilities Commission and Minnesota Pipe Line Company ~~MPL~~ gave proper notice of the public hearings, and the public was given the opportunity to appear at the hearings or to submit public comments. All procedural requirements for the CON and Routing Permit were met.

⁹ Letter from Friedmans, dated Sept. 21, 2006. MPL did not respond on the record but included information in its proposed findings about the difficulty of agreeing to the Friedmans' request.

2. EXCEPTIONS RELATED TO EVALUATION OF ALTERNATIVES

A. *ALJ FINDINGS 88 AND 89*: MPIRG exception concerning review of alternatives.

88. MPL examined three alternatives to the proposed pipeline: expanding the existing MPL facilities; trucking; and the “no build” alternative that would rely on the Wood River Pipeline or other pipeline expansion projects. MPL evaluated the alternatives in light of the public and environmental impacts, constructability, estimated in-service date, cost, economic life, and system delivery reliability.¹⁰

89. Two additional alternatives were discussed in the record – the Department examined the alternative of shipment by rail and members of the public suggested replacing a portion of the current MPL system with a larger pipe.

Exception: MPIRG asserted that the options looked at in this record were not a “valid use of alternative analysis” and that the Enbridge Southern Lights and the TransCanada Keystone projects should be examined. MPIRG also asserted that “replacing a portion of the current MPL system with a larger and more modern and safer pipe was not analyzed in sufficient detail in the environmental assessment.”

EFP Staff Analysis: The alternatives to the project were addressed by the parties and considered by the ALJ in the Certificate of Need portion of this proceeding. The ALJ’s report includes a discussion of the alternatives to the project, and concludes that there is a need for the project as proposed. With regard to the consideration of alternatives in the route proceeding, only alternative routes are addressed, and the applicant is required to demonstrate consideration of other alternatives. *See* Minn. R., parts 4415.0080 and 4415.0170. Hearing Exhibit 2, the Environmental Assessment Supplement at part 2.0, pages 13-23, includes a review of system and routing alternatives. The Commission considered route alternatives during its agenda meeting on June 30, 2006, and determined which route alternatives the ALJ was to consider in the contested case process. Thus, consideration of other routes not identified by the Commission was not a requested part of the ALJ’s review and recommendation despite the many comments from the public concerning them. *See* Order Accepting Alternative Route Segment Proposals For Consideration at the Contested Case Hearing, Docket No. PL-5/PPL-05-2003 (July 19, 2006) (accepting four route segments in the Staples and Belle Plaine areas for consideration at the contested case hearing, and rejecting the existing route from such consideration).

The Commission lacks authority to compel another entity to build a different system or system alternative, but it does consider the projects proposed by applicants. MPIRG did not demonstrate that the other systems it suggested would have the ability as proposed to deliver the quantities of oil needed by Minnesota’s refineries, nor was other evidence submitted in the record to demonstrate this. Therefore, EFP staff is not recommending any modifications to Findings 88 and 89.

¹⁰ Ex. 10 at 3 (McKimmey); Ex. 7 at 32-34.

B. ALJ FINDING 97 AND 103: MPIRG exceptions on alternatives analysis.

97. Shipping by truck rather than by pipeline was evaluated as Alternative #2. Trucking creates a much higher public safety and environmental risk than the proposed pipeline. The heavy volume of truck traffic required to carry similar capacity would be difficult to accommodate in the metropolitan area, and it would also be expensive (100,000 bpd would require 28 trucks per hour 24 hours per day, 7 days per week). Trucking would also consume approximately 29,443,600 gallons of fuel per year. There was no evidence to support this option. Thus, this was not a more reasonable or prudent alternative to MPL's proposed pipeline.¹¹

103. The Department requested that MPL examine the alternative of rail transportation.¹² Based on the information provided, including the number of railcars required, the lack of loading and unloading facilities at Clearbrook and the Minnesota refineries, and the associated costs, the Department agreed with MPL that rail transportation was not a reasonable and prudent alternative.¹³ There was no evidence to the contrary.

Exception: MPIRG noted in its exceptions to Findings 97 and 103, that because the transportation of hydrocarbons by rail and truck are such minor modes of transportation and they have such a poor safety record, compared to pipelines, that they were only included to make the proposed project "look less destructive." MPIRG argued that this is not a valid use of alternatives analysis and makes questionable the adequacy and credibility of the environmental assessment.

EFP Staff Analysis: These Findings more specifically address the issue of need and alternatives to the project. EFP Staff makes no recommendation concerning the need for the project, but notes that the Energy Division of the Department of Commerce addressed this issue in testimony.

3. EXCEPTIONS CONCERNING IMPACT ON THE ENVIRONMENT AND THE ENVIRONMENTAL ASSESSMENT

A. ALJ FINDING 94: MPL exception concerning loss of prime agricultural land.

94. Many members of the public pointed out that prime agricultural land is being lost to development, and that the loss was not factored into the comparison of the existing route and the proposed route.

¹¹ Ex. 7 at 33; Ex. 10 at 4; Ex. 14 at 6-7.

¹² Ex. 114, IR 13; Ex. 14 at 7.

¹³ Ex. 14 at 8.

Not only will the placement of the pipeline through prime agricultural land affect crop production, but it also places additional agricultural land at risk of a future pipeline leak or break.¹⁴ The increase in property placed at risk was not taken into consideration in comparing the expansion of the existing route with the proposed route, but Alternative 1 would require an expanded right-of-way to assure adequate separation from the existing lines.¹⁵

Exception: Minnesota Pipe Line noted that “the pipeline will cross agricultural land and that land will not be taken out of production due to the operation of the pipeline.” MPL also notes that “the Agricultural Impact Mitigation Plan (AIMP) specifically addresses, in detail, the measure to be taken when crossing such lands in order to mitigate the impact of such crossings.”

Paula Maccabee commented that the record amply documents that pipelines affect crop production and asserted that it is presumed in Minn. Stat. 216G.07.

EFP Staff Analysis: Staff agrees with some of comments offered by Ms. Maccabee, but would note that in some cases compliance with 216G.07 may increase the impacts on agricultural lands having sensitive soil profiles. Staff also agrees with some aspects of MPL’s exception. Staff is proposing to modify Finding 94 to read:

94. Many members of the public alleged that prime agricultural land is being lost to development, and that the loss was not factored into the comparison of the existing route and the proposed route. Not only will the placement of the pipeline through prime agricultural land affect crop production, but it also places additional agricultural land at risk of a future pipeline leak or break. The increase in property placed at risk was not taken into consideration in comparing the expansion of the existing route with the proposed route, but Alternative 1 would require an expanded right-of-way to assure adequate separation from the existing lines. Almost any pipeline route in Minnesota will have some impact on agricultural land. However, while agricultural land is being crossed by the pipeline, it is not being lost, since this land will still support farming operations after construction of the pipeline and proper restoration of the right-of-way. In addition, MPL has agreed to an Agricultural Impact Mitigation Plan and Appendix to address issues associated with the crossing of such lands.

B. ALJ FINDING 121 AND CONCLUSION 9: MPL exception concerning Stormwater Pollution Prevention Plan.

121. Environmental damage could occur from oil spills during pipeline construction and operation. MPL intends to develop a Stormwater Pollution Prevention Plan describing the necessary steps to take in the

¹⁴ See e.g. letter from Ken Posusta, August 20, 2006; T. 9 at 65 (Kaufenberg).

¹⁵ Ex. 114, IR 11.

event of a spill during construction.¹⁶ No such plan was included in the record. The PUC may wish to require MPL to develop a Stormwater Prevention Plan as a condition of the Routing Permit.

9. The Routing Permit should require a Stormwater Pollution Prevention Plan reviewed and approved by the Minnesota Pollution Control Agency, describing the steps to be taken in the event of a spill from construction-related activities.

Exception: MPL commented that Conclusion 9 is linked to Finding 121, concerning what must be done in the event of a fuel spill during construction. MPL's exception to Finding 121 and Conclusion 9 suggested that "it may be more appropriate to develop a Spill Prevention, Control and Response Plan, rather than a Stormwater Pollution Prevention Plan."

MPL suggested that a Spill Prevention, Control and Response Plan was more appropriate than a Stormwater Pollution Prevention Plan and suggested that Conclusion 9 be restated to provide:

The Routing Permit should require a Stormwater Pollution Prevention Plan, or equivalent Plan, to be prepared prior to construction, in accordance with guidelines from the Minnesota Pollution Control Agency, describing the steps to be taken in the event of a spill from construction related activities.

Ms. Maccabee objected to MPL's exception on the belief that MPL's suggestion would weaken conditions in the pipeline routing permit and the PUC would be "deleting the requirement that the Stormwater Pollution Prevention Plan must be 'reviewed and approved' by the Minnesota Pollution Control Agency (MPCA)." She further asserted that acceptance of this suggested change would undermine the ALJ's recommendation.

EFP Staff Analysis: MPL's application at pages 5-6 states "MPL will prepare and implement a Stormwater Pollution Prevention Plan (SWPPP), which will include measures for preventing, containing, and cleaning up accidental releases of fuel and other hazardous substances during construction of the pipeline." Further, the site sediment control plan is required as part of the stormwater pollution prevention plan and is required by state rule. MPL must create a stormwater pollution prevention plan that explains how they will control stormwater. Because the project will impact more than 50 acres and may impact special waterbodies, the SWPPP will need to be reviewed and approved by the MPCA, not the PUC.

Staff does not read MPL's exception to this Conclusion as one that would weaken or undermine the ALJ recommendation. Rather, it indicates that there may be a better or more effective way of meeting this requirement. However, if there is a better way, that determination will be made by

¹⁶ Ex. 7 at 51.

the MPCA in its discussions with MPL. The Commission does not have jurisdiction over the MPCA permitting process, nor does a MPCA decision trump a Commission decision. Each works within the authority of its respective jurisdictions. If there is an equivalent plan that satisfies the MPCA permitting requirement, MPCA staff will respond accordingly.

This concern is addressed in the proposed permit section V.D. and in part reads: “The Permittee shall comply with all terms and conditions of permits or licenses issued by and Federal and State Agency as identified in the Route Permit Application....” The staff proposed pipeline routing permit also requires a permittee to obtain all of the necessary permits. MPL must also comply with the requirement of Minnesota Rule, Chapter 7090 and any amendments made to its existing permit (# 0056472) by the MPCA.

Staff proposes to amend Finding 121 to read:

121. Environmental damage could occur from oil spills during pipeline construction and operation. MPL intends to develop a Stormwater Pollution Prevention Plan describing the necessary steps to take in the event of a spill during construction. No such plan was included in the record. ~~The PUC may wish to require MPL to develop a Stormwater Prevention Plan as a condition of the Routing Permit.~~

Clearly, MPL is required to conform to the MPCA required permits. Therefore, EFP staff is suggesting that Conclusion 9 be amended to read:

9. ~~The Routing Permit should require a~~ Permittee shall obtain a Stormwater Pollution Prevention Plan or equivalent that is reviewed and approved by the Minnesota Pollution Control Agency, describing the steps to be taken in the event of a spill from construction-related activities.

EFP staff does not believe the last sentence is necessary because of the uncertainty it creates. MPL will need to obtain all necessary permits. The omission of this language does not undermine the requirements of statute and rule MPL must comply with to build the proposed pipeline.

C. ALJ FINDING 131: MPL exception concerning effect on crop production.

131. Some members of the public criticized the evaluation of the environmental costs because there was no assessment of the environmental costs from loss of forests or prime agricultural land.¹⁷ For

¹⁷ Letter from Douglas and Kathy Rasch, Sept. 20, 2006; T. 1 at 40 (“In these 20 years we have not derived economic benefit from this forest, knowing its greatest value to us has always been its natural contribution to the health of the ecosystem it is a part of. It is beautiful, it is unique in the Clearwater County community, and its contribution to carbon storage, clean water, and conservation of many species of plants and animals should not be underestimated. Especially in light of our society’s awareness of our impact on the climate and the resources we use.”); T. 4 at 20-21 (Blann).

example, there was no assessment of the effect on the environment of the loss of forest acreage. The Department's witness acknowledged that there was no assessment of the effect of the loss of agricultural land, but only a review of the Agricultural Impact Mitigation Plan.¹⁸

Exception: MPL filed an exception to this finding. See discussion in Finding 94 above. Paula Maccabee responded to MPL's exception indicating, as she did in Finding 94, that the fact that pipelines affect crop production is amply documented in this record. Ms. Maccabee suggests that the finding could be amended "to add the clarification of 'loss or impairment' since the record describes both complete destruction of farming operations and the potential for reductions in crop quality or quantity, depending on the nature of the farm." Ms. Maccabee also objected to MPL's efforts to bootstrap in this Report a "finding" that "land will still support farming operations after construction of the pipeline" as being misleading, unsupported by the record, and should be rejected.

EFP Staff Analysis: EFP Staff takes issue with parts of the exceptions filed by MPL and the response of Ms. Maccabee on finding 131. The fact is that Minnesota is crossed by several thousand miles of high pressure or transmission pipelines (more than 275 psi) that carry natural gas, crude oil, and other refined products that serve a variety of need and interests in and outside of Minnesota. Hundreds, if not thousands of these miles of pipelines cross agricultural land and for the most part these existing pipelines do not significantly affect farmland, nor are the quantity and quality of crops affected by the presence of all pipeline facilities. However, in some instances, yields have been affected by poor construction and restoration practices and this is a compensable loss. More often than not the presence of a pipeline does not interfere with the ability of that person or persons to farm the land. Specialty farms may face a somewhat different situation; for example, an organic farm may experience a loss or delay of certification until such time as it can be reestablished.

The purpose of a pipeline routing permit and an Agricultural Impact Mitigation Plan is to minimize impacts from the proposed project. Compliance with proper construction and restoration techniques, as provided in the proposed pipeline routing permit are intended to minimize project related impacts on all agricultural lands, other land uses and features crossed by the proposed project. Staff believes that MPL may understate the case and Ms. Maccabee overstates the case. Staff experience with numerous pipeline projects throughout the state clearly demonstrate that pipelines are compatible with a variety of land use activities and natural resource features and that those uses continue after installation and restoration of the pipeline, except on forested lands. Staff recommends modification of Finding 131 as follows:

131. Some members of the public criticized the evaluation of the environmental costs because there was no assessment of the environmental costs from loss of forests or prime agricultural land. For example, there was no assessment of the effect on the environment of the loss of forest acreage. The Department's witness acknowledged that there

¹⁸ T. 17 at 36 (Medhaug).

was no assessment of the effect of the loss of agricultural land, but only a review of the Agricultural Impact Mitigation Plan. While agricultural land is being crossed by the pipeline, it is not being lost, since this land will still support farming operations after construction of the pipeline. Where there is a loss of production as a result of pipeline construction, the AIMP will require MPL to compensate landowners for lost production for a period of five years. Mitigative Actions for Organic Agricultural Land are also addressed in the Appendix to the Agricultural Impact Mitigation Plan.

D. ALJ FINDING 169 AND CONCLUSION 10: MPL exception related to site sediment control.

169. No state agency has objected to the Environmental Assessment Supplement. The Metropolitan Council submitted a letter to the Department dated May 30, 2006, stating that it took no formal action, but “the Pipeline Routing Permit Application and Environmental Assessment Supplement (*sic*) complete and accurate with respect to regional concerns and raises no major issues of consistency with Council policies. The Metropolitan Council recommended that the Minnesota Pollution Control Agency’s NPDES Construction Permit Program requirements for site sediment control be included in the project construction specifications. The PUC may wish to require MPL to comply with the [NPDES] Construction Program requirements for site sediment control as a condition of the Routing Permit.

10. The Routing Permit should require MPL to develop project construction specifications for site sediment control, as required by the Minnesota Pollution Control Agency NPDES Construction Permit program.

Exception: MPL suggested that the recommendation in Conclusion 10 was not discussed at the hearing and that it is addressed in the Wetland and Waterbody Construction and Mitigation Procedures, the Upland Control, Revegetation, and Maintenance Plan and Agricultural Impact Mitigation Plan (“AIMP”) and Appendix (collectively, “Plans”) discussed in the record and incorporated in Conclusion 8. MPL asserts that Conclusion 10 is unnecessary and should be omitted.

Ms. Maccabee suggests that omission of this Conclusion 10 “would prevent the appropriate state agency from determining the sufficiency of its efforts to control pollution. Ms. Maccabee concludes that the ALJ’s Finding 169 and Conclusion 10 should be adopted so that the appropriate agency, rather than the pipeline company will determine whether NPDES pollution prevention practices are sufficient.

EFP Staff Analysis: EFP staff has proposed language in the pipeline routing permit to makes clear what the permitting requirements are. See pipeline routing permit at Parts V.C.1 and V.D., in Sections 8.A. and 8.B.

No language changes are required in the pipeline routing permit to effectuate this, it is already provided for in the permit at V. D.

Proposed Amended Finding 169 and Conclusion 10. Not necessary.

E. ALJ FINDING 187 AND CONCLUSION 6: Scott County (Allen Frechette) comments on environmental review procedures; Jason Giesen objection to selection of Belle Plaine Alternative.

187. Many members of the public were critical about the lack of an independent environmental review of the proposed pipeline. The Department of Commerce Energy Facility Permitting (EFP) Staff reviewed MPL's application for completeness with Minn. Rules 4415.0115 to 4415.0170, and determined that the application and the Environmental Assessment Supplement provided the required information, including information about the environmental impact of the project. The EFP staff concluded that the application was complete and recommended that the PUC accept the application. On February 16, 2006, the PUC accepted the application. Chapter 4415 of the Minnesota Rules was adopted by the Minnesota Environmental Quality Board in 1989 as an alternative form of environmental review for proposed pipelines, consistent with the requirements for alternative review in Minn. Rule 4410.3600.

6. The Applicant has conducted an appropriate environmental assessment consistent with Minn. Rules 4415.0115 to 4415.0170 and met the requirements for alternative environmental review in Minn. Rule 4410.3600.

Exception: Allen Frechette, Environmental Health Manager for Scott County, commented that "Scott County, receiving these materials was not effectively notified that these materials also included what constituted the Environmental Review for this project." Mr. Frechette also commented on what he considered procedural transgressions (notice included) because environmental review for pipelines was approved of as an alternative form of environmental review and is implemented through Minnesota Rules, Chapter 4415. Mr. Frechette also asserted that other state agencies expressed frustration over the environmental review requirements for pipelines. His exceptions relate to Finding 187 and Conclusion 6.

Mr. Frechette also commented that the Environmental Supplement was inadequate in several areas but chose to only comment on two. First, is groundwater protection in sensitive area; and second, is excavation in areas known to be contaminated with Anthrax. These issues were not addressed in the project's environmental document.

EFP Staff Analysis: The record and the ALJ report are very clear about environmental review for pipelines. While the review process is different than the standard environmental review process, the rules and the alternative form of environmental review for pipelines have been in place since 1989 and more than 25 projects have been permitted.

Mr. Frechette also had ample opportunity to contact DOC EFP Staff or EQB Environmental Review staff for an explanation of the administrative review process for pipelines. All notices provided EFP staff telephone, fax numbers and e-mail, web and mailing addresses. Scott County received copies of MinnCan's applications for a Certificate of Need and for the Pipeline Routing Permit (which included the "Environmental Assessment Supplement to the Pipeline Routing Permit Application"), and a set of route maps was filed with the application.

DOC Staff does not know if Mr. Frechette took the opportunity to attend the Public Information Meeting in Scott County on March 22, 2006, or attend the Public Hearing in Scott County on September 7, 2006, or any of the other meetings and hearings in this proceeding. Mr. Frechette correctly noted that at ALJ Finding 169 that "No state agency objected to the Environmental Assessment Supplement." The Office of Pipeline Safety, DNR and the Department of Agriculture actively participated in this proceeding.

Met Council also participated as noted in ALJ Finding 169 above. DOC EFP staff has observed that several state agencies with permitting authority for some aspect of pipelines do not comment on the applications distributed for review and comment because they issue their own permits, and their respective permits address their respective agency concerns. When pipeline permitting authority was with the EQB all projects were reviewed by the Technical Representatives from the board member agencies. Over many years and numerous pipeline projects that were permitted by the EQB, the agencies did not indicate that they did not understand the permitting process for pipelines.

Mr. Frechette has expressed other concerns as well. However, those concerns were raised outside of the record in this proceeding. DOC Staff has attempted to address those concerns in the "Other Issues" section of this document.

EFP Staff Recommendation on Finding 187 and Conclusion 6: Although Staff proposes no amendment to Finding 187 or Conclusion 6, staff is sensitive to all perceived concerns regarding the process. For future pipeline projects, staff will expand its explanation of how the environmental review is handled in pipeline proceedings.

F. ALJ FINDING 206 AND CONCLUSION 25: MPL exception to wording on restoring habitat.

206. The need to keep rights-of-way cleared to permit inspection and maintenance of the pipelines must be balanced against the need to allow a degree of ecological function and vegetation growth. The extent of change to the environment largely depends on the type of vegetative cover that is traversed by the pipeline. Small changes occur in agricultural

fields, and the greatest changes occur when forested areas are cleared to accommodate construction and to maintain the right-of-way. The Commission may wish to require right-of-way restoration that would provide some habitat and natural buffer while allowing for the visual inspection of the right-of-way as a condition of the routing permit.¹⁹

25. The Routing Permit should require MPL to work with landowners, the DNR, and local wildlife management programs to restore and maintain the right-of-way to provide useful and functional habitat for plants, nesting birds, small animals and migrating animals and to minimize habitat fragmentation in a manner consistent with inspection and safe maintenance of the right-of-way.

Exception: MPL filed an exception to this conclusion stating this conclusion was never discussed during the hearing and creates an open-ended “obligation” for MPL and makes it unclear what may be expected of MPL “to work with landowners” on the issues discussed. MPL suggests that this conclusion be omitted. MPL commented on the wording that may require them to restore habitat for birds and animals where none existed.

Ms. Maccabee felt that the finding is supported by the record. Ms. Maccabee stated that “MPL’s exception to this recommendation is overbroad” and that the conclusion is supported by evidence. Ms. Maccabee points out that the Commission’s duty as well as authority for this is provided for in Minn. Stat. 116D.02, subd. 2 (10), which requires wise use of areas of natural habitation and protective measures where appropriate.

EFP Staff Analysis: Staff does believe the language is open and subject to a variety of interpretations. However, the proposed pipeline routing permit contains language that addresses this issue (V.C.14) and reads as follows:

V.C.14. Revegetation. The Permittee shall revegetate the right-of-way and all temporary work space, in accordance with the procedures specified in its Upland Erosion Control, Revegetation and Maintenance Plan and as required by permit conditions or other federal and state agency permits.

¹⁹ Ex. 104 at 45-50.

G. ALJ FINDING 212: MPIRG comments on adverse impacts on the environment of pipeline spills.

212. Although pipeline incidents are rare, they have the potential for significant impact on life, property and the environment.²⁰ Many members of the public were concerned about these possible consequences. Neither MPL nor the Department attempted to evaluate and compare the risk of exposing more land and property to the possibility of a pipeline incident by selecting the proposed route rather than following the existing route. Just as transmission pipelines pose a risk to their surroundings, so does human activity in the vicinity of pipelines pose a risk to the pipelines. These risks increase with growth in population, urban areas, and pipeline capacity.²¹ MPL took human activity into account in its decision not to follow the existing route for the full length of the pipeline, but planned development along the proposed route is inevitable.

Exception: MPIRG commented that “The ALJ ignores the cumulative impact, the combined or additive effect on the risk of spills and other adverse environmental impacts on the environment in Minnesota by utilizing separate route through the state.” MPIRG further commented that “This incomplete and cursory analysis is further evidence of the inadequacy of the environmental assessment used as the basis of environmental review. The lack of adequate alternatives in the environmental assessment means that MPUC’s decisions are likely to be based on a faulty or incomplete analysis.”

EFP Staff Analysis: EFP notes that risk analysis is broadly defined to include risk assessment, risk characterization, risk communication, risk management, and public policy relating to risk. In evaluating this pipeline proposal the PUC’s interests include risks to human health and the environment, both built and natural, and are reflected in the criteria the PUC must use in reaching a decision in this matter. See Minnesota Rules, part 4415.0100 Criteria for Pipeline Route Selection. See Attachment 3 in the Commissioner’s packet.

At a different level, for example, Homeland Security might look at a pipeline and consider risk or threats to the pipeline in terms of physical, chemical, and biological agents and attacks. The Office of Pipeline Safety might look at the risk to pipelines from human activity as well as natural events. All of these entities examine risk at some level in their decision-making processes. Risk to humans and or the environment is also limited or minimized by compliance with Best Management Practices, laws, rules and permit conditions. See Attachment 4 in the Commissioner’s packet for a list of the permits required for this project. Attachment 5 in the

²⁰ 49 C.F.R. § 195.50 defines a reportable incident for hazardous liquids transmission pipelines as an incident in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following: (a) explosion or fire not intentionally set by the operator; (b) release of 5 gallons or more of hazardous liquid or carbon dioxide; (c) death of any person; (d) personal injury requiring hospitalization; or (e) estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000. See additional discussion at Ex. 104 at 67 *et seq.*

²¹ Ex. 104 at 68.

Commissioner's packet identifies a list of the mitigation plans that have been or are being prepared and Attachment 6 in the Commissioner's packet is an example of one of the mitigation plans.

There is abundant evidence in the record emphasizing the importance of pipeline safety. For example, the Minnesota Office of Pipeline Safety, the Gopher State One-Call System, and the U.S. Department of Transportation are but a few of the many examples in the record.

MPIRG infers that there was a lack of alternatives analysis in the environmental assessment. The ALJ report does reflect the information in the record about the alternatives in the CON record and route alternatives that were examined in this proceeding. Both the Applicant and the Department provided the information required by statute and rule.

However, at no point in the proceeding did Mr. Nicholas Keener, who represented MPIRG at several of the public hearings ask the Applicant or the Department a question about any of the data or information contained in the CON and pipeline routing permit applications.

EFP Staff believes that there is no need to amend Finding 212.

4. FINDINGS AND CONCLUSIONS RELATED TO PIPELINE SAFETY ISSUES

A. *ALJ FINDINGS 213-214 AND CONCLUSIONS 22-23:* MPL comments on Pipeline Safety conditions.

213. The PUC may wish to consider as a condition of the Routing Permit that MPL periodically mail pipeline safety brochures to members of the public living within the vicinity of the pipeline, companies engaged in excavation activities, emergency response agencies and local public officials, with information about pipeline safety and excavation damage prevention information. The notice shall include information about the One Call Excavation Notice System.

214. The PUC may also wish to require as a condition of the Routing Permit that prior to placing the pipeline in operation, MPL report to the PUC or Minnesota Office of Pipeline Safety a description of the training conducted for KPL's employees, for governmental response agencies through which the pipeline will pass, and for emergency response contractors concerning response to releases.

22. The Routing Permit should require MPL to periodically mail pipeline safety brochures to members of the public living within the vicinity of the pipeline, companies engaged in excavation activities, emergency response agencies and local public officials, with information about pipeline safety and excavation damage prevention information. The notice shall include information about the One Call Excavation Notice System.

23. Prior to placing the pipeline into operation, the Routing Permit should require MPL to report to the Commission or Minnesota Office of Pipeline Safety a description of the training conducted for KPL's employees, for governmental response agencies in each county through which the pipeline will pass, and for emergency response contractors concerning response to releases.

Exception: MPL noted that the Conclusions associated with Findings 213 and 214 are unnecessary as they address safety related issues that are the exclusive jurisdiction of the state and federal agencies that handle these issues. MPL objects to the inclusion of Conclusions 22 and 23 and associated findings because they address safety related issues and because such issues are beyond the scope of the PUC proceeding.

EFP Staff Analysis: MPL is correct in noting that the pipeline routing permit may not address safety standards, since those standards fall under the exclusive jurisdiction of other agencies. Specifically, responsibility is vested with the (U.S. DOT) Pipeline and Hazardous Material Safety Administration (PHMSA) which has public responsibilities for safe and secure movement of hazardous material to industry and consumers by all transportation modes, including the nation's pipelines (<http://www.phmsa.dot.gov/>).

The Minnesota Office of Pipeline Safety in the Minnesota Department of Public Service is an interstate agent of the PHMSA and is authorized to inspect both interstate and intrastate natural gas pipelines, and hazardous or liquid pipelines (<http://www.dps.state.mn.us/pipeline/index.html>).

Federal Regulations require pipeline operators to develop and implement public awareness programs for pipelines they operate. Pipeline Safety: Pipeline Operator Public Awareness Program, Federal Register / Vol. 70. No. 96 / Thursday, May 10, 2005 / Rules and Regulations, pages 28833-28842. See Attachment 7 in the Commissioner's packet.

Staff agrees that Conclusion 23 is a safety related issue and should not be a permit condition. Staff also believes that Conclusion 22 can be amended as proposed to indicate that pipeline safety is an ongoing activity and educational effort required by federal rules and regulations. See Attachment 8 in the Commissioner's Packet. However, staff also believes that the record should reflect and that the public should be aware that the Permittee will provide the necessary safety related information to the appropriate regulatory and response agencies which will include, but not be limited to, the Office of Pipeline Safety, other appropriate state and federal agencies and appropriate response agencies. See Pipeline Routing Permit V.C.17.

Staff suggests the following amendment to Conclusions 22 and 23.

22. ~~The Routing Permit should require MPL to periodically~~ mails pipeline safety brochures to members of the public living within the vicinity of the pipeline, companies engaged in excavation activities, emergency response agencies and local public officials, with information about pipeline safety

and excavation damage prevention information as required by federal rules and regulations. The ~~notice shall~~ mailings also include information about the One Call Excavation Notice System.

23. Prior to placing the pipeline into operation, the ~~Routing Permit should require MPL Permittee must~~ report to the ~~Commission or Minnesota~~ Office of Pipeline Safety a description of the training conducted for KPL's employees; and Emergency Response Plans for governmental response agencies in each county through which the pipeline will pass, and for emergency response contractors concerning response to releases.

5. EXCEPTIONS RELATED TO IMPACT ON LANDOWNERS WHOSE PROPERTY IS CROSSED BY THE PIPELINE

A. *ALJ FINDING 158, FINDING 163, AND CONCLUSION 18:* MPL exception related to organic farming.

158. The PUC may wish to consider as a condition of the Routing Permit requiring MPL to retain an organic certifier at its expense to assist any landowner to negotiate terms to the right-of-way agreement that will minimize damage during construction and delay or loss of organic certification for any farm that is Organic Certified or in active transition to become so.

163. The PUC may wish to consider as a condition of the routing permit requiring MPL to notify each landowner annually of the opportunity to register organic farms and the landowner's or tenant's Organic System Plan with MPL and hold MPL responsible for the damage caused by any maintenance practice that is inconsistent with the landowner's or tenant's Organic System Plan on file or the express written approval of the farmer. The PUC may also wish to consider whether additional conditions should be added to the Routing Permit to address the concerns of organic farmers who have not developed an Organic System Plan, as that term is defined in the AIMP Appendix.

18. The Routing Permit should require MPL to retain an Organic Certifier at its expense to assist any landowner to negotiate terms to the right-of-way agreement that will minimize damage during construction and delay or loss of organic certification for any farm that is Organic Certified or in active transition to become Organic Certified.

Exception: MPL argues that Finding 158 and Conclusion 18 would require MPL to hire an Organic Certifier to negotiate right-of-way terms between MPL and a landowner. MPL also noted that the ALJ found issues relating to right-of-way acquisition to be beyond the scope of

this project. MPL further noted that this requirement would create the potential for disputes and conflicts as to whether the right-of-way agreement minimizes damages during construction and the loss of organic certification.

Ms. Maccabee objected to MPL's exception because it "would allow the Company rather than an independent third party expert, to determine whether the Company's activities should be controlled to minimize human and environmental impacts." Ms. Maccabee also suggested that the Company's "proposed amendment would create an unenforceable "plan" rather than a binding agreement." And that to amend it as the MPL suggests should be rejected.

Although no formal exception was filed to Finding 163, EFP staff discussed this issue with staff at the Department of Agriculture, who indicated that this language could be more precise and less open-ended if the PUC addresses this issue.

EFP Staff Analysis: DOC EFP staff discussions with the Department of Agriculture have led to a proposed change in Finding 158 and Conclusion 18. The term "Organic Certifier" should be replaced with "qualified organic consultant." An organic certifier would be unlikely to perform the role intended by the ALJ. A certifier's sole responsibility is to determine whether or not an organic farm meets the standards for organic certification. A consultant, however, would be able to provide advice to a landowner/farmer. MPL's arguments concerning issues of right-of-way acquisition are further addressed below in section 5.E.

EFP staff believes that the language in Finding 163 could be tightened up in the last sentence by limiting its scope to farms in active transition to become Organic Certified.

EFP staff recommends the following modification to Finding 158:

158. The PUC may wish to consider as a condition of the Routing Permit requiring MPL to retain a ~~organic certifier~~ qualified organic consultant at its expense to assist any landowner to negotiate terms to the right-of-way agreement that will minimize damage during construction and delay or loss of organic certification for any farm that is Organic Certified or in active transition to become so.

EFP Staff recommends the following modification to Finding 163:

163. The PUC may wish to consider as a condition of the routing permit requiring MPL to notify each landowner annually of the opportunity to register organic farms and the landowner's or tenant's Organic System Plan with MPL and hold MPL responsible for the damage caused by any maintenance practice that is inconsistent with the landowner's or tenant's Organic System Plan on file or the express written approval of the farmer. The PUC may also wish to consider whether additional conditions should

be added to the Routing Permit to address the concerns of organic farmers in active transition to become Organic Certified who have not yet developed an Organic System Plan, as that term is defined in the AIMP Appendix.

EFP Staff recommends the following modification to Conclusion 18:

18. The Routing Permit should require MPL to retain ~~an Organic Certifier~~ a qualified organic consultant at its expense to assist any landowner to negotiate terms to the right-of-way agreement that will minimize damage during construction and delay or loss of organic certification for any farm that is Organic Certified or in active transition to become Organic Certified.

B. ALJ FINDING 161 AND CONCLUSION 20: MPL exception concerning contacting landowners for maintenance.

161. The PUC may wish to consider as a condition of the routing permit requiring MPL to give notice to landowners prior to conducting maintenance.

20. The Routing Permit should require that MPL contact landowners prior to entering the property or conducting maintenance along the route and avoid maintenance practices, particularly the use of fertilizer or pesticides, inconsistent with the landowner's or tenant's use of the land.

Exception: MPL noted that Finding 161 and Conclusion 20 provide no exception in the event of an emergency or in the event of an inability to contact the landowner despite efforts to do so.

EFP Staff Analysis: Staff agrees with MPL's proposed language that would replace the ALJ language with the following language for Conclusion 20:

20. With the exception of any access required in the event of an emergency, the Routing Permit should require MPL to make a good faith effort to contact landowners prior to entering the property for routine maintenance along the route, and to avoid maintenance practices that include the use of fertilizer or pesticides, to the extent reasonable alternatives are available to MPL.

C. ALJ FINDING 264: MPL qualification of prior commitment.

264. With the exception of the route width between MP 98 and 105, the Staples Alternative, and MP 242 and 248, the Belle Plaine Alternative, MPL agreed that it would not cross the property of any

landowner not crossed on the September 15 Alignment unless that landowner agreed to the placement.

Exception: MPL commented that Finding 264, setting forth a commitment it made during the public hearings, should note that its commitment was qualified in the event that environmental or engineering concerns arise. Ms. Maccabee commented that “[t]his exception would create enormous uncertainty and render meaningless the extensive process by which the proposed route was noticed, briefed and selected” and suggested that it be rejected.

EFP Staff Analysis: Staff concurs that statements made by MPL were qualified by this language and proposes the following modification:

264. Absent environmental or engineering concerns requiring an adjustment to the September 15 Alignment, Alignment, ~~W~~with the exception of the route width between MP 98 and 105, the Staples Alternative, and MP 242 and 248, the Belle Plaine Alternative, MPL agreed that it would not cross the property of any landowner not crossed on the September 15 Alignment unless that landowner agreed to the placement.

D. ALJ FINDING 294: Reinhardt exception on Department conduct.

294. Thomas Scheffler was disturbed by the way MPL had responded to his questions about land valuation and the Department’s unwillingness to provide a complete list of the names and addresses of other landowners along the route so that he could meet with them to discuss the project.²²

Exception: John and Laura Reinhardt commented that “We take exception to the inexcusable behavior of the Department in refusing to provide public data to landowners in this proceeding.”

EFP Staff Analysis: EFP staff believes that Finding 294 should be corrected to reflect the fact that Department staff has never had a list, complete or incomplete, of the landowners along the route. If the Department had a copy of the list, it certainly would have been provided to any person who requested it, as long as it contained public information. The ALJ’s footnote states that “[a]pparently the Department seeks landowner approval prior to providing names and addresses.” Staff is unable to provide something it does not have. See proposed EFP staff recommended modification of Finding 294 and deletion of the associated footnote. Staff offers the following modification:

²² Apparently the Department seeks landowner approval prior to releasing the names and addresses.

294. Thomas Scheffler was disturbed by the way MPL had responded to his questions about land valuation and the Department's ~~unwillingness~~ inability to provide a complete list of the names and addresses of other landowners along the route so that he could meet with them to discuss the project.²³

E. ALJ FINDINGS 318-333 AND CONCLUSIONS 26 AND 27: MPL exceptions concerning scope of Routing Proceeding.

318. There were many objections to the amount of compensation that MPL was offering landowners to sign a right-of-way agreement. While questions of right-of-way acquisition and compensation are beyond the scope of this docket, Department Staff and Commission Staff, the ALJ and MPL all offered some information about the right-of-way acquisition and eminent domain process to the public at the public hearings. It is apparent that MPL land agents have led many landowners to believe that they had no choice but to accept MPL's payment or their land would be "taken" through eminent domain. From this, landowners incorrectly inferred that they would receive nothing if they did not accept MPL's offer. The landowners did not receive any information that explained to them that they could seek an independent appraisal, and only those landowners who appeared at some of the public hearings were offered an outline of the eminent domain process. Kenneth Posusta and others requested that, in the future, information about the eminent domain process and how it works should be sent to all landowners along the proposed route.²⁴

319. Many members of the public challenged MPL's offer to compensate property owners at a rate for agricultural land in areas where future development was imminent. These individuals asserted that their land was an investment, and that they stood to benefit significantly from future sale to a developer. They were concerned that the presence of a pipeline on their land might prevent development or affect the timing, type of development, and the level of compensation that they would receive.²⁵

320. Other members of the public questioned the level of compensation for the loss of trees on their property, and the effect the loss of trees would have on their property value.²⁶ One landowner could lose

²³ ~~Apparently the Department seeks landowner approval prior to releasing the names and addresses.~~

²⁴ T. 6 at 20-21 (Blann); T. 6 at 30 (Bliese); T. 14 at 101 (Posusta).

²⁵ See e.g. T. 9 at 60 (Kaufenberg); T. 12 at 50-51, T. 13 at 26 (Ruhland); T. 13 at 21 (Langmo); T. 15 at 46-47 (Slater); Letter from Rodger E. Slater, Sept. 16, 2006; letter from Mr. and Mrs. Gerald Worm, Sept. 17, 2006.

²⁶ See e.g. T. 4 at 24-26 (Sorgert); Letter from Milo Pomije, Sept. 18, 2006..

up to 80 mature trees.²⁷ MPL offered to retain a professional tree appraiser, if requested by the property owner, to establish the value of any trees lost.²⁸

321. Some members of the public complained that MPL does not adequately compensate for land that is maintained for wildlife and has not taken into account the disturbance that the construction and maintenance of the right-of-way will have for the wildlife, and the loss of the attendant pleasure to the landowners.²⁹ MPL did not have a response to these comments.

322. Over the course of the public hearings, landowners complained about the one-sided terms of the right-of-way agreements,³⁰ and MPL revealed that certain provisions could be negotiated. Indemnification for damages caused by operation of the pipeline,³¹ tree value, removal or retention of an out-of-service pipe, weed control, and tree protection were among the items that could be raised in negotiations. MPL places the responsibility on the landowners to raise issues for negotiation³² and it was apparent from the public comments that the land agents may have led the landowners to believe that the terms were not negotiable.

323. It is MPL's practice to negotiate a one-time payment but reserve the right to come onto the property later to relocate, remove or relay the pipeline, and to add valves, security fencing, wires, cables, or other equipment as the company deems necessary or convenient. In addition, the agreement gives the company the right to use unspecified additional workspace along the right of way as needed, and to clear trees, shrubs and brush without compensation to the property owner. Although the company agrees to pay for losses resulting from and arising out of the construction of the pipeline, the right-of-way agreement does not address damages that may occur after construction, nor specify the method used to value the damages incurred.

²⁷ T. 11 at 33 (Janovsky).

²⁸ T. 11 at 33 (Wright).

²⁹ T. 15 at 44-46 (Schuette).

³⁰ See e.g. T. 16 at 51-55 (Osborn). Ex. 118.

³¹ T. 12 at 40-41, offering "Tier One Indemnification," covering all losses arising from the pipeline, so long as the landowner is not at fault. (Wright).

³² T. 16 at 102 (Wright).

324. MPL representatives repeatedly stated on the record that it was the company's "policy" to restore the property back to the condition prior to the damages occurring, but the right-of-way agreement contains no such language. Instead, it expressly states that there is no authority beyond the terms of the right-of-way agreement.³³

325. The Department requested the following information: "Please describe the extent to which MPL assumes responsibility to compensate landowners for damages due to an oil spill." MPL replied: "Absent an agreement with the landowner that either expands or limits MPL's liability, MPL's responsibility to compensate landowners for damages due to an oil spill would be consistent with established principles of Minnesota law."³⁴

326. Landowners who specifically request it may be able to negotiate an indemnification agreement with MPL that will compensate the landowner in the event of an oil leak or spill on their property.³⁵ However, it was apparent that this was not a standard provision of the right-of-way agreement.³⁶

327. The PUC may consider as a condition of the routing permit requiring MPL to offer all landowners an indemnification agreement similar to the Tier One Indemnification offered to some landowners.

328. Some landowners were very upset about the company's unwillingness to place the pipeline at the edge of their property, or at a greater distance from their house, garage, well, or other improvements.³⁷ The perceived ability of the company to dictate the line location over the objection of the landowner was the source of many of the concerns expressed about the routing. Landowners feared for the safety of their families and their land in the event of a pipeline leak or break. MPIRG representatives expressed this concern throughout the public hearings, as did many other members of the public. Although issues of pipeline safety are outside the scope of this proceeding, the public concern was expressed in opposition to both the CON and routing permit and heightened by the oil spill in Little Falls.

³³ See e.g. Ex. 118.

³⁴ Ex. 114, IR 28; see Minn. Stat. § 299J.17 (right to bring a legal action to recover for personal injury, disease, economic loss, or other costs arising out of a release); see also Minn. Stat. § 604.02, subd. 1.

³⁵ T. 12 at 32-42 (Strolberg, with responses from Van Horn and Wright).

³⁶ T. 16 at 101-102 (Wright); but see T. 9 at 53-54 (Sachs: "Okay. And then in our personal agreements there will be a line item on that document that says any spills is (sic) your problem, not mine? Van Horn: That's correct. It's covered in the easement.")

³⁷ See, e.g. MP 46, Sharon and Alan Friedman, *supra*.

329. Landowners along the portion of the proposed route that parallels the existing MPL pipelines also raised concerns. In his letter, Curtis J. Kreklau included an easement stipulation signed by Larry Van Horn, Vice President of MPL, and a witness in this proceeding.³⁸ Essentially the stipulation clarifies that the new pipeline will be built according to the terms set forth in the Grant of Easement signed by Wilfred and Lorraine Kreklau in 1954.³⁹ Although the stipulation states that Curtis Kreklau had requested a more definite description of the location of the current pipelines as well as the location of the proposed new pipeline, no legal description was provided. Instead, only an illustration showing the distance of the pipelines from the corner of the property was provided.⁴⁰

330. There were also complaints about the imbalance of power in negotiations with MPL. A letter submitted by landowners near Hamburg and Norwood-Young America outlined their concerns, including the low offers received for their land relative to sales figures on file with the county, MPL's refusal to accept liability for damages to land, crops, home, farm buildings or livestock caused by the operation of the pipeline, and MPL's refusal to negotiate a provision that would require MPL to pay the difference in the appraised value for their land with or without a pipeline at the time that they would choose to sell the land for development.⁴¹

331. Similarly, landowners complained that the land agents representing MPL intimidated landowners and were unwilling to negotiate any terms of the right-of-way agreement.⁴² Many different landowners raised the same concern at the hearing, that the land agents were directed by their supervisors to remain firm and to impress upon the landowners that MPL would have the right to take their land through eminent domain if any agreement was not reached. Since eminent domain is not well understood, and many of the landowners could not afford to retain a lawyer, this was an intimidating practice. MPL's witnesses apologized for offending landowners, but acknowledged that its goal is to obtain signed agreements.⁴³

³⁸ Letter, undated from Curtis J. Kreklau, with attachments.

³⁹ See T. 4 at 56 ([O]ur policy is to exercise the rights that were granted to us under the 1954 Easement.")(Wright).

⁴⁰ See Minn. Stat. § 300.045. Letter, September 21, 2006; *see also* T. 54 at 56-57 (Wright).

⁴¹ Letter from Rochelle Eichner, September 18, 2006, with attachments. See also T. 16 at 42-50 (Eichner); T. 16 at 64-66 (Schrupp).

⁴² See *e.g.* T. 14 at 33-35 (Nowak); T. 14 at 38-39 (Schestak); Letter from Bob Nytes, Sept. 19, 2006;

⁴³ T. 14 at 36-37 (Wright).

332. From the record in this proceeding it is not clear whether MPL must negotiate a new right-of-way agreement with landowners and pay additional compensation for a wider right-of-way where the proposed route follows the existing pipeline system, or whether MPL will exercise rights under its existing right-of-way agreement with those landowners.

333. MPL's shifts to the centerline created tension among neighbors, particularly because of the low rate of compensation, perceived negative impact of the pipeline on their property, their fear that MPL had far greater resources to negotiate than most landowners, and belief that MPL would make millions of dollars of profit at the expense of the landowners.⁴⁴

26. The Routing Permit should require MPL to negotiate agreements with landowners that will minimize the impact on future development of the property, and to assume any additional costs of development that may be the result of installing roads, driveways and utilities that must cross the right-of-way.

27. The Routing Permit should require MPL to offer all landowners an indemnification provision similar to the Tier One Indemnification offered to some landowners.

Exception: MPL objected to Findings 318-333 and related conclusions which it claims are beyond the scope of this docket. MPL further contends that several of the findings contain misstatements: (1) in Finding 319, that the Company offered to compensate property owners at a rate for agricultural land in areas where future development was imminent; (2) in Finding 324, that the Company's right-of-way agreement limits landowners' rights or the Company's liability; (3) in Finding 330, that MPL has refused to accept liability for damages; and (4) in Finding 331, that the ALJ suggests that the Company has refused to negotiate terms with landowners. According to MPL, the Commission need not correct the misstatements; rather, the Commission can simply omit all but the first two sentences of Finding 318 and omit Findings 319-333 in their entirety from any Order accompanying a final Routing Permit.

MPL's rationale is that any language in these findings related to rights-of-way acquisition, compensation, or safety issues are the province of the courts or other state or federal agencies. In addition, Conclusions 26 and 27 require specific negotiated language in the right-of-way acquisition agreements in all circumstances to minimize the impact of future development on the property and offer indemnification that it has negotiated with some landowners.

Ms. Maccabee responded that MPL is seeking to eliminate conditions addressing landowner concerns that were recommended by the ALJ after hearing extensive comment from landowners about the conduct of the Company and its agents in acquisition negotiations prior to permit

⁴⁴ See e.g. T. 9 at 82-86 (Ostlie); Letter from Thomas Scheffler dated Sept. 12, 2006; T. 14 at 45 (Tupy).

issuance. Much of the testimony landowners provided described one-sided practices by a Company with disproportional resources to the landowners, with incomplete or misleading information given to many landowners and the use of intimidating tactics to attempt to obtain their agreement. Ms. Maccabee further states that it is within the Commission's authority to minimize human and environmental harm from the pipeline and to ensure that costs are born by customers who benefit from it rather than a few landowners who own property along the selected route. In this case, according to her arguments, there is ample evidence that permit conditions are needed to "ensure that individual landowners do not bear a disproportionate and unmitigated burden from the authorized pipeline." Ms. Maccabee suggests that the language after the word property should be deleted in Conclusion 26.

EFP Staff Analysis: The ALJ's Memorandum at pages 75-78 of the Report discusses numerous landowner issues raised in the numerous hearings held in this proceeding, some of which she concluded needed to be addressed by conditions in the permit. A primary purpose of these hearings was to allow members of the public the opportunity to be heard before government action allows their property to be taken without their consent, and to obtain comment from the public that will assist the Commission in carrying out its responsibility to minimize the project's impacts on humans and the environment.

The Legislature directed the OAH to adopt rules (Minn. R. Chapter 1405) attempting to maximize citizen participation in siting and routing proceedings. This citizen participation serves to inform the Commission of potential harms to humans and the environment, so that the Commission can apply the legal standard and criteria without regard to any new easements or right-of-way agreements obtained from potentially affected landowners. Thus, the Company obtains such agreements at its own risk, and subject to the conditions of any subsequent permit authorized by the Commission.

The Commission is required "to consider the characteristics, the potential impacts, and methods to minimize or mitigate the potential impacts of all proposed routes so that it may select a route that minimizes human and environmental impact." See Minn. R. 4415.0100, subp. 2 (2005). The public input enhances the record by providing information on impacts to humans and the environment. In authorizing a routing permit, the Commission has broad authority to balance the potential harms and benefits to individuals and the environment and the only way to address concerns is to impose conditions in the Routing Permit to lessen the impacts on humans and the environment. Staff suggests that to accept the Company's position benefits no one but the Company and takes any balancing of impacts out of the equation.

With respect to requiring indemnification provisions in the negotiated agreements, such provisions are appropriate if they reasonably mitigate the impacts on humans and the environment. Landowners commented they were concerned with MPL's failure to include an indemnification provision in its standard right-of-way agreement. MPL's counsel advised landowners who raised the issue at a public hearing that the Company was willing to negotiate indemnification agreements, and that it was the Company's policy to cover any damage. The statement of Company policy, as the ALJ found, "provided little assurance to the public." See *ALJ Report* at 78. Although staff recommends that the Commission has broad authority to

include conditions such as an indemnification requirement in the Routing Permit, staff does not take a position on this issue. However, the right that MPL will obtain with a routing permit to take property by eminent domain proceedings should be balanced by conditions that do not have harmful impacts on landowners.

Proposed Amended Conclusion: EFP Staff does not recommend any modifications to Findings 318-333 or Conclusion 27. However, Staff recommends the Commission adopt the following modification to Conclusion 26, recommended by Ms. Maccabee:

26. The Routing Permit should require MPL to negotiate agreements with landowners that will minimize the impact on future development of the property, ~~and to assume any additional costs of development that may be the result of installing roads, driveways and utilities that must cross the right-of-way.~~

F. OTHER RECOMMENDED CONCLUSIONS

1. MPL proposed the following additional Conclusion be adopted:

The Routing Permit does not alter or affect any legal rights or duties negotiated and agreed to between MPL and any landowner or other party.

2. Ms. Maccabee argues that MPL's proposed conclusion contradicts Minnesota law, and instead recommends the Commission clarify this with the following additional Conclusion:

Any easements or right-of-way agreements obtained from potentially affected landowners by MPL or its agents prior to issuance of the permit in this matter are null and void to the extent that they conflict with the route selected or conditions established by this Routing Permit.

Proposed Additional Conclusions: Staff recommends adopting neither of these conclusions. The first (MPL) would allow MPL to disregard conditions in the Routing Permit. The second (Maccabee) is unnecessary as MPL has negotiated right-of-way agreements at its own risk subject to changes required by Routing Permit conditions.

6. NOTICE TO LANDOWNERS

- A. ALJ FINDING 234:** MPL exceptions to findings relating to adequate notice to landowners along alternative routes selected for consideration.

234. There was no evidence that MPL attempted to notify landowners along the Belle Plaine Alternative route, either prior to filing the Belle Plaine Alternative or prior to the public hearings. Notice of the

public hearing in Scott County was published in the Belle Plaine Herald on August 23, 2006. It included a small inset map generally depicting the proposed route and the Alternative.⁴⁵

Exception: MPL commented that the ALJ misstates the record in this Finding when it is stated that “there was no evidence that MPL attempted to notify landowners along the Belle Plaine Alternative route either prior to filing the Belle Plaine alternative route proposal, or prior to the public hearings.” MPL suggested that Exhibit 86 shows that the MinnCan Update newsletter, including a list of public hearings, was mailed to all landowners, including landowners along the Staples and Belle Plaine Alternatives. MPL also noted that its right-of-way agents contacted the newly affected landowners after the June 2006, Commission meeting that approved of alternative routes in the Staples and Belle Plaine areas.

EFP Staff Analysis: Staff review of the record would indicate that MPL is somewhat correct in this instance. Mr. McKimmey testified that the first contact that landowners along these route alternatives may have had was from a land agent attempting to negotiate an easement with the landowner. Tr. Vol. 12 at 86-87. Some landowners refused to talk to the Company’s land agents, but it is not evident from the record if that was the case with any of these persons. EFP staff supports the following modification of Finding 234:

234. There was no evidence that MPL attempted to notify *all* ~~There was no evidence that MPL attempted to notify~~ landowners along the Belle Plaine and Staples Alternative routes. Some may have received notice of the public hearings via the Company’s newsletter and/or received contacts from land agents beginning shortly after the Commission’s acceptance of those Alternatives in late June 2006. However, notice of the public hearings, including maps of the proposed Alternatives, appeared prior to the hearings in local newspapers as required by Minn. R. 4415. either prior to filing the Belle Plaine Alternative or prior to the public hearings. Notice of the public hearing in Scott County was published in the Belle Plaine Herald on August 23, 2006. ~~It included a small inset map generally depicting the proposed route and the Alternative.~~

B. ALJ FINDINGS 307-311: Reinhardt’s Exceptions to Findings 307-309 concerning notice to landowners; MPIRG exceptions to Findings 307-311.

307. Many members of the public objected to the notice that they received concerning the proposed pipeline and did not feel that MPL had provided adequate information in time for them to fully comprehend the significance of MPL’s application, the process required by law for its approval, or the role that the public could play.

⁴⁵ Ex. 115.

308. The proposed pipeline was well-publicized at the time the application was filed and at the time that the public information meetings were held in March.⁴⁶ Landowners along the proposed route were notified about the project, and informed that the pipeline alignment could change within the route. The certificate of need and routing processes are complex but the public was adequately informed about the proposed project and given contacts to obtain additional information.

309. Many landowners complained that they received no notice that the proposed pipeline right-of-way had changed and would cross their property. Two groups of landowners were especially concerned. First were those who were not affected by the original application, but were affected by a route alternative approved by the PUC on June 29, 2006. These landowners received no written notice. Their first notice came well after the deadlines to submit route alternatives or to intervene in the proceedings, and came through contact with a land agent. For example, Jason Giesen was affected by the decision to consider an alternative route near Belle Plaine. There was no requirement that MPL or the Department provide notice to Mr. Giesen that an alternative was being considered that could affect his property, nor did he receive notice in time to propose another route alternative.⁴⁷

310. Some landowners were affected by a shift of the right-of-way alignment within the route. They received notice that the right-of-way could move within the proposed route, but learned long after the deadline to intervene or to suggest an alternative that MPL had shifted the right-of-way to cross their property. In most cases, the landowners learned of the alignment change from an MPL land agent and did not receive any written notice from MPL.⁴⁸

311. Other landowners were uncertain at the time of the hearing whether MPL intended to cross their property or not.⁴⁹ As MPL frequently stated, the alignment could change as negotiations with landowners continue. This was unsettling to the landowners.

Exception: MPIRG commented that these findings “document due process issues and trampling on the public’s right to participate in the regulatory process.” MPIRG further argued that the ALJ failed to observe that the portion of the public most detrimentally affected by the

⁴⁶ Ex. 86; Ex. 100.

⁴⁷ Letter from Jason T. Giesen, dated Sept. 21, 2006; *See also* T. 10 at 115 (Busse).

⁴⁸ T. 12 at 84 (McKinney).

⁴⁹ *See e.g.* Letter from Don and Alice Storlie, received by facsimile transmission on Sept. 20, 2006; letter from Gary and Linda McConnell, by e-mail, Sept. 17, 2006 (told by Cory Rasmussen from MPL on 3/29/06, confirmed in April, that their land would not be crossed, but maps and pictures represent otherwise, and no MPL representative has contacted them); Letter from Frederic W. Knaak on behalf of Lois Dandurand (near MP 259 to 261), concerned about rumors that the alignment could shift south and affect her land, Sept. 15, 2006.

lack of notice was entirely silent due to their absence from the hearings, and thus were not heard because their opportunity to participate had been preemptively withheld. MPIRG emphasizes that only one landowner was a party in this proceeding--a tiny number in view of the total number of landowners impacted. MPIRG also claims that "many landowners never did receive notice from the pipeline company." Finally, MPIRG asserts that "[m]any of these filed changes to the route introduce many new landowners to the regulatory process long after any opportunity to participate meaningfully and be heard has expired. A breach of proper due process of significant proportion has occurred and continues to occur in MPUC's regulatory process for the MinnCan Pipeline." MPIRG states that the process must be restarted in order to ensure proper due process.

John and Laura Reinhardts' exceptions contain similar concerns and arguments about unfair notice, specifically taking exception to Finding 308 that notice was adequate. In addition, they assert that the Commission and the Department deliberately and knowingly deprived landowners of their rights to due process in a regulatory proceeding that would directly affect their property interests, and "knowingly discriminated against the *unnotified* landowners in this proceeding by allowing the *notified* landowners to shift the pipeline burden onto their *uninformed* neighbors." (The emphasis is the Reinhardts'.)

EFP Staff Analysis: Due process requires notice and the opportunity to be heard. MPL's witness testified that its letters were sent to all landowners on the initial centerline of the proposed route, and to adjacent property owners. Notice was published in newspapers in every county passed through by the proposed route explaining in detail the method for participation in the proceeding. The record does not demonstrate that landowners on the alternative route segments proposed for consideration received individual notification from MPL. Rather, it demonstrates that their first indication that their land may be taken may have been contact from a land agent representing the Company. Despite the late notification, the published notice in newspapers alerted them to the route proposed in their county and provided a complete schedule of public hearings to be held in all counties. Numerous landowners commented at the public hearings. There is no evidence in the record to indicate that landowners actually affected were deprived of due process.

MPIRG does not assert that it was denied this opportunity; in fact, the record demonstrates that MPIRG representatives participated at most public hearings by offering comments, submitting exhibits, and by questioning MPL and Department witnesses. The ALJ concluded that the legal requirements for notification to landowners and others were met. Staff does not believe that MPIRG has asserted that it represents any of the landowners along the proposed route. Without such representation, staff believes that MPIRG cannot demonstrate deprivation of due process on behalf of an individual landowner(s).

EFP Staff Recommendation: EFP staff recommends no modifications to the ALJ's Findings 307 to 311.

7. ROUTE DESIGNATION

- A. **ALJ FINDING 263 AND CONCLUSION 7:** MPL comment on consistency with Conclusion 7, Giesen exception and EFP staff recommended corrections and modification.

263. In its application, MPL provided maps showing the full width of 1.25 miles for the length of the proposed pipeline. In response to requests from PUC Staff, as part of its September 28, 2006, filing, MPL altered its requested route, as follows:

- From MP 0 to 119, where the proposed route is parallel with MPL's existing pipeline system, a route width of 500 feet on each side of the September 15 Alignment. Based on its review of the environmental and engineering data and the current status of landowner negotiations, MPL concluded that it would have sufficient flexibility with a route width of 500 feet to address individual landowner requests.
- From MP 119 where the route diverges from the existing pipeline system to the end of the route in Dakota County (the "Greenfield" portion of the route), a route width of a distance of 1/3 mile on each side of the September 15 Alignment, with three exceptions, along the Staples Alternative, the Belle Plaine Alternative, and in the area affected by the Stipulation with GOE. With the exception of the route along the two Alternatives, MPL concluded that a route width of 1/3 mile on each side of the centerline would give it sufficient flexibility to negotiate a mutually acceptable alignment on landowners' property or move the right-of-way to the property of a willing adjacent landowner. Further narrowing would unduly limit the flexibility of MPL and the landowners and increase the likelihood of eminent domain proceedings.
- From MP 98 to 105, the Staples Alternative, and MP 242 to 248, the Belle Plaine Alternative, retain a route width of 1.25 miles.
- From approximately MP 274.5 to 275.5, a route width consistent with MPL's Stipulation with GOE.

7. MPL has demonstrated that its September 15 Alignment, reflecting the Staples Alternative, Belle Plaine Alternative and GOE Stipulation, as well as other alignment changes developed in consultation

with landowners, meets the statutory and rule criteria and a corresponding Routing Permit should issue. The approved route should be narrowed as follows:

- (a) From MP 0 to 199 where the proposed route is parallel with MPL's existing pipeline system, a route width of 500 feet on each side of the September 15 Alignment;
- (b) From MP 119 where the route diverges from the existing pipeline system to the end of the route in Dakota county (the "Greenfield" portion of the route), a route width of a distance of 1/3 mile on each side of the September 15 Alignment;
- (c) From approximately MP 274.5 to 275.5, a route width consistent with MPL's Stipulation with GOE.

Exception: MPL commented that Finding 263 should be modified so that it parallels Conclusion 7, by setting forth a similar width.

Mr. Jason Giesen filed exceptions to Conclusions 6 and 7, claiming the ALJ's findings and conclusions regarding the Belle Plaine alternative selected for consideration are inaccurate and incomplete. Mr. Giesen proposed ten additional findings of fact, five additional conclusions, and three ordering provisions. Mr. Giesen requests the Commission remove the previously accepted Belle Plaine alternative from consideration because it violates the rights of Minnesota citizens. He further asserts that the Belle Plaine area initial route must be considered the preferred alternative and the Commission should recognize that the Belle Plaine alternative does not create the least impact as required by rule Minn. R. 4415.0100.

EFP Staff Analysis: With respect to Mr. Giesen's exceptions, it appears that Mr. Giesen is objecting to the Commission's acceptance of the Belle Plaine Alternative in its July decision on alternatives. Mr. Giesen's proposal is more akin to a motion for reconsideration or rehearing. Department EFP staff makes no recommendation on Mr. Giesen's proposal beyond noting that to consider it would require the Commission to reopen the record to consider the issues he raises. His exceptions include factual statements that are not in the record and have not been subject to discovery or cross-examination. Further, it is not apparent from his filings whether Mr. Giesen's property is affected by the Belle Plaine Alternative or the initial Belle Plaine route segment.

Staff proposes two modifications to Conclusion 7. First, the EFP staff recommends correction of a typo in the milepost (MP) number. It should be "119" rather than "199" and is corrected in two different places in the Conclusion.

Second, Staff is proposing to further limit the width of the route as proposed by the ALJ to something more restrictive. For purposes of this permit EFP staff is recommending a route width of 300 feet or 150 feet on either side of MPL's proposed centerline alignment. The proposed Amended Conclusion would read as follows:

7. MPL has demonstrated that its September 15 Alignment, reflecting the Staples Alternative, Belle Plaine Alternative and GOE Stipulation, as well as other alignment changes developed in consultation with landowners, meets the statutory and rule criteria and a corresponding Routing Permit should issue. The approved route should be narrowed as follows:

- (a) From MP 0 to 1919 where the proposed route is parallel with MPL's existing pipeline system, a route width of ~~500~~ 150 feet on each side of the September 15 Alignment;
- (b) From MP 119 where the route diverges from the existing pipeline system to the end of the route in Dakota county (the "Greenfield" portion of the route), a route width of a distance of ~~1/3-mile~~ 150 feet on each side of the September 15 Alignment;
- (c) From approximately MP 274.5 to 275.5, a route width consistent with MPL's Stipulation with GOE.

8. OTHER CONDITIONS RECOMMENDED BY THE ALJ IN HER CONCLUSIONS

The ALJ report contains 31 conclusions. This part of the EFP Staff Comment and Recommendations offers for PUC consideration the following corrections, amendments, modifications, additions and analysis of the exceptions and comments received on conclusions unrelated to particular findings.

A. ALJ CONCLUSIONS 8 AND 11.

8. The Routing Permit should require MPL to comply with its proposed Wetland and Waterbody Construction and Mitigation Procedure, its Upland Erosion Control, Revegetation, and Maintenance Plan and its Agricultural Impact Mitigation Plan and Appendix.

11. The Routing Permit should require MPL to comply with those practices set forth in its Route Permit Application and Environmental Assessment Supplement for right-of-way preparation, construction, cleanup, restoration and maintenance.

EFP Staff Analysis: The requirement of Conclusions 8 and 11 are reflected in the staff proposed pipeline routing permit at section V.C.1., which states:

C.1. Application Compliance. The Permittee shall comply with those practices set forth in its Route Permit Application and Environmental Assessment Supplement, dated January 5, 2006 (Revised), unless this Permit establishes a different requirement in which case this Permit shall prevail for right-of-way preparation, construction, cleanup, and restoration."

All of the documents the ALJ referred to are a part of the “pipeline routing permit application” and the “Environmental Supplement to the Pipeline Routing Permit Application Supplement.” See Exhibit 2, Environmental Assessment Supplement, Appendix B (Upland Erosion Control, Revegetation, and Maintenance Plan), Appendix C (Agricultural Impact Mitigation Plan), and Appendix D (Wetland and Waterbody Construction and Mitigation Procedures).

The ALJ recommendations in Conclusions 8 and 11 are also reflected in the proposed pipeline routing permit at parts V.B. and V.D.

Proposed Amended Conclusions 8 and 11. No amendments are necessary.

B. ALJ CONCLUSION 12.

12. The Routing Permit should require MPL to attain all required local, state and federal permits and licenses, to comply with the terms of those permits or license, and to comply with all applicable rules and regulations.

EFP Staff Analysis. Language meeting the intent of this requirement is included in the proposed permit at V.D. and V.E.

D. COMPLIANCE WITH FEDERAL AND STATE AGENCY PERMITS

The Permittee shall comply with all terms and conditions of permits or licenses issued by any Federal and State Agency as identified in the Route Permit Application including but not limited to the requirements of the Minnesota Pollution Control Agency (Section 401 Water Quality Certification, SDS Discharge/Construction Storm Water [parallel and new section], Site Specific Discharge Approvals); Department of Natural Resources (License to Cross Public Waters, License to Cross Public Lands, Water Appropriation Permits, State Protected Species Consultation); Historical Society (Section 106 Historic Act Consultation); Department of Agriculture (Agricultural Impact Mitigation Plan Approval); Office of Pipeline Safety (Ongoing Inspection and Safety Compliance).

E. COMPLIANCE WITH COUNTY, CITY OR MUNICIPAL PERMITS

The Permittee shall comply with all terms and conditions of permits or licenses issued by the Counties, Cities and Municipalities crossed by the project that do not conflict or are not pre-empted by Federal or State permits and regulations.

EFP Staff would like to direct the PUC to Minnesota Statutes 216G.02, subd.4., which states:

The issuance of a pipeline routing permit under this section and subsequent purchase and use of the route locations is the only site approval required to be obtained by the person owning or construction the pipeline. The pipeline routing permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local, and special purpose governments.

Proposed Amended Conclusion 12. None proposed.

C. ALJ CONCLUSION 13.

13. The Routing Permit should require MPL to confer with each local jurisdiction, including the soil and water conservation districts, prior to finalizing the right-of-way in each township, city and county, and provide regular planning and construction updates to designated representatives for each jurisdiction.

Exception: MPL commented that Conclusion 13, as currently drafted imposes on MPL an ambiguous, open-ended “condition” of conferring with “each local jurisdiction” prior to finalizing its right-of-way. MPL indicated that if the Commission believes such language is necessary it should provide for continued communication with local jurisdictions and offered language changes.

Ms. Maccabee suggested that local governments have an interest in the final route selection to minimize impacts on land use and the environment.

EFP Staff Analysis: Staff believes that the language provided by MPL addresses the need to provide local governments with status reports and updates if they are interested. All local units of governments will receive a copy of the pipeline route permit and a copy of the pipeline route maps. That information will be helpful to the units of government affected by the project. MPL will also need permits from units of government for road crossings and other local permits as necessary. The permitting authorities will be aware of the location of the pipeline as those permits are finalized and issued. Language meeting the intent of Conclusion 13 is in the pipeline routing permit at part V.L.3 and states:

L.3 MPL shall provide regular planning and construction updates to designated representatives of local jurisdictions, including the soil and water conservation districts in each township, city and county, as requested by that jurisdiction.

Staff suggests that Conclusion 13 be amended as follows:

13. The Routing Permit should require MPL to ~~confer with each local jurisdiction, including the soil and water conservation districts, prior to finalizing the right of way in each township, city and county, and~~ provide regular planning and construction updates to designated representatives of each local jurisdictions, including the soil and water conservation districts, in each township, city and county, as requested by that jurisdiction.

D. ALJ CONCLUSION 14.

14. The Routing Permit should require MPL to work with the Minnesota Historical Society prior to commencing construction to determine whether an archaeological survey will be necessary for any length of the proposed route. MPL should mark and preserve any archaeological sites that are found during construction and shall promptly notify the Historical Society and PUC of the discovery. MPL should not excavate at such locations until so authorized by the Historical Society.

EFP Staff Analysis: ALJ Conclusion 14 is addressed in the proposed pipeline routing permit at Part V.G. and reads as follows:

G. ARCHAEOLOGICAL SURVEY

The Permittee shall work with the State Historic Preservation Office (SHPO) at the Minnesota Historical Society as early as possible in the planning process to determine whether an archaeological survey is recommended for any length of the proposed pipeline.

The Permittee will contract with a qualified archaeologist to complete such surveys, and will submit the results to the PUC, and SHPO. The SHPO will make recommendations for the treatment of any significant archaeological sites which are identified. Any issues in the implementation of these recommendations will be resolved by PUC in consultation with SHPO. In addition, the Permittee shall mark and preserve any previously unrecorded archaeological sites that are found during construction and shall promptly notify the SHPO and the PUC of such discovery. The Permittee shall not excavate at such locations until so authorized by the PUC in consultation with the SHPO.

If human remains are encountered during construction, the Permittee shall immediately halt construction at that location and promptly notify local law enforcement authorities and the State Archaeologist. Construction at the human remains location shall not proceed until authorized by local law enforcement authorities or the State Archaeologist.

Proposed Amended Conclusion 14. None necessary.

E. ALJ CONCLUSION 15.

15. The Routing Permit should require MPL to obtain all necessary permits authorizing access to public rights-of-way and should obtain approval of landowners for access to private property.

Exception: MPL commented that the ALJ’s recommended permit is unnecessary because MPL “must obtain all necessary permits authorizing access to public rights-of-way prior to construction in such right-of-way, whether or not such a condition is placed in the Routing Permit.” MPL offered alternative language to Conclusion 15 that would read:

The Routing Permit should require MPL to obtain, prior to construction, all necessary permits authorizing access to public right-of-way and approval of landowners for access to private property.

Paula Maccabee commented that this condition is necessary to “minimize human impacts to private landowners and to ensure that local jurisdictions retain their authority despite the routing process. Ms. Maccabee suggests that the clarification proposed by MPL suggests that landowners and local governments should have no ability to control access for maintenance, repair, or other activities subsequent to construction. Ms. Maccabee offers language, with an exception for emergencies, that she believes clarifies ALJ Conclusion 15 that reads:

The Routing Permit should require MPL to obtain, prior to construction or any non-emergency operation, repair or maintenance activities, all necessary permits authorizing access to public rights-of-way and approval for access to private property.

EFP Staff Analysis: The proposed pipeline routing permit at Part V.H provides conditions for access to property that reads:

H. ACCESS TO PROPERTY FOR CONSTRUCTION

1. The Permittee shall obtain all necessary permits authorizing access to public rights-of-way.
2. The Permittee shall obtain the rights to access private property to construct and operate the pipeline.
3. The Permittee shall work with property owners to identify and address any special circumstances for access to property the landowners may have that are associated with the pipeline and associated facilities.
4. Easement agreements between MPL and the landowner provide for ingress and egress to and from the right-of-way, unless ingress and egress is otherwise negotiated with the landowner(s). Normal

inspection and maintenance activities are limited to ingress and egress specified in the easement agreement and is typically done on the easement.

5. In an emergency situation, responders will take appropriate actions necessary to address the emergency. By statute (216G.07, subd. 3) the Pipeline Routing Permit may not set safety standards for the construction of pipeline. This would also apply to operation and maintenance. Therefore, this Pipeline Routing Permit does not address pipeline safety related issues.
6. The Permittee will also make a reasonable effort to contact the landowner prior to accessing the property before maintenance and repair, unless otherwise specified by the easement agreement.

To address the concerns raised by MPL and Ms. Maccabee, staff suggests that Conclusion 15 be modified as follows:

15. The Routing Permit should require MPL to obtain, prior to construction, all necessary permits authorizing access to public rights-of-way and ~~should obtain~~ approval of landowners for access to private property.

F. ALJ CONCLUSION 16.

16. The Routing Permit should include the agreement between MPL, Daniel Moehring and Gordon Grimm, as reflected on Exh. B attached to the letter from Alan M. Albrecht, dated September 14, 2006.

Exception: Alan M. Albrecht counsel for Daniel Moehring and Gordon Grimm, commented that Exhibit B in ALJ Conclusion 16 is incorrectly marked and that it should be labeled as Exhibit D.

EFPP Staff Analysis: Staff concurs with the exception and has corrected the exhibit error and has included a corrected version as a condition in the Pipeline Routing Permit at Part V.L.6 which reads as follows:

L.6 The agreement between MPL, Daniel Moehring and Gordon Grimm, as reflected in Exh. D attached to the letter from Alan M. Albrecht, dated September 14, 2006, is hereby incorporated as a special condition.

Proposed Amended Conclusion 16:

16. The Routing Permit should include the agreement between MPL, Daniel Moehring and Gordon Grimm, as reflected on Exh. ~~B~~ D, attached to the letter from Alan M. Albrecht, dated September 14, 2006.

G. ALJ CONCLUSION 21.

21. The Routing Permit should require MPL to contract with independent third-party environmental inspectors to oversee the construction process and to monitor compliance with the Wetland and Waterbody Construction and Mitigation Procedure Upland Erosion Control, Revegetation and Maintenance Plan, the Agricultural Impact Mitigation Plan and Appendix, and the required environmental permits.

Exception: No exceptions were filed on Conclusion 21.

EFP Staff Analysis: MPL's pipeline routing permit application at part 4415.0150 identifies right-of-way protection and restoration measures to minimize and mitigate potentially adverse environmental effects resulting from right-of-way preparation, construction, operation, and maintenance of the proposed pipeline. DOC EFP Staff believes the measures outlined provide sufficient controls. Staff has provided language in the proposed pipeline routing permit that addresses this conclusion. See pipeline routing permit at Part V.L.7.

L.7. The Permittee will contract with third party environmental inspectors to insure compliance with but not limited to part 4415.0150 of its application and all permits and plans, permits and license's associated with this project.

Proposed Amended Conclusion 21. None necessary.

H. ALJ CONCLUSION 24.

24. The Routing Permit should require MPL to work with landowners to locate the pipeline on their property to minimize the loss of agricultural land, forest, and wetlands, with due regard for proximity to homes and water supplies, following property lines and minimizing diagonal crossings, even if the deviations will increase the cost of the pipeline, so long as the landowner's requested relocation does not adversely affect environmentally sensitive areas.

Exception: MPL believes that the language in this conclusion "creates an unclear directive with conflicting goals" and "believes that it establishes an impossible and unenforceable condition and should be omitted." Ms. Maccabee believes this conclusion is "critical to minimize the human and environmental impacts of the pipeline and is well within the jurisdiction of the

Commission...” See Minn. Stat 116D.03 and Minn. Stat. 216G.02, subd. 3 (4). Ms. Maccabee also points out that Minn. R. 4415.0195 (E), (F), (G) “specify how pipelines shall be routed and requires conditions to minimize human and environmental impacts at the level of individual properties as well as in selecting the overall route.”

EFP Staff Analysis: Staff recognizes the importance of minimizing impacts from the project on humans and the environment as stated in the criteria. The development of the record in this proceeding sought to identify a location within the route that best minimizes impacts to humans and the environment. Limiting the width of the 1.25 mile wide proposed route to a maximum of 300 feet serves to minimize those impacts while providing MPL and landowners with the flexibility to adjust the specific location of the right-of-way.

Proposed Amended Conclusion 24. None proposed.

I. ALJ CONCLUSION 28: MPL and Maccabee concerning depth of cover requirement and waiver.

28. The Routing Permit should require that MPL comply with Minn. Stat. § 116I.06 concerning depth of cover and notify all landowners along the selected right-of-way of its requirements, along with the name and telephone number of the county inspector.

Exception: Both MPL and Paula Maccabee stated their exceptions to the language in Conclusion 28. MPL pointed out that the Conclusion fails to point out that landowners may waive the depth of cover requirement and that the Agricultural Monitor may be the more appropriate person for landowners to contact, rather than the county inspector. Ms. Maccabee pointed out that the Company must comply with the law whether or not the depth of cover is waived.

EFP Staff Analysis: Staff agrees with and disagrees with statements made by both Ms. Maccabee and MPL. Staff believes that the Agricultural Inspector may be the more appropriate person to contact, because their responsibility is to insure compliance with the requirements of the Agricultural Impact Mitigation Plan and associated Appendix requirements. The County may appoint an inspector of their choice, and in many past situations it has been the County Highway Engineer, whose only interest may be road and ditch crossings rather than protection of agricultural land.

The depth of cover requirement is a condition in the proposed pipeline routing permit at Part III. D and reads as follows:

III. D. Minimum Depth of Cover for State and Federal Requirements

Minnesota Statute, section 216G.07, subd. 1. requires that the pipeline be installed with a minimum level cover of not less than 4.5 feet in all areas where the pipeline crosses the right-of-way of any public drainage facility or any county, town, or municipal street or highway and where the

pipeline crosses cultivated agricultural land. Where the pipeline crosses the right-of-way of any drainage ditch, the pipeline shall be at least 4.5 feet below the authorized depth of the ditch, unless waived in the manner proved. In cultivated agricultural land along the existing pipeline route, the Permittee may seek a depth requirement waiver from the affected landowners to install the pipeline at the same depth as the existing adjacent pipelines. In all other areas, the Permittee shall install the pipeline at depths that meet or exceed U.S. Department of Transportation regulations (Code of Federal Regulations (CFR) 49, section 195.248).

Staff would also like to point out some of the other requirements of this Statute. For example, Minn. Stat. 216G.07, subd. 7 [County Inspector] provides that “The county board of each county through which a pipeline will be constructed shall designate an inspector who shall conduct on-site inspections of the construction to determine whether the pipeline is constructed in compliance with the provision of this section and ordinances or resolutions adopted pursuant to this section.” This section of the statute also provides for the permittee to make a payment to the county to cover the cost of inspection. The inspector is assigned duties and responsibilities

Subdivision 10 of Minn. Stat. 216G.07 provides for a civil penalty when the court finds that any person has violated the provisions of subdivision 1 or any ordinance or resolution adopted pursuant to subdivisions 3 and 5 or has violated any court order issued under subdivision 8 the court may impose a civil penalty of not more than \$5,000 for each violation. These penalties are paid to the county in which the violation occurred. A violation of Subdivision 1, 3 and 5 is guilty of a misdemeanor. (See Minn. Stat. 216G.06, subd. 9. Criminal penalty).

Staff is recommending that Conclusion 28 be modified to reflect its current codification by the Minnesota Office of the Revisor of Statutes, the waiver of depth requirement and the Agricultural Inspector and County Inspector requirements.

Proposed Amended Conclusion 28:

28. The Routing Permit should require that MPL comply with Minn. Stat. § 116I.06 (recodified as 216G.07) concerning depth of cover and waiver and notify all landowners along the selected right-of-way of its requirements, along with the name and telephone number of the Agricultural Monitor and the county inspector designated by the county.

J. ALJ CONCLUSION 29.

29. The Routing Permit should require MPL to cooperate with all entities that have existing easements or infrastructure within the route to ensure minimal disturbance to existing or planned developments.

EFP Staff Analysis: This conclusion is addressed in the proposed pipeline routing permit at Part V.F. and reads as follows:

F. COOPERATION WITH ENTITIES HAVING EXISTING EASEMENTS AND INFRASTRUCTURE IN THE PIPELINE ROUTE

The Permittee shall cooperate with all entities that have existing easements or infrastructure within the pipeline route or affected by pipeline construction to ensure minimal disturbance to existing or identified planned developments.

Proposed Amended Conclusion 29. None.

K. ALJ CONCLUSION 30.

30. The Routing Permit should require MPL to maintain a toll-free telephone number and establish complaint handling procedures and to notify the PUC of those procedures within thirty days from the issuance of the Routing Permit. MPL should notify the PUC of any complaints that are not resolved within 30 days of the complaint.

EFP Staff Analysis: The proposed Pipeline Routing Permit requires MPL to provide a toll-free telephone number and web site to respond to complaints. Additional details regarding the handling of complaints and inspection will be done through a compliance filing by the Permittee within 30 days of issuance of this Permit. The proposed pipeline routing permit (Part V.I) also provides a procedure for addressing complaints, consistent with other energy facility permitting complaint procedure requirements and reads as follows:

V.I. Complaints

1. The Permittee shall establish a complaint reporting procedure in accordance with the requirements of Attachment 1 to this permit prior to commencing construction. The Permittee shall advise the PUC in writing when such procedure has been established.
2. The Permittee shall advise the PUC in writing of any substantial complaints received by the Permittee during the course of construction that are not resolved within 30 days of the complaint. (Minn. R. 4415.0200).
3. Complaints may be filed with the Permittee toll-free at (1-877-796-7846 or electronically at (<http://www.minncanproject.com/>).

Proposed Amended Conclusion 30. None proposed

OTHER ISSUES

This part of the staff analysis and recommendations addresses issues raised outside of the record in this proceeding.

Mr. Allen Frechette, Environmental Health Manager for Scott County, identified two issues outside of the record in this proceeding that EFP staff would like to make the Commission aware of and provide a discussion of what actions have been taken by MPL to address the issues identified by Mr. Frechette.

The two issues are: a) excavation in areas known to be contaminated with Anthrax; and b) ground water protection in particularly sensitive areas.

With regard to the Anthrax issue the following actions have taken place. First, Minnesota Pipe Line Company, LLC has developed an Anthrax Mitigation Plan to address potential risks associated with pipeline excavation activities in areas of known historical outbreaks of anthrax in livestock in Scott County. See Attachment 9 in the Commissioner's packet. The plan provides an overview of anthrax, identifies the locations of historical outbreaks of the disease in the vicinity of the proposed pipeline route of the MinnCan Project, and identifies mitigative measures to minimize the potential for grazing animals in the vicinity of the project to ingest anthrax spores and become infected with the disease.

As indicated by the Minnesota Department of Health in its letter attached in Appendix A of the plan, there is little to no risk to humans of contracting anthrax as the result of soil disturbance activities. The construction workers on the project and the landowners in the vicinity of the project are not at risk for contracting the disease as a result of pipeline construction activities. Therefore, this plan addresses concerns related to animal health and not human health.

The Anthrax Mitigation Plan was developed by MinnCan in consultation with the Minnesota Board of Animal Health (BAH) and the Minnesota Department of Health (MDH).

The "Anthrax Mitigation Plan for Scott County," was sent to Mr. Michael Sobota, Community Development Director, Scott County by Randy Duncan, Natural Resource Group Inc., on January 16, 2007. NRG is a consultant for Minnesota Pipe Line Company on the MinnCan project.

The prepared anthrax plan is only for Scott County and is not a part of the proposed pipeline routing permit.

The other issue outside of the record raised by Mr. Frechette is ground water protection in particularly sensitive areas ("unusually sensitive area"). USA's are one type of "High Consequence Area" ("HCA") defined by 49 C.F.R. 195.6 and is defined as:

- (1) A commercially navigable waterway, which means a waterway where a substantial likelihood of commercial navigation exists;
- (2) A high population area, which means an urbanized area, as defined and delineated

by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile; (3) An other populated area, which means a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as incorporated or unincorporated city, town, village, or other designated residential or commercial area; (4) an unusually sensitive area, as defined in Sec. 195.6.

MPL, in a letter dated December 12, 2006, to Mr. Michael Sobota, Community Director, Scott County (see Attachment 10 in the Commissioner's packet) stated that:

the company gave full consideration to all HCAs identified by the Office of Pipeline Safety in the engineering design and in the consideration of potential routes for the pipeline. I can further assure you that the company fully complies with all applicable safety regulations and is in frequent communication with both the federal Pipeline and Hazardous Materials Safety Administration ("PHSMA"), Office of Pipeline Safety and the Minnesota Office of Pipeline Safety, who exercise jurisdiction over these matters.

For purposes of the MinnCan project, the segment of the pipeline beginning at the mid-point pump station and continuing on to the Twin Cities refineries does indeed affect HCA's. Therefore, the entire segment, including the roughly 30 miles in Scott County, will be managed consistent with the requirements for HCAs. The Integrity Management Plan requires the MPL Integrity and Reliability staff to identify additional mitigative practices that will be employed to further protect HCAs once the pipeline is in operation.

MPL has responded to Scott County and Mr. Frechette's two concerns that were raised outside of the record. Whether the Anthrax Mitigation Plan for Scott County and the information on HCAs adequately addresses Mr. Frechette's concerns raised outside of the record is unknown at this time.

DOC EFP Staff believes that it is important to respond to concerns about public health and safety and appreciate Mr. Frechette's action in bringing them to everyone's attention.

PROPOSED PIPELINE ROUTING PERMIT

DOC EFP staff has prepared a proposed pipeline routing permit for the Commission's consideration. The proposed permit is similar in many respects to other pipeline routing permit requirements issued by the Minnesota Environmental Quality Board and the Commission.

The DOC EFP staff proposed permit also incorporates many of conditions addressed by the ALJ's report in Conclusions 8 through 30, unless otherwise noted or discussed. Staff believes the proposed permit provides terms and conditions that will minimize impacts to humans and the natural environment.

COMMISSION DECISION OPTIONS

CORRECTIONS AND MODIFICATION TO ALJ REPORT

1. GENERAL EXCEPTIONS

A. ALJ Finding 1 – MPL exception concerning legal name (page 9).

- 1) Adopt ALJ Finding 1 as written.
- 2) Adopt Finding 1 with the following MPL and staff suggested modification:
 1. ~~The Minnesota Pipe Line Company, LLC (MPL)~~ (“MPL” or “Company”) has applied for a certificate of need (CON) and a routing permit to construct a new 24-inch diameter crude oil pipeline known as the MinnCan Project, originating at MPL’s existing interconnection with the Enbridge crude oil pipeline system in Clearbrook, Minnesota, located in Clearwater County, and running to Flint Hills Resources in Rosemount, Minnesota.
- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option A. 2).

B. ALJ Finding 46 – MPL exception related to mid-point (page 9).

- 1) Adopt ALJ Finding 46 as written.
- 2) Adopt Finding 46 with the following MPL and staff suggested modification:
 46. The project will also include two new pump stations, one inside the originating station at Clearbrook Minnesota, and ~~a mid-point pump station to be constructed between proposed Mileposts 140 and 146 in Morrison County.~~ one at the approximate mid-point of the pipeline (MP 153) in northern Stearns County.
- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option B. 2).

C. ALJ Finding 54 – MPL exception on corporate structure (page 10).

- 1) Adopt ALJ Finding 54 as written.
- 2) Adopt Finding 54 with the following MPL and staff suggested modification:

54. MPL does not operate its pipelines. Its assets are operated by Koch Pipeline Company; (“KPL”), with northern operations headquartered in Rosemount. ~~MPL, Koch Pipeline Company~~ KPL and Flint Hills Resources are all wholly owned subsidiaries of Koch Industries, Inc.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option C. 2).

D. ALJ Finding 201 – MPL suggested language to address concern about the Red River Ox Cart Trail Network (page 10).

- 1) Adopt ALJ Finding 201 as written.
- 2) Adopt Finding 201 with the following MPL and staff suggested modification:

201. Michael R. North was concerned that the pipeline could cross the Red River Ox Cart Trail Network near MP 93 and was uncertain if an adjustment to the alignment would avoid it. ~~It is not clear from the record if MPL was aware of Mr. North’s concerns.~~ The Ox Cart Trail was investigated and will be discussed in the cultural resources survey report.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option D. 2).

E. ALJ Finding 207 – MPL suggestion related to Xcel Route Permit language (page 11).

- 1) Adopt ALJ Finding 207 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option E. 1).

F. ALJ Finding 267 and Footnote 332 – Friedman correction. (page 11).

- 1) Adopt ALJ Finding 267 as written.
- 2) Adopt Finding 267 with the following staff suggested modification:

267. Sharon and ~~S. Alan~~ Allen Friedman have three of MPL's existing pipelines crossing their property in Hubbard County and have built their house and garage and drilled their well at a safe distance from the existing pipelines. The proposed alignment will be within 50' of their house and less than 25' from the well. The Friedmans requested that MPL run the pipeline further to the west side of their property, but MPL would not agree.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option F. 2).

G. ALJ Conclusion 3 – EFP suggested correction. (page 12).

- 1) Adopt ALJ Conclusion 3 as written.
- 2) Adopt Conclusion 3 with the following staff suggested modification:

3. Public hearings were conducted in 14 locations along the proposed pipeline route. The Department of Commerce, Public Utilities Commission and Minnesota Pipe Line Company ~~MPL~~ gave proper notice of the public hearings, and the public was given the opportunity to appear at the hearings or to submit public comments. All procedural requirements for the CON and Routing Permit were met.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option G. 2).

2. EXCEPTIONS RELATED TO EVALUATION OF ALTERNATIVE

A. ALJ Finding 88 and 89 – MPIRG exception concerning review of alternatives (page 13).

- 1) Adopt ALJ Findings 88 and 89 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option A. 1).

B. ALJ Finding 97 and 103 – MPIRG exception on alternative analysis (pages 14).

- 1) Adopt ALJ Findings 97 and 103 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option B. 1).

3. EXCEPTIONS CONCERNING IMPACT ON THE ENVIRONMENT AND THE ENVIRONMENTAL ASSESSMENT

A. ALJ Finding 94 – MPL exception concerning loss of prime agricultural land (page 14).

- 1) Adopt ALJ Finding 94 as written.
- 2) Adopt Finding 94 with the following staff suggested modification:

94. Many members of the public alleged that prime agricultural land is being lost to development, and that the loss was not factored into the comparison of the existing route and the proposed route. Not only will the placement of the pipeline through prime agricultural land affect crop production, but it also places additional agricultural land at risk of a future pipeline leak or break. The increase in property placed at risk was not taken into consideration in comparing the expansion of the existing route with the proposed route, but Alternative 1 would require an expanded right-of-way to assure adequate separation from the existing lines. Almost any pipeline route in Minnesota will have some impact on agricultural land. However, while agricultural land is being crossed by the pipeline, it is not being lost, since this land will still support farming operations after construction of the pipeline and proper restoration of the right-of-way. In addition, MPL has agreed to an Agricultural Impact Mitigation Plan and Appendix to address issues associated with the crossing of such lands.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option A. 2).

B. ALJ Finding 121 and Conclusion 9 – MPL exception concerning Stormwater Pollution Prevention Plan. (page 15).

- 1) Adopt ALJ Finding 121 and Conclusion 9 as written.
- 2) Adopt Finding 121 with the following staff suggested modification:

121. Environmental damage could occur from oil spills during pipeline construction and operation. MPL intends to develop a Stormwater Pollution Prevention Plan describing the necessary steps to take in the event of a spill during construction. No such plan was included in the record. ~~The PUC may wish to require MPL to develop a Stormwater Prevention Plan as a condition of the Routing Permit.~~

- 3) Adopt Conclusion 9 with the following staff suggested modification:

9. ~~The Routing Permit should require a~~ Permittee shall obtain a Stormwater Pollution Prevention Plan or equivalent that is reviewed and approved by the Minnesota Pollution Control Agency, describing the steps to be taken in the event of a spill from construction-related activities.

- 4) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option B. 2) and 3).

C. ALJ Finding 131 – MPL exception concerning effect on crop production (page 17).

- 1) Adopt ALJ Finding 131 as written.
- 2) Adopt Finding 131 with the following staff suggested modification:

131. Some members of the public criticized the evaluation of the environmental costs because there was no assessment of the environmental costs from loss of forests or prime agricultural land. For example, there was no assessment of the effect on the environment of the loss of forest acreage. The Department's witness acknowledged that there was no assessment of the effect of the loss of agricultural land, but only a review of the Agricultural Impact Mitigation Plan. While agricultural land is being crossed by the pipeline, it is not being lost, since this land will still support farming operations after construction of the pipeline. Where there is a loss of production as a result of pipeline construction, the AIMP will require

MPL to compensate landowners for lost production for a period of five years. Mitigative Actions for Organic Agricultural Land are also addressed in the Appendix to the Agricultural Impact Mitigation Plan.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option C. 2).

D. ALJ Finding 169 and Conclusion 10 – MPL exception related to site sediment control (page 19).

- 1) Adopt ALJ Finding 169 and Conclusion 10 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option D. 1).

E. ALJ Finding 187 and Conclusion 6 – Scott County (Allen Frechette) comments on environmental review procedures (page 20).

- 1) Adopt ALJ Finding 187 and Conclusion 6 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option E. 1).

F. ALJ Finding 206 and Conclusion 25 – MPL exception to wording on restoring habitat (page 21).

- 1) Adopt ALJ Finding 206 and Conclusion 25 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option F. 1).

G. ALJ Finding 212 – MPIRG comments on adverse impacts on the environment of pipeline spills (page 23).

- 1) Adopt ALJ Finding 212 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option G. 1).

4. FINDINGS AND CONCLUSIONS RELATED TO PIPELINE SAFETY ISSUES.

A. ALJ Findings 213-214 and Conclusions 22-23 – MPL comments on Pipeline Safety conditions (page 24).

- 1) Adopt ALJ Findings 213-214 and Conclusions 22-23 as written.
- 2) Adopt Findings 213-214 as written and Conclusions 22-23 with the following staff suggested modification:

~~22. The Routing Permit should require MPL to periodically~~ mails pipeline safety brochures to members of the public living within the vicinity of the pipeline, companies engaged in excavation activities, emergency response agencies and local public officials, with information about pipeline safety and excavation damage prevention information as required by federal rules and regulations. The ~~notice shall~~ mailings also include information about the One Call Excavation Notice System.

~~23. Prior to placing the pipeline into operation, the Routing Permit should require MPL Permittee to~~ report to the ~~Commission or Minnesota~~ Office of Pipeline Safety a description of the training conducted for KPL's employees; and Emergency Response Plans for governmental response agencies in each county through which the pipeline will pass, and for emergency response contractors concerning response to releases.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option A. 2).

5. EXCEPTIONS RELATED TO IMPACT ON LANDOWNERS WHOSE PROPERTY IS CROSSED BY THE PIPELINE

A. ALJ Finding 158, Finding 163 and Conclusion 18 – MPL exception related to organic farming (page 26).

- 1) Adopt ALJ Findings 158 and 163 and Conclusion 18 as written.
- 2) Adopt Findings 158 and 163 and Conclusion 18 with the following staff suggested modification:

158. The PUC may wish to consider as a condition of the Routing Permit requiring MPL to retain a ~~organic certifier~~ qualified organic consultant at its expense to assist any landowner to negotiate terms

to the right-of-way agreement that will minimize damage during construction and delay or loss of organic certification for any farm that is Organic Certified or in active transition to become so.

163. The PUC may wish to consider as a condition of the routing permit requiring MPL to notify each landowner annually of the opportunity to register organic farms and the landowner's or tenant's Organic System Plan with MPL and hold MPL responsible for the damage caused by any maintenance practice that is inconsistent with the landowner's or tenant's Organic System Plan on file or the express written approval of the farmer. The PUC may also wish to consider whether additional conditions should be added to the Routing Permit to address the concerns of organic farmers in active transition to become Organic Certified who have not yet developed an Organic System Plan, as that term is defined in the AIMP Appendix.

18. The Routing Permit should require MPL to retain ~~an Organic Certifier~~ a qualified organic consultant at its expense to assist any landowner to negotiate terms to the right-of-way agreement that will minimize damage during construction and delay or loss of organic certification for any farm that is Organic Certified or in active transition to become Organic Certified.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option A. 2).

B. ALJ Finding 161 and Conclusion 20: MPL exception concerning contacting landowners for maintenance (page 28).

- 1) Adopt ALJ Finding 161 and Conclusion 20 as written.
- 2) Adopt ALF Finding 161 as written and Staff suggested replacement for Conclusion 20:

20. With the exception of any access required in the event of an emergency, the Routing Permit should require MPL to make a good faith effort to contact landowners prior to entering the property for routine maintenance along the route, and to avoid maintenance practices that include the use of fertilizer or pesticides, to the extent reasonable alternatives are available to MPL.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option B. 2).

C. ALJ Finding 264 – MPL qualification of prior commitment (page 28).

- 1) Adopt ALJ Finding 264.
- 2) Adopt Findings 264 with the following staff suggested modification:

264. Absent environmental or engineering concerns requiring an adjustment to the September 15 Alignment, Alignment, ~~W~~with the exception of the route width between MP 98 and 105, the Staples Alternative, and MP 242 and 248, the Belle Plaine Alternative, MPL agreed that it would not cross the property of any landowner not crossed on the September 15 Alignment unless that landowner agreed to the placement.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option C. 2).

D. ALJ Finding 294 – Reinhardt exception on Department conduct (page 29).

- 1) Adopt ALJ Finding 294 as written.
- 2) Adopt Finding 294 with the following staff suggested modification and delete the associated footnote:

294. Thomas Scheffler was disturbed by the way MPL had responded to his questions about land valuation and the Department's ~~unwillingness~~ inability to provide a complete list of the names and addresses of other landowners along the route so that he could meet with them to discuss the project.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option D. 2).

E. ALJ Findings 318-333 and Conclusions 26 and 27 – MPL exceptions concerning scope of Routing Proceeding (page 30).

- 1) Adopt ALJ Findings 318-333 and Conclusions 26 and 27 as written.
- 2) Adopt Findings 318-333 and Conclusions 27 as written and Adopt Conclusions 26 with the following staff suggested modification:

26. The Routing Permit should require MPL to negotiate agreements with landowners that will minimize the impact on future development of the property, ~~and to assume any additional costs of development that may be the result of installing roads, driveways and utilities that must cross the right of way.~~

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option E. 2).

F. Other Recommended Conclusions – MPL and Maccabee suggestions (page 36).

- 1) Adopt MPL suggested conclusion.
- 2) Adopt Maccabee suggested conclusion.
- 3) Reject MPL and Maccabee suggested conclusion.
- 4) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option F. 3).

6. NOTICE TO LANDOWNERS.

A. ALJ Finding 234 – MPL exceptions to findings relating to adequate notice to landowners along alternative routes selected for consideration (page 36).

- 1) Adopt ALJ Finding 234 as written.
- 2) Adopt Finding 234 with the following staff suggested modification:

234. There was no evidence that MPL attempted to notify ~~all~~ ~~There was no evidence that MPL attempted to notify~~ landowners along the Belle Plaine and Staples Alternative routes. Some may have received notice of the public hearings via the Company's newsletter and/or received contacts from land agents beginning shortly after the Commission's acceptance of those Alternatives in late June 2006. However, notice of the public hearings, including maps of the proposed Alternatives, appeared prior to the hearings in local newspapers as required by Minn. R. 4415. either prior to filing the Belle Plaine Alternative or prior to the public hearings. Notice of the

~~public hearing in Scott County was published in the Belle Plaine Herald on August 23, 2006. It included a small inset map generally depicting the proposed route and the Alternative.~~

- 3) Take other action deemed more appropriate.

EFPP Staff Recommendation: Staff recommends Option A. 2).

B. ALJ Findings 307-311 – Reinhardt's Exceptions to Findings 307 and 309 concerning notice to landowners; MPIRG exceptions to Findings 307-311 (page 37).

- 1) Adopt ALJ Findings 307-311 as written.
- 2) Take other action deemed more appropriate.

EFPP Staff Recommendation: Staff recommends Option B. 1).

7. ROUTE DESIGNATION.

A. ALJ Finding 263 and Conclusion 7 – MPL comments on consistency with Conclusion 7, Giesen exception and staff recommendations on corrections and route modifications (page 40).

- 1) Adopt ALJ Finding 263 and Conclusion 7 as written.
- 2) Adopt Finding 263 as written and adopt Conclusion 7 with the following staff suggested modification:

7. MPL has demonstrated that its September 15 Alignment, reflecting the Staples Alternative, Belle Plaine Alternative and GOE Stipulation, as well as other alignment changes developed in consultation with landowners, meets the statutory and rule criteria and a corresponding Routing Permit should issue. The approved route should be narrowed as follows:

- (a) From MP 0 to 1919 where the proposed route is parallel with MPL's existing pipeline system, a route width of ~~500~~ 150 feet on each side of the September 15 Alignment;
- (b) From MP 119 where the route diverges from the existing pipeline system to the end of the route in Dakota county (the "Greenfield" portion of the route), a route width of a distance of ~~4/3 mile~~ 150 feet on each side of the September 15 Alignment;

(c) From approximately MP 274.5 to 275.5, a route width consistent with MPL's Stipulation with GOE.

3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option A. 2).

8. OTHER CONDITIONS RECOMMENDED BY THE ALJ IN HER CONCLUSIONS

A. ALJ Conclusion 8 and 11 (page 42).

1) Adopt ALJ Conclusion 8 and 11 as written.

2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option A. 1).

B. ALJ Conclusion 12 (page 43).

1) Adopt ALJ Conclusion 12 as written.

2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option B. 1).

C. ALJ Conclusion 13 (page 44).

1) Adopt ALJ Conclusion 13 as written.

2) Adopt Conclusion 13 with the following staff suggested modification:

13. The Routing Permit should require MPL to ~~confer with each local jurisdiction, including the soil and water conservation districts, prior to finalizing the right of way in each township, city and county, and~~ provide regular planning and construction updates to designated representatives of each local jurisdictions, including the soil and water conservation districts, in each township, city and county, as requested by that jurisdiction.

3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option C. 2).

D. ALJ Conclusion 14 (page 45).

- 1) Adopt ALJ Conclusion 14 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option D. 1).

E. ALJ Conclusion 15 (page 46).

- 1) Adopt ALJ Conclusion 15 as written.
- 2) Adopt Conclusion 15 with the following staff suggested modification:

15. The Routing Permit should require MPL to obtain, prior to construction, all necessary permits authorizing access to public rights-of-way and ~~should obtain~~ approval of landowners for access to private property.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option E. 2).

F. ALJ Conclusion 16 (page 47).

- 1) Adopt ALJ Conclusion 16 as written.
- 2) Adopt Conclusion 16 with the following staff suggested modification:

16. The Routing Permit should include the agreement between MPL, Daniel Moehring and Gordon Grimm, as reflected on Exh. ~~B~~ D. attached to the letter from Alan M. Albrecht, dated September 14, 2006.

- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option F. 2).

G. ALJ Conclusion 21 (page 48).

- 1) Adopt ALJ Conclusion 21 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option G. 1).

H. ALJ Conclusion 24 (page 48).

- 1) Adopt ALJ Conclusion 24 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option H. 1).

I. ALJ Conclusion 28 (page 49).

- 1) Adopt ALJ Conclusion 28 as written.
- 2) Adopt Conclusion 28 with the following staff suggested modification:

28. The Routing Permit should require that MPL comply with Minn. Stat. § 116I.06 (recodified as 216G.07) concerning depth of cover and waiver and notify all landowners along the selected right-of-way of its requirements, along with the name and telephone number of the Agricultural Monitor and the county inspector designated by the county.
- 3) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option I. 2).

J. ALJ Conclusion 29 (page 50).

- 1) Adopt ALJ Conclusion 29 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option J. 1).

K. ALJ Conclusion 30 (page 51).

- 1) Adopt ALJ Conclusion 30 as written.
- 2) Take other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option K. 1).

ADOPTION OF ALJ RECOMMENDATION

1. Adopt ALJ Recommendation 2 to grant MPL's Application for a Routing Permit subject to the conditions set forth in the ALJ Conclusions.
2. Adopt ALJ Recommendation 2 subject to the conditions set forth in the ALJ Conclusions with conditions as addressed above.
3. Take some other action deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option 2.

PERMIT ISSUANCE

1. Grant the EFP staff recommended pipeline route permit to Minnesota Pipe Line company, LLC, for a 303 mile, 24-inch diameter steel, high-pressure (1,462 pounds per square inch gauge) underground crude oil pipeline and associated aboveground facilities (e.g. pump stations, meter stations) originating at Minnesota Pipe Line company's Clearbrook Station in Clearwater county and terminating at the Flint Hills Resources refinery in Dakota County.
2. Grant the EFP staff recommended pipeline route permit with modifications to Minnesota Pipe Line Company, LLC, for a 303 mile, 24-inche diameter steel, high-pressure (1,462 pounds per square inch gauge) underground crude oil pipeline and associated aboveground facilities (e.g. pump stations, meter stations) originating at Minnesota Pipe Line Company's Clearbrook Station in Clearwater County and terminating at the Flint Hills Resources refinery in Dakota County.

EFP Staff Recommendation: Staff recommends Option 1.