

MINNESOTA DEPARTMENT OF COMMERCE
ENERGY FACILITY PERMITTING
STAFF BRIEFING PAPERS

Meeting Date: February 2, 2006 Agenda Item # _____

Company: Minnesota Pipe Line Company

Docket No. PUC PL5/PPL-05-2003

In the Matter of the Application to the Minnesota Public Utilities Commission for a Pipeline Routing Permit for a 295 mile, 24-inch diameter steel, high-pressure (1,462 psi) 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 Minnesota Public Utilities Commission accept the application?
Should the Commission take any additional actions at this time?

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Relevant Documents (enclosed in Commission Packet, unless otherwise noted): See eDockets (05-2003) or the PUC website for the documents identified below at:

<http://energyfacilities.puc.state.mn.us/Docket.html?Id=18339>

1. **(Provided Under Separate Cover)** Application of Minnesota Pipe Line Company for a Pipeline Routing Permit (Filed January 5, 2006, and as amended January 26, 2005)
 2. General location map of the MinnCan Project
 3. Schematic of Permitting Process for Pipelines
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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.

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).

Statement of the Issue

Should the Public Utilities Commission (PUC or Commission) accept, conditionally accept, or reject the application filed by Minnesota Pipe Line Company for a pipeline routing permit to provide crude petroleum oil to the Twin Cities-area refineries to meet a growing demand for fuels in the region? Should the Commission take any additional actions at this time?

Introduction

Minnesota Pipe Line Company (MPL or the applicant) has filed two applications with the PUC, for its MinnCan Pipeline project, the first is a for a Certificate of Need (CON) and the second is for a pipeline routing permit pursuant to Minnesota Statutes 116I.015 and the Pipeline Route Selection procedures in Minnesota Rules 4415.0045 to 4415.0100.

In order to better understand some of the terms used in this briefing paper, a review of definitions is provided from the following subparts of Minnesota Rule 4415.0010:

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.

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.

Project Overview

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 accompanying map, item # 2 in the Commissioner’s packet.

The proposed 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 112 of the 119 miles in the counties of Clearwater, Hubbard, Wadena, Todd and Morrison. Near Cushing, Minnesota, in Morrison County, the MPL proposed route leaves the existing multiple line crude oil pipeline right-of-way, which then requires a new route and new permanent right-of-way approximately 50 feet in width, within a proposed route for another 176 miles generally west and south of the Twin Cities metropolitan area, in the counties of Morrison, 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 are planned for the project. The originating station will be located inside MPL's Clearbrook Station in Clearwater County. The mid-point pump station is planned to be constructed between Milepost 140 and 146 in Morrison County.

The proposed 295 mile crude oil petroleum pipeline will have an outside diameter of 24-inches with a nominal wall thickness of 0.350 to 0.500 inches. The maximum allowable operating pressure will be 1,462 pounds per square inch (psi). The proposed pipeline will have a design capacity ranging from 60,000 to 165,000 barrels per day.

The cost of constructing the MinnCan project is currently estimated to be about \$300 million. The expected in-service date is early 2008.

Pipeline Permitting and Pipeline Routing Rules Chapter 4415

Minn. Stat. 116I.015 requires a pipeline routing permit from the PUC to construct certain intrastate natural gas and petroleum pipelines in Minnesota. The statute was passed in 1987. In 1989, the EQB adopted rules implementing the pipeline routing requirements (Minn. Rules Chapter 4415). Approximately 25 pipeline routing permits have been issued over the years.

2005 Minnesota Laws transferred EQB jurisdiction over the permitting of pipelines to the PUC, which includes pipelines with a diameter of six inches or more that are designed to transport hazardous liquids like crude petroleum and those that are designed to carry natural gas and be operated at a pressure of more than 275 pounds per square inch.

There are two review procedures available to applicants for obtaining a pipeline routing permit:

- A) An applicant may apply for a "Partial Exemption from Pipeline Route Selection Procedures" if the project is not expected to have significant environmental impacts. In such a case, the process normally takes from 60 to 120 days from acceptance of the application to completion.
- B) For larger or more controversial projects with expected significant environmental impacts, a more complex process is required and is referred to as "Pipeline Route Selection Procedures." It can take up to nine months to complete from the time the application is accepted.

The procedural steps of each process are shown in the schematic in the Commissioner's packet. See item # 3.

The partial exemption process was reviewed with the Commission upon acceptance of the Xcel Energy Highbridge Pipeline application in December 2005, which the Commission will be asked to make a decision on in the near future.

In this instance, MPL is seeking review under the pipeline route selection procedures which is approximately a nine month permitting process. The requirements of this process are in Minnesota Rules 4415.0045 through 4415.1000 and are different in several respects from the shorter partial exemption process.

Attachment A of this briefing paper provides a more detailed explanation of some of the requirements associated with this review process (notice of application acceptance, route proposals, and comparative analysis of alternative routes) that may be useful to review, but are secondary to application acceptance.

The following provides a review of several items more relevant to Commission consideration of application acceptance.

1. *Public Advisor (Minnesota Rule 4415.0065) - # 4 in process schematic*

Upon acceptance of an application for a pipeline routing permit, the Commission shall designate a staff person to act as the public advisor on the project (Minnesota Rule 4415.0065). The public advisor shall be available to any person to advise that person how to effectively participate in route selection procedures. The public advisor is not authorized to give legal advice or advice that may affect the legal rights of the person being advised or to act as an advocate.

If it wishes, the Commission can authorize the Department to name a member from the EFP staff as the public advisor, as was done recently with the Big Stone project (PUC Docket # TR-05-1275).

2. *Citizen Advisory Committee (Minnesota Rule 4415.0060) - # 4 in process schematic and other public involvement options*

The PUC **may** establish citizen advisory committees to aid and advise the PUC in evaluating routes for pipelines (Minnesota Rule 4415.0055). The PUC can charge the advisory committee with identifying additional routes or impacts associated with route proposals. The PUC can provide guidance to the advisory committee in the form of a charge to the committee and through specific requests.

The department staff believes that there should be many opportunities for general and individual public involvement in the routing and permitting process. Depending on project type and size, there may be more effective and available venues (description following) for interested persons to examine routing options or alternatives than what is available through an advisory committee.

Because of the scale (295 miles and 13 counties crossed) of the MinnCan project, the pipeline permitting rules, coupled with other public outreach or activities and actions designed to promote public involvement/participation may be more effective than an advisory task force.

Often concerns associated with large pipeline projects tend to be more local in scope and people in one area of the 295 mile route will have different concerns than people in another area.

For example, 112 of the first 119 miles follow MPL existing pipeline right-of-way. Most of the land crossed between Milepost (MP) 1 and MP 53 is forested or wooded land, with scattered pasture lands. Between MP 53 and MP 119 the land is more actively farmed, with smaller scattered woodlots. After MP 119 the proposed route no longer follows existing rights-of-way and will require a new right-of-way or alignment within a designated route. Between MP 119 and 242 (Minnesota River Crossing) the land is primarily agricultural land. Between MP 243 and 295 the dominant land use is agricultural that is subject to increased residential and suburban development.

Impacts from pipeline projects, also tend to more temporary than impacts from other linear facilities such as transmission lines and roads.

Other avenues for public participation and involvement

- A. Public Meetings**— After the application is accepted, the rules require that the PUC shall hold at least one public information in each county crossed by the applicant's preferred pipeline route to explain the route designation process and respond to questions raised by the public (Minnesota Rules 4415.0070 Subp 1.). Another public meeting will be held in each county through which a route is proposed to explain the route designation process, present major issues, and respond to questions raised by the public. These two provisions will result in at least 26 public meetings for this project. In addition, there will also be a formal contested case hearing presided over by an administrative law judge. Notices of meeting and hearing will be published in local newspapers in each county.
- B. Department Outreach**— Staff can enhance involvement by working with individuals to assist them in making proposal, as well as interested citizens, community groups, local units of governments (township, municipal and county) and regional governments.
- C. Public Advisor**— The public advisor is also available as a resource to provide the public with information and assistance.
- D. Web Site**— Project information will be available on eDockets (05-2003) or the PUC website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=18339>. Project information is available on MPL's website at: MinnCanproject.com.
- E. MPL Communication Plan**—MPL has also developed its own internal communication plan for the MinnCan projects, with emphasis on informing people of the project and how to participate in the PUC permitting process.

F. Department Initiatives—Actions will be taken in response to specific requests for data and information.

A decision on the establishment of a citizen advisory committee does not need to be made when the application is accepted. In considering the timing of the review process and time available in the rules (70 days from the time of appointment) to propose additional routes, the PUC should make the determination as early in the process as possible.

The Commission could also authorize the Department to use whatever options and form works for local groups to provide advice and information within the PUC review process. The PUC took this action recently in the Big Stone HUTL docket.

3. PUC Approval of Project Budget

Minnesota Rules 4415.0210 require an application fee to cover actual costs necessarily and reasonably incurred in processing an application for a pipeline routing permit, permit compliance activities, administrative overhead and legal expenses.

The rules require that PUC budget be reviewed with the applicant, which has been done, and be approved by the PUC. In this instance, EFP staff is requesting a budget of up to \$300,000 for the MinnCan project. This number should be sufficient to cover all actual costs associated with PUC review and approval of this project. The applicant will be provided with an accounting of all expenditures and may present objections to the PUC. Any unspent funds will be returned to the applicant.

4. Minnesota Department of Agriculture Involvement

With the transfer of permitting authority from the EQB to PUC, other legislative changes were made in the permitting of both electric energy facilities and pipelines. Chapter 97 at Section 10. Subd 3b. amended-Minnesota Statutes 2004, section 116C.61 Subdivision 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.

EFP staff, the applicant and the Minnesota Department of Agriculture are coordinating actions on this requirement. A Draft Agricultural Mitigation Plan (AMP) will be available as a

separate document for review by interested persons and also included in the Environmental Assessment Supplement to the Pipeline Routing Permit Application. The Draft AMP will be 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.

A final AMP can be included as one of the conditions in a pipeline routing permit issued by the Commission.

5. *Environmental Review Requirements*

In 1989 the EQB approved the pipeline routing rules as a substitute form of environmental review (Minnesota Rules 4410.3600). Therefore, the review process established for pipelines in Chapter 4415 fulfills the intent and requirements of the Minnesota Environmental Policy Act and parts 4410.0200 to 4410.6500. Consequently, a separate EIS is not required for pipeline projects in Minnesota.

EFP Staff Analysis and Comments

Application Requirements

The pipeline routing rules (4415.0045) state as follows:

A person submitting an application for a pipeline routing permit must comply with the application procedures of part 4415.0105 and submit an application that contains the information required in parts 4415.0115 to 4415.01170. Within nine months from PUC acceptance of an application for route selection, unless the PUC by resolution extends this deadline for cause, the PUC shall issue a pipeline routing permit for the proposed pipeline and associated facilities.

Staff Review for Completeness

EFP Staff has completed its review of Minnesota Pipe Line Company's application for completeness with the applicable rules [Minn. Rules 4415.0115 to 4415.0170 (Contents of Application)]. MPL's application for the MinnCan Project provides the required information, including information on the environmental impact of the project and a separate Environmental Assessment Supplement to the Pipeline Routing Permit Application. EFP staff has concluded the application is complete and that the Commission should accept the application.

Acceptance of the application or conditional acceptance by the Commission allows the Department of Commerce EFP Staff and the applicant to initiate the actions required by Minn. Rule 4415.0045 through 4415.0095. These actions include application distribution, publishing notice of information meeting in each county, providing opportunity to make other route proposals, analysis of alternative routes, and public hearings.

MPL has stated to the Department that it will comply with requests for additional information from the Commission and the Department.

Decision Options

1. Accept the application of Minnesota Pipe Line Company for a pipeline routing permit under the full permitting process for the proposed 295-mile, 24-inch outside diameter crude petroleum pipeline proposed for the MinnCan Project. The Commission authorizes the Department to name a public advisor for the project. The Commission approves of the proposed Department budget. The Commission authorizes the Department to implement enhanced public participation opportunities in lieu of an advisory committee.
2. Accept the application of Minnesota Pipe Line Company for a pipeline routing permit under the full permitting process for the proposed 295-mile, 24-inch outside diameter crude petroleum pipeline proposed for the MinnCan Project. The Commission authorizes the Department to name a public advisor for the project. The Commission approves of the proposed Department budget. The Commission also authorizes the establishment of a citizen advisory task force and directs the Department to implement that authorization.
3. Conditionally accept the application, and issue an Order indicating which deficiencies, if corrected, will allow the application to be accepted.
4. Reject the application as incomplete and issue an Order indicating the specific deficiencies to be remedied before the applicant can be accepted or conditionally accepted; or
5. Make some other decision deemed more appropriate.

EFP Staff Recommendation

Staff recommends selection of option #1.

ATTACHMENT A

Notice of application acceptance (See process schematic #3)

Within 20 days of PUC acceptance of an application for a pipeline routing, the PUC shall provide published notice of acceptance of the application in a newspaper in each county in which a route is proposed by the applicant. The notice must identify the applicant, the date of application acceptance, a brief description of the facility, the name function and address of the public advisor, locations where the permit application is available to the public, procedures for proposing alternate routes and notice of information meetings. An information meeting must be held in each of the thirteen counties.

Pipeline Route Proposals (See process schematic #6)

PUC review of the permit application under pipeline route selection process allows any other route or route segments proposed and approved of by the PUC to be considered at the formal public hearing. Minnesota Rule 4415.0075 provides that no route shall be considered at the public hearing unless accepted by the PUC before notice of the hearing.

Route proposals may be made by the PUC, other state agencies, EFP staff and the citizen advisory committee. Route proposals made by the citizen advisory committee must be made no later than 70 days after appointment of the committee.

Any person may also propose a route or route segment if it is made on an appropriate map or aerial photo, contains the data and analysis required in parts 4415.0140, subpart 3, and in 4415.0145, unless the information is substantially the same as provided by the applicant, and must be presented to the PUC within 70 days of application acceptance. If a route proposal is submitted to the PUC has ten days to determine if the proposal contains the necessary information. If it does, the proposal may be forwarded to the PUC for a determination of acceptance at the hearing. If the PUC determines that the proposal does not contain the necessary information, the PUC shall inform the proposer in writing of what additional information is required. The proposer must submit the additional information within ten days to the PUC. The PUC shall determine within five working days whether the amended proposal contains the required information. If the PUC determines that the proposal does not contain the required information, the route proposer may appeal to the PUC at its next regular meeting for consideration of acceptance. If the proposal contains the required information, the PUC must consider acceptance of the route proposal for public hearing.

This process for reviewing and accepting alternatives routes or route segments was formerly managed by the EQB staff and the EQB chair, and could be handled quickly. A similarly expedited process that does not require consideration by the full Commission-perhaps by the PUC Executive Director or delegation to the Department-could be used for the initial steps, with an aggregated decision on additional alternative routes still made by the Commission.

Analysis of Alternative Routes (See process schematic # 8)

A comparative environmental analysis of all of the pipeline routes accepted for consideration at public hearings shall be prepared by the EFP staff or by the applicant and reviewed by the EFP staff. This comparative environmental analysis must be submitted as prefiled testimony required by Minnesota Rule 1405.1900. This document would provide an analysis of the features crossed by each proposed route or route segment.