BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Application to the Minnesota Public Utilities Commission for a Pipeline Routing Permit for a Crude Oil Pipeline and Associated Aboveground Facilities	ISSUE DATE: April 13, 2007 DOCKET NO. PL-5/PPL-05-2003 ORDER GRANTING ROUTING PERMIT

PROCEDURAL HISTORY

On January 3, 2006, Minnesota Pipe Line Company (MPL, the Applicant, or the Company) filed an application for a Certificate of Need (CoN) for the MinnCan Project. The matter was assigned to Docket No. PL-5/CN-06-2.

On January 5, 2006, MPL filed an application for a pipeline routing permit for the MinnCan Project. That matter was assigned to the current docket.

On February 16, 2006, the Commission issued an Order in each of these two dockets. The Commission found that both applications met the filing requirements and initiated consideration of the merits of the applications.[1]

On the same day, the Commission issued additional Orders, one in each docket, referring the matters to the Office of Administrative Hearings (OAH) for contested case proceedings.[2]

On February 21, 2006, the Minnesota Department of Commerce (the Department) issued a Notice of Application Acceptance and Public Information Meetings. In addition to listing the upcoming public information meetings, the Notice explained how to propose an alternative route or route segments and stated that all such proposals were due on May 30, 2006 and must be approved by the Commission to receive consideration at the public hearing.

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[1] See ORDER GRANTING VARIANCE AND ACCEPTING [CoN] APPLICATION AS SUBSTANTIALLY COMPLETE, Docket No. PL-5/CN-06-2 and ORDER ACCEPTING ROUTE PERMIT APPLICATION, AUTHORIZING NAMING OF PUBLIC ADVISOR, APPROVING BUDGET AND GRANTING VARIANCE, Docket No. PL-5/PPL-05-2003.

[2] See NOTICE AND ORDER FOR [CoN] HEARING, Docket No. PL-5/CN-06-2 AND NOTICE OF ROUTE PERMIT HEARING, PL-5/PPL-05-2003.

Between March 13 and March 23, 2006, the Department's Energy Facility Permitting staff held 13 public information meetings, one in each county crossed by the Company's proposed pipeline alignment.[3] 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. Approximately 925 people attended the information meetings/open houses and around 500 people have signed up to be added to the Department's project mailing list.

On April 18, 2006, MPL filed its prefiled direct testimony in this matter.

On June 21, 2006 the Department of Commerce filed direct testimony in this matter.

Between August 24, 2006 and September 14, 2006, a public hearing was held in each of the 14 counties crossed by the proposed project as well as one in St. Paul.

On September 28, 2006, MPL submitted its projected centerline as of September 15, 2006 (the September 15 Alignment), together with a comparative analysis of the initially proposed centerline and revised centerline as requested by Commission staff.

On October 13, 2006, MPL filed proposed findings.

On October 18, 2006, the Department sent a letter to the Administrative Law Judge (ALJ) indicating it did not object to the findings proposed by the Company.

On November 17, 2006 the Administrative Law Judge filed her Findings of Fact, Conclusions and Recommendation. Appearances registered by the ALJ were as follows:

> Eric F. Swanson, Winthrop & Weinstine, 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402, on behalf of the Minnesota Pipeline Company (MPL or Applicant).
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> Valerie M. Smith, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, on behalf of the Department of Commerce (Department), addressing the Certificate of Need.
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> Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, on behalf of the Department of Commerce, Energy Facility Planning staff, addressing the Routing Permit.
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> Paula Goodman Maccabee, Attorney at Law, 1961 Selby Avenue, St. Paul, MN 55104, on behalf of Atina and Martin Diffley as Gardens of Eagan, addressing the Routing Permit.

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[3] The route that MPL proposed for this project (the MinnCan Project) in its January 5, 2006 application generally followed and used 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 first 119 miles in the counties of Clearwater, Hubbard, Wadena, Todd and Morrison. Near Cushing, Minnesota, in Morrison County, the MPL-proposed route left the existing multiple-line crude oil pipeline right-of-way for another 176 miles generally west and south of the Twin Cities area, in the counties of Morrison, Stearns, Meeker, Wright, McLeod, Carver, Sibley, Scott, Rice and Dakota.

Larry Hartman, Project Manager, Department of Commerce, Energy Facility Permitting, 85 7th Place East, Suite 500, St. Paul, MN 55101-2198, addressing the Routing Permit.

Deborah Pile, Public Advisor, Department of Commerce, 85 7tn Place East, Suite 500, St. Paul, MN 55101-2198, addressing the Routing Permit.

Ken Wolf, Public Advisor for the Certificate of Need, Bret Eknes and Robert Cupit, Commission Staff, 121 7th Place East, Suite 350, St. Paul, MN 55101-2147.

On December 4, 2006, the Minnesota Public Interest Research Group (MPIRG), Laura and John Reinhardt, Scott County, Jason Giesen and the Company filed exceptions to the ALJ's Report.

On December 11, 2006, MPL filed an objection to the exceptions of the Minnesota Public Interest Research Group (MPIRG), Jason Giesen, Laura and John Reinhardt, and Scott County.

On December 13, 2006, Jason Giesen filed a reply to the Company's objection.

On December 15, 2006, the Reinhardts filed a reply to the Company's objection.

On January 10, 2007, Gardens of Eagan, together with individual landowners S. Allen Friedman and Daly Edmunds (hereinafter Gardens or Eagan or GOE), filed in response to MPL's Exceptions.

On February 2, 2007, the Department filed its comments and recommendations, along with a proposed pipeline routing permit, the final Agricultural Impact Mitigation Plan and Appendix, and a set of pipeline route maps.

On February 13, 2007, this matter, in conjunction with MPL's petition for a Certificate of Need,[4] came before the Commission. The parties and interested members of the public presented oral argument and the record closed under Minn. Stat. § 14.61, subd. 2.

These matters came before the Commission for deliberations on February 15, 2007.

FINDINGS AND CONCLUSIONS

I. Summary of Order

In this Order the Commission designates a route for the MinnCan pipeline that minimizes adverse human and environmental impact. Specifically, the Commission approves issuance of a Routing Permit for the MinnCan project authorizing construction of the MinnCan pipeline within a specific route. The approved route, limited to a maximum of 300 feet wide, is shown on the January 5, 2007 pipeline route maps in this proceeding. The final alignment (i.e., the permanent and maintained rights of way) will be located within this 300 foot wide designated route.

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[4] The Commission addressed MPL's application for a Certificate of Need for the MinnCan Project and granted the requested certificate to the Company in an Order issued in Docket No. PL-5/CN-06-2.

To assure that the designated route meets the legal requirement that it minimize adverse human and environmental impact, the Commission accepts and applies to the Permit certain conditions recommended by the ALJ, modifies some of her conditions and adds some new conditions. A copy of the Routing Permit stating those conditions is attached.

The Routing Permit's provisions become part of every easement agreement between the Company and landowners, including MinnCan easement agreements that have already been signed as well as any that may be signed in the future. The Routing Permit's provisions take precedence over any contrary provision in an easement between a landowner and the Company. That is, the Company is bound by the Routing Permit's provisions with respect to every landowner with whom it signs or has signed an easement agreement.

II. MPL's Proposed MinnCan Project and Proposed Route

Minnesota Pipeline Company, LLC (MPL or the Company) owns a 256-mile pipeline system that carries approximately 300,000 barrels of Canadian crude oil per day to two Minnesota refineries, the Marathon Petroleum Company refinery in St. Paul and Flint Hills Resources refinery in Rosemount. MPL's system is supplied by the Enbridge Pipeline at Clearbrook. The assets of MPL are operated by Koch Petroleum Company, an affiliate of Flint Hills Resources (FHR).

The Company's proposed MinnCan Project is a system expansion project estimated to cost around $300 million. The proposed MinnCan pipeline is approximately 303 miles of 24-inch diameter pipe with a capacity of 165,000 barrels per day, on an annual average. The entire project is within the borders of Minnesota, would mostly be underground and would run from Clearbrook to Rosemount. For the northern section of the proposed project, from Clearbrook to near Cushing (119 miles), the pipeline would be buried within existing rights-of-way and would run parallel to MPL's existing pipeline system. From Cushing to Rosemount, however, the pipeline would be placed in new rights-of-way to the west and south of the metropolitan area.

III. The Administrative Law Judge's Report

The ALJ's November 17, 2006 Findings of Fact, Conclusions and Recommendation (ALJ's Report) addressed not only MPL's application for a Certificate of Need but also its application for a Routing Permit, which is the subject of this Order.

With respect to the Routing Permit, the ALJ examined the record and found that MPL had conducted an appropriate environmental assessment consistent with Minn. Rules, Parts 4415.0115 to 4415.0170, met the requirements for alternative environmental review in Minn. Rules, Part 4410.3600 and had taken into consideration the criteria established in Minn. Rules, Part 4415.0100.[5]

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[5] The ALJ found that MPL's Application for a Routing Permit, which included an Environmental Assessment Supplement, addressed each criteria for selection of a route designation. ALJ Finding of Fact #245. See also ALJ Finding of Fact #137 which states in part: "To select a preferred route for the pipeline, MPL took into consideration the criteria established in Minnesota Rules Chapter 4415."

The ALJ's conclusion regarding the adequacy of the Company's environmental assessment is based on extensive findings of fact based in the record: Findings of Fact 142 to 169 and 187 to 204. Significant ALJ findings include the following:

> **ALJ Finding of Fact 142** states: MPL filed its Environmental Assessment Supplement with its Route Permit Application on January 5, 2006. It includes an analysis of the socioeconomic impacts, land use, terrain and geology, soil, vegetation, wildlife and fisheries, including endangered and threatened species, groundwater and surface water resources, including waterbodies and wetlands, cultural resources, and federal, state and county recreational areas.
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> **ALJ Finding of Fact 169** states in relevant part: 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 is complete and accurate with respect to regional concerns and raises no major issues of consistency with Council policies."
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> **ALJ Finding of Fact 143:** In response to public comments that environmental analysis should have been conducted by an independent entity, the ALJ noted that environmental assessment by the applicant is permitted for pipeline routing.
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> **ALJ Finding of Fact 187:** Again in response to public comment regarding lack of an independent environmental review, the ALJ found: "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. . . . 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."

In sum, the ALJ examined MPL's initially preferred route alongside several alternatives. The ALJ concluded that the Company demonstrated that the Company's September 15, 2006 Alignment (reflecting the Staples Alternative, the BellePlaine Alternative, the Garden of Eagan Stipulation as well as several other alignment changes developed in consultation with landowners) meets the statutory and rule criteria. The ALJ recommended that a Routing Permit should be granted for that route, subject to 23 specified conditions.[6]

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[6] See ALJ's Conclusions 8 through 30.

IV. Exceptions to the Administrative Law Judge's Report[7]

A. MPL's Exceptions

1. Exception to Conclusion 9

MPL suggested that instead of conditioning the Routing Permit on the Company's preparation of a "Stormwater Pollution Prevention Plan," the Routing Permit should require the Company to develop a Spill Prevention, Control and Response Plan. MPL noted that the ALJ's proposed condition was linked to Finding 121 concerning planning for the steps to be taken in the event of a spill during construction. To best address spillage concerns for this 300 mile pipeline project, therefore, MPL suggests that Conclusion 9 be restated as indicated:

ALJ Conclusion 9	MPL's Proposed Conclusion 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.	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.

Gardens of Eagan objected that MPL's wording undermined the ALJ's recommendation because it deleted the requirement that the Stormwater Pollution Prevention Plan be "reviewed and approved" by the Minnesota Pollution Control Agency (MPCA).

The Department agreed with the Company that allowing the Company to prepare a Spill Plan was preferable to a Stormwater Plan. The Department also suggested that making thus a Permit Condition was unnecessary since MPL is required to conform to MPCA required permits. The Department, therefore, recommended the following changes:

> **Finding of Fact 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.~~

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[7] This Section of the Order addresses the merits of objections to the ALJ's Report raised not only by MPL but also by MPIRG, the Reinhardts, Scott County and Jason Giesen. This Order does not, however, decide the merits of the MPL's position that these individuals and entities are not entitled to file exceptions to the ALJ's Report. This Order makes no finding regarding their standing to file exceptions to the ALJ's Report in this matter and establishes no precedent regarding the standing of persons and entities in similar circumstances to bring exceptions to an ALJ's Report.

Conclusion 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.

The Commission will modify Conclusion 9 to allow for preparation of a Spill Plan rather than a Stormwater Plan. The Company is persuasive that a Spill Plan is more appropriate. The Commission will not delete the requirement that MPL obtain MPCA approval of that plan but will, as suggested by the Department, not make it a Permit Condition and will modify Finding 121's reference to the Stormwater Plan. The modified language, therefore will be as follows:

Finding of Fact 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.~~

Conclusion 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

2. Exception to Conclusion 10 and Finding of Fact 169

Finding of Fact 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 is 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.

Conclusion 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.

MPL stated that the ALJ's recommendation to condition the Routing Permit on "project construction specifications for site sediment control" (Conclusion 10) was unnecessary and should be omitted. The Company stated that such issues are already addressed in the Wetland and Waterbody Construction and Mitigation Procedure, the Upland Control, Revegetation, and Maintenance Plan and the Agricultural Impact Mitigation Plan (AIMP) and Appendix and incorporated in Conclusion 8.

Gardens of Eagan suggested that omission of this Conclusion 10 "would prevent the appropriate state agency from determining the sufficiency of its efforts to control pollution. GOE argued 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.

The Department agreed with the Company that Conclusion 10 was unnecessary and should be omitted. The Department stated that its proposed Routing Permit makes clear what the permitting requirements are. The Department stated that no changes to its proposed Routing Permit are necessary to effectuate the ALJ's recommendation because it is already provided for in section V, D of the Department's draft permit.[8]

The Commission finds that the ALJ's language and recommendation (ALJ Finding 169 and Conclusion 10) are appropriate, will adopt them as written, and therefore incorporate the specific condition recommended by the ALJ into the Routing Permit. The language in Permit Section V.D. cited by the Department is not an adequate substitute for the specificity of the ALJ's recommendation.

3. Exception to Conclusion 13

MPL objected that the ALJ's Conclusion 13 proposed an open-ended condition to confer with each jurisdiction prior to finalizing its right-of-way. The Company stated that this condition was unnecessary and ambiguous. The Company suggested that if the Commission believed such a condition was necessary that the Commission should impose the condition recommended in the modified Conclusion 13:

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[8] Section V, D of the Department's draft Permit, entitled COMPLIANCE WITH FEDERAL AND STATE AGENCY PERMITS, states:

> 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).

The ALJ's Conclusion 13	MPL's Proposed Conclusion 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.	The Routing Permit should require MPL to 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.

The Department recommended that the Commission adopt the Company's modification of Conclusion 13. The Company's and Department's recommended changes from the ALJ's language are shown as follows:

> **Conclusion 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 jurisdiction, including the soil and water conservation districts, in each township, city and county, as requested by that jurisdiction.

The Department stated that it believes the language proposed by MPL addresses the need to provide local governments with status reports and updates if they are interested. The Department stated that it has incorporated this modified language into its proposed Routing Permit at Part V,L,3.

The Commission will adopt the modified Conclusion 13 and the Routing Permit language proposed by the Department. The modified language assures that the Company will be communicating with affected local governmental bodies but also clarifies the Company's obligation, providing for greater accountability.

4. Exception to Conclusion 15

The ALJ recommended in Conclusion 15 that 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.

MPL argued that the ALJ's recommended Permit condition was unnecessary but that if the Commission felt it was necessary and appropriate the Commission should modify it to clarify that the permits and authorizations referred to are required before construction on the involved property and not as a condition-precedent to other project-related activities. The Company's proposed change is shown as follows:

Conclusion 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.

The Department recommended adopting this changed language.

The Commission finds that the clarification requested by MPL is reasonable. Its proposed language is appropriate and will be adopted.

5. Exception to Conclusion 18 and Related Findings

The ALJ's Conclusion 18 is as follows:

> **Conclusion 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.

MPL stated that if the Commission believes further assistance to organic farmers is required beyond that which already exists in the Appendix to the Agricultural Impact Mitigation Plan (AIMP), Conclusion 18 should be replaced with the following Conclusion:

> **Conclusion 18.** The Routing Permit should require MPL to train its Agricultural Inspectors on the organic certification process and/or retain an Organic Certifier at its expense in order to assist MPL in developing a site specific plan for crossing any farm that is Organic Certified or in active transition to become Organic Certified.

Gardens of Eagan recommended that the Commission reject MPL's proposed amendment. It argued that the Company's language "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." It also suggested that the Company's "proposed amendment would create an unenforceable 'plan' rather than a binding agreement."

The Department stated that based on information from the Department of Agriculture, an organic certifier simply determines whether or not an organic farm meets the standards for organic certification and hence would not perform the role intended by the ALJ. The Department suggested that the term "Organic Certifier" should be replaced with "qualified organic consultant," a person who could give advice to the landowner. The Department also recommended that the ALJ's language be tightened to limit the scope of the recommended condition to farms in active transition to become Organic Certified.

Based on discussion among the parties and clarification of mutual intent, the Commission will adopt Finding of Fact 163 as is and modify Finding 158 and related Conclusion 18 as follows:

> **Finding 158:** The PUC may wish to consider as a condition of the Routing Permit requiring MPL to retain a ~~organic certifier~~ <u>qualified organic consultant</u> 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 <u>documented</u> active transition to become so.
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> **Conclusion 18.** The Routing Permit should require MPL to retain ~~an Organic Certifier~~ <u>a qualified organic consultant</u> at its expense to assist any landowner to <u>identify site-specific construction practices</u> ~~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 <u>documented</u> active transition to become organic certified.

The Commission finds that the clarifying modifications adopted for Finding 158 and Conclusion 18 properly reflect the ALJ's intent as well. The Routing Permit issued in conjunction with this Order will include the requirement recommended in ALJ Conclusion 18, as modified above.

6. Exception to Conclusion 20 and Associated Finding 161

MPL stated that this Conclusion concerning notice prior to entry onto property for maintenance provides no exception in the event of emergency or in the event of an inability to contact the landowner despite good faith efforts to do so. MPL suggested that the ALJ's Conclusion 13 be replaced as follows.

ALJ's Conclusion 20	MPL's Proposed Replacement Conclusion 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.	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 conducting 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.

The Department recommended that the Commission adopt the Company's replacement language.

The Commission finds that the replacement language is a reasonable way to address a practical concern while maintaining the ALJ's intent. The Commission will adopt the amended Conclusion 20 and incorporate that requirement into the Routing Permit.

7. Exception to Conclusions 22 and 23 and Associated Findings 213 and 214

In her Conclusion 22, the ALJ recommended that 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 ALJ also recommended that the notice include information about the One Call Excavation Notice System.

In her Conclusion 23, the ALJ recommended that the Routing Permit should require MPL to submit to the Commission or Minnesota Office of Pipeline Safety, prior to placing the pipeline into operation, 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.

MPL objected that the two permit conditions recommended in these Conclusions were unnecessary and addressed safety issues that are not within the Commission's jurisdiction. At the hearing, the Company suggested that the Permit simply require it to comply with all federal and state safety regulations. The Commission finds that the Company's proposed change is consistent with the ALJ's intent while also meeting the Company's concern. The Commission will adopt the change and incorporate the Company's proposed language in the Routing Permit.

8. Exception to Conclusion 24

MPL objected that permit requirements recommended in Conclusion 24 to "minimize the loss of agricultural land, forest and wetlands" while also "following property lines and minimizing diagonal crossings" were conflicting goals that were impossible to meet. The Company recommended that the entire Conclusion 24 should be omitted.

Gardens of Eagan stated that Conclusion 24 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). It also stated that Minn. Rules, Part 4415.0195 (E), (F), (G) "specify how pipelines shall be routed and require conditions to minimize human and environmental impacts at the level of individual properties as well as in selecting the overall route."

The Department stated that limiting the width of the proposed route (1.25 mile wide) 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.

The Commission believes that a requirement that the route follow property lines would be overly prescriptive. For a pipeline moving diagonally across the state starting in the northwest and proceeding southeasterly, such a requirement would inevitably increase the length, hence the cost, of the pipeline. Since, as the Company has argued, following property lines in certain instances may in fact increase the crossing of agricultural lands, forested areas or wetlands and require diagonal crossings, a requirement that the route follow property lines will not be adopted, but the requirement that the pipeline location "minimize the loss of agricultural land, forest, and wetlands, with due regard for proximity to homes and water supplies" will be adopted and incorporated into the Routing Permit, since that is consistent with the overall goal of the pipeline routing rules, i.e., to select a route that minimizes human and environmental impact.[9]

In addition, in light of concerns expressed by landowners that the Company's protection of its pipeline might unreasonably restrict access to the landowner's property, the Commission will add the following language to ALJ's Conclusion 24 and incorporate that language into the Routing Permit:

> MPL shall not unreasonably deny a landowner's request to cross the easement to access the landowner's property.

Accordingly, the ALJ's Conclusion 24 will be adopted and its recommendations incorporated in to the Routing Permit revised as follows:

> **Conclusion 24.** The Routing Permit should require MPL to work with landowners to provide access to their property, 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. MPL shall not unreasonably deny a landowner's request to cross the easement to access the landowner's property.

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[9] Minn. Rules, Part 4415.0100, Subpart 2.

9. Exception to Conclusion 25

MPL stated that Conclusion 25 regarding habitat restoration, like Conclusion 24, recommends a condition never discussed during the hearings and which creates an uncertain and potentially open-ended obligation for MPL. The Company asserted that the ALJ's recommended condition makes it unclear what may be expected of MPL "to work with landowners" on the issues discussed. The Company further objected to the ALJ's recommendation that MPL be required "to provide"' habitat for birds, small animals and migrating animals even where none existed previously. The Company recommended that this Conclusion be omitted.

Gardens of Eagan stated that the Conclusion is supported by the record and argued that MPL's exception to this recommendation was over broad. It argued that the Commission's duty as well as authority to impose this requirement 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.

The Department agreed with the Company that the ALJ's language was open and subject to a variety of interpretations and stated that the following language in the Department's proposed pipeline routing permit would adequately address the habitat restoration issue.

> **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.

At the hearing, the Department and the Company argued that reference in the Routing Permit to procedural requirements contained in the Upland Erosion Control, Revegetation and Maintenance Plan adequately defined the Company's obligations regarding revegetation. The Commission finds that the ALJ's Conclusion 25 and the associated Finding #206 are well-founded and will adopt them.

As to clarifying the Company's obligations regarding revegetation, the Commission does not believe that a reference to the Upland Erosion Control, Revegetation and Maintenance Plan in the Department's draft permit adequately informs landowners and other interested members of the public of the Company's important obligations in this regard.

Accordingly, the Commission will include in the Routing Permit language requiring MPL to work with landowners and the Department of Natural Resources local wildlife management programs to restore the land in accordance with the Upland Erosion Control, Revegetation and Maintenance Plan, including providing useful and functional habitat if the landowner so requests. The Commission will also amend the Departments's proposed Route Permit V, C, 14 by adding to the Routing Permit the language at Section D, items a and b on page 8 of the Upland Restoration Plan, as follows:

a. MPL is responsible for revegetation of soils disturbed by project-related activities. Plow compacted areas with a paraplow or other deep tillage implement as described in the Agricultural Impact Mitigation Plan (AIMP).

b. Disturbed areas will be restored in accordance with recommendations from soil conservation agencies or as requested by the landowner or land management agency.

10. Exception to Conclusion 26

The ALJ's Conclusion 26 states:

> 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.

MPL recommended that Conclusion 26 be omitted. The Company objected to Conclusion 26 for several reasons. First, the Company stated, right-of-way acquisition is beyond the scope of this proceeding. Second, MPL asserted that if the Company and landowner cannot ultimately negotiate an agreement, the Company may proceed with a condemnation action as provided by Minnesota law. The Company argued that the Commission cannot deny MPL this option by requiring MPL to negotiate agreements in all circumstances. Finally, by requiring the agreement to address future development, the condition allegedly creates an impossible standard since no party can know with any reasonable degree of certainty what future development may occur on a property. Moreover, the Company stated, this condition attempts to address compensation and damages issues, issues acknowledged by the ALJ to be beyond the scope of this docket.

Gardens of Eagan responded that MPL is seeking to eliminate permit conditions addressing landowner concerns that the ALJ recommended after hearing extensive complaints from landowners about the conduct of the Company and its agents in acquisition negotiations prior to permit issuance. It stated that it is within the Commission's authority to minimize human and environmental harm from the pipeline and to ensure that costs are borne by customers who benefit from it rather than a few landowners who own property along the selected route. It further stated that 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.

Gardens of Eagan also stated, however, that the language requiring that the Company assume any additional costs of development that may be the result of installing roads, driveways and utilities that must cross the right-of-way may be overly specific. It therefore recommended that the language after the word property should be deleted in Conclusion 26. Deleting this language would remove the ALJ's proposal that the Company be required 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.

The Department disagreed with the Company's recommendation to delete Conclusion 26 altogether, but agreed with Garden of Eagan's recommendation to delete the future development requirement.

The Commission finds that the ALJ's Conclusion is appropriate and prudent. The record of landowner complaints regarding one-way communications from the Company justifies the Commission's concern and warrants a requirement that the Company negotiate agreements with landowners that will minimize the impact on future development of the property.

In addition, consistent with the goal of minimizing human impact, it is appropriate to clarify that the Company assumes any additional costs of development that result from installing roads, driveways and utilities that must cross the right-of-way. After all, Minn. Rules, Part 4415.0100, Subp. 3,A specifically provides that pipeline permits should minimize impacts on future land use.

The Commission does not find this requirement overly specific, as suggested by Gardens of Eagan, but appropriately detailed in light of the record, thereby promoting clearer landowner/Company communication on this subject.

Nor does the Commission agree with the Company's argument that the ALJ's "future development" condition creates an impossible standard. The specific amount of costs the Company will assume under this provision need not be known with certainty in order to make it legitimate, as the Company appears to suggest. The value of stating such a Permit condition in this case is that it clarifies for the landowner and the Company the general proposition that the Company is responsible for such future costs. Finally, the Company's objection that the proposed condition addresses compensation and damages which are beyond the scope of this docket is not persuasive because the condition does not decide what the compensation or damages should be for any particular situation or set of circumstances, but simply states a general principle.

The Commission will modify the ALJ's Conclusion, however, to add reference to negotiations for landowner access to their property. Based on landowner concerns expressed on the record, the Commission believes adding this specific reference is appropriate to the Conclusion, and incorporating that reference into the corresponding Permit Condition. In addition, based on the same landowner concerns regarding negotiations, the Commission will add the same language it added to Conclusion 24 and the Routing Permit.

Accordingly, the Commission will adopt Conclusion 26, modified as indicated:

> **Conclusion 26.** The Routing Permit should require MPL to negotiate agreements with landowners that will give the landowners access to their property, 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. MPL shall not unreasonably deny a landowner's request to cross the easement to access the landowner's property.

11. Exception to Conclusion 27

The ALJ's Conclusion 27 states:

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

MPL recommended that the Commission omit this Conclusion. MPL argued that the Conclusion recommended requiring specific action of the Company in its right-of-way acquisition and, as such, goes beyond the proper scope of this proceeding and beyond the Commission's authority.

The Department recommended that the Commission adopt Conclusion 27 without modification. The Department stated that requiring indemnification provisions in the negotiated agreements is appropriate if they reasonably mitigate the impacts on humans and the environment. The Department noted that landowners commented they were concerned with MPL's failure to include an indemnification provision in its standard right-of-way agreement.

The Commission will adopt the ALJ's Conclusion 27. The Commission has discretion to adopt permit conditions to minimize human impacts. The indemnification provisions serve to minimize human impacts by safeguarding landowners from potential liabilities beyond their control.

Moreover, as a matter of equity, the indemnification provisions extended to Tier One should be available to all affected landowners on an equal basis. Placing the ALJ's proposed requirement in the Routing Permit will achieve these public interest goals and will be done.

12. Exception to Conclusion 28

The ALJ's Conclusion 28 recommends that the Commission's Routing Permit include a condition requiring MPL to comply with Minn. Stat. § I161.06 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.

MPL objected that in requiring the Company to give notice to all landowners the ALJ's Conclusion did not take into account that a Minnesota statute allows landowners to waive depth of cover requirements. The Company also stated that the proper person for landowners to contact was the Agricultural Monitor[10] rather than the county inspector.

Gardens of Eagan commented that the Company must comply with the law whether or not the depth of cover is waived and recommended a modest editing of the ALJ's recommendation as follows:

> **Conclusion 28.** The Routing Permit should require that MPL comply with Minn. Stat. § 1161.06 (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 ~~county~~ inspector designated by the county.

The Department recommended that Conclusion #28 be modified to reflect the identified statute's current codification by the Minnesota Office of the Revisor of Statutes and the waiver of depth requirement as recommended by Gardens of Eagan and the Agricultural Monitor and County Inspector requirements, as follows:

ALJ's Conclusion 28	Department's Recommended Changes
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.	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 county inspector designated by the county.

[10] In the AIMP, MPL agreed to retain and fund an Agricultural Monitor to audit MPL's compliance with the AIMP. The Agricultural Monitor will report directly to MDA. The Monitor will have no direct authority over construction, but will report instances of noncompliance to MPL's Agricultural Inspector and prepare regular compliance reports and submit them to MDA. ALJ's Report, Finding of Fact #153.

The Commission finds that it is appropriate to include reference to the Company's obligations regarding depth of cover and finds that the modifications recommended by the Department (essentially the same language proposed by Gardens of Eagan) appropriately reflect the Company's obligations. This language will be incorporated as a condition in the Routing Permit.

13. MPL's Proposed Additional Conclusion

MPL requested that the Commission find that the Routing Permit does not alter any legal rights or duties negotiated and agreed to between MPL and any landowner or other party.

Gardens of Eagan objected, arguing that MPL's proposed Conclusion contradicted applicable Minnesota law: Minn. Rules, Part 4415.0100, Subp. 1. Gardens of Eagan requested that the Commission clarify the issue by adopting the following 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.

The Department recommended that the Commission adopt neither of these proposed Conclusions. The Department stated that MPL's proposal was to be free to disregard conditions in the Routing Permit and Garden of Eagan's proposal was unnecessary because the Company has negotiated right-of-way agreements at its own risk, subject to changes required by Routing Permit conditions.

The Commission finds that the Company's proposed Conclusion is inappropriate. First, it conflicts with Minn. Rules, Part 4415.0100, Subp. 1, which states in part:

> Any new easements or right-of-way agreements obtained from potentially affected landowners before issuance of a pipeline routing permit are obtained at the sole risk of the applicant.

Second, the permit conditions adopted by the Commission in this matter have been found necessary by the Commission to minimize the human and environmental impact of the Company's pipeline. These conditions promote and safeguard the public interest. It is fitting, therefore, that they remain in place and effect and not be rendered inapplicable based on private easement agreements between individual landowners and the Company, whether those agreements have been reached before or after the Commission's adoption of these conditions. This is particularly the case where, as here, numerous concerns have been raised in the record regarding the actions of the Company's land agents in pursuing easement agreements.

14. Exception to Findings 1 and 54

MPL recommended that Findings 1 and 54 be amended to incorporate its full proper legal name and to clarify that MPL is not a wholly-owned subsidiary of Koch Industries, but a separate company.

No one disputed the Company's recommendation and the Department agreed. The Commission will adopt the amended findings as follows:

Finding 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.

Finding 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.

15. Exception to Finding 46

MPL stated that Finding 46 should be amended to reflect that, since the Company has agreed to approximately 100 alignment changes during this proceeding, the pipeline has lengthened by several miles. As a result, the midpoint of the line has shifted and is likely to be in northern Stearns County. The Company proposed a modification to Finding 46 to reflect that change.

No one disputed the Company's recommendation and the Department agreed. The Commission will adopt the amended findings as follows:

Finding 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.

16. Exception to Findings 94

The ALJ found as follows:

Finding 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. 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. [Footnote omitted] 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. [Footnote omitted.]

MPL took exception to this finding, asserting that agricultural land will not be taken out of production due to the operation of the pipeline and stated that "the Agricultural Impact Mitigation Plan (AIMP) specifically addresses, in detail, the measures to be taken when crossing such lands in order to mitigate the impact of such crossings." The Company proposed alternative language:

> Many members of the public alleged that prime agricultural land is being lost to development. 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. In addition, MPL has agreed to an Agricultural Impact Mitigation Plan, discussed below, to address the issues related to crossing of such lands.

Gardens of Eagan responded that MPL's assertions regarding Finding 94 are simply inaccurate since Finding 94 refers to loss of prime agricultural land to **development**, not to loss of agricultural land due to pipeline construction. It further argued that the fact that pipelines affect crop production is amply documented in this record and is presumed in the underlying law, Minn. Stat. 216G.07.

The Department recommended that the Commission alter the ALJ's finding by adding the following:

> 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 right-of-way. In addition, MPL has agreed to an Agricultural Impact Mitigation Plan and Appendix to address issues related to the crossing of such lands.

After discussion, it was the consensus that the Department's proposed amended language was accurate, with the addition of the word "usually" between "still" and "support," as recommended by Gardens of Eagan, to reflect the fact that some land may not continue to support farming operations after construction of the pipeline. In these circumstances, the following language for Finding 94, consistent with the ALJ's underlying intent, appears to be the most reasonable:

> **Finding 94.** Many members of the public ~~pointed out~~ 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 **usually** 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.

17. Exception to Finding 131

MPL proposed a similar modification for Finding 131, which refers to a "loss of agricultural land." The Company proposed amending Finding 131 by adding the following sentence:

> 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.

Gardens of Eagan again objected that the fact that pipelines affect crop production is amply documented in this record. It suggested 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. It also objected to MPL's proposed finding that "land will still support farming operations after construction of the pipeline." It stated that such a finding should be rejected because it was misleading and unsupported by the record.

As with Finding 94, the Commission will adopt clarifying modifications, reasonable changes that maintain the ALJ's general intent, as follows:

> **Finding 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 usually 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. Mitigative Actions for Organic Agricultural Land are also addressed in the Appendix to the Agricultural Impact Mitigation Plan.

18. Exception to Finding 201

MPL recommended that Finding 201 be modified as follows:

> **Finding 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.

The Company stated that Mr. North's concern was investigated and that it will be addressed in the cultural resources survey. The Department agreed with the Company's proposed change.

The Commission will adopt the change requested by the Company and the Department. The Company has stated that it will discuss the Red River Ox Cart Trail in the cultural resources report which is required as a condition of the Routing Permit. See Section V,G.

19. Exception to Finding 207

In her Finding #207, the ALJ noted that 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 in Docket No. G-002/GP-05-1706, the Commission had included the following 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 surrounding area, unless otherwise negotiated with the affected landowner.

The ALJ further found that the record is unclear whether MPL would be able to safely construct and maintain its proposed pipeline with such a condition.

MPL stated that the condition referred to in Finding 207 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, in fact, make a recommendation to include this condition in MPL's Routing Permit nor is it even mentioned in the ALJ's Conclusions. MPL suggested deleting the Finding.

The Department recommended and the Commission finds that the finding is accurate as written. The Commission will adopt this finding but notes that the ALJ did not base a Conclusion or recommend a Permit condition based on this Finding.

20. Exception to Finding 324

> **ALJ Finding 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.

MPL objected to the ALJ's finding 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." The Company stated 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.

The Department reviewed the record and recommended that the ALJ's finding be modified as follows:

> **ALJ Finding 234.** There was no evidence that MPL attempted to notify all landowners along the Belle Plaine and Staples Alternative routes~~. 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.~~ 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.

The Commission has also reviewed the record and finds that the Department's recommended charges are appropriate and supported in the record. Most important for clarity, the finding as amended identifies and properly finds compliance with the notice requirements of the applicable rule.

21. Finding 263

In Finding #263, the ALJ states the alignment recommended by MPL in its September 28, 2006 filing. The Company excepted to the finding, however, requesting that the Commission conform the alignment reported in the finding to the ALJ's recommended alignment in Conclusion 7.

The Commission finds Finding #236 to be an accurate account of the Company's proposal as of September 28, 2006 and will not alter that finding. The Company's request to alter Finding #236 to conform to Conclusion 7 indicates its agreement with the alignment recommended by the ALJ in that Conclusion. There is therefore no disagreement to resolve in that regard.

22. Exception to Finding 264

> **Finding 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.

MPL recommended qualifying this finding, as the ALJ did in Finding 265, in the event that environmental or engineering concerns arise.

Gardens of Eagan 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.

The Department agreed with MPL that in making that agreement, the Company had qualified its agreement as stated. The Department therefore recommended that Finding 264 be modified as follows:

> **Finding 264.** Absent environmental or engineering concerns requiring an adjustment to the September 15 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.

The Commission will adopt Finding 264 as modified by the Department's proposed language, which appears to accurately reflect the Company's commitment regarding crossing property.

23. Exceptions to Findings 318 - 333

MPL asserted that the ALJ's Findings 318-333 are on issues of pipeline safety and questions of right-of-way acquisition and compensation. As such, the Company argued, they are beyond the scope of the proceeding and should be omitted from any Order accompanying a final Routing Permit.

Gardens of Eagan responded that in seeking deletion of these findings MPL is seeking to eliminate the basis for permit 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 issuance. It noted that much of the testimony landowners provided described one-sided practices by a Company with disproportionate 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.

The Department noted that a primary purpose of the public hearings in this proceeding 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 Department noted that 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."[11] The Department stated that public input enhances the record by providing information on impacts to humans and the environment. The Department recommended no change to the ALJ's Findings.

The Commission finds that the ALJ's findings are based in the record and germane to this proceeding. MPL objects to them, asserting that they address issues of pipeline safety or right-of-way acquisition and compensation and, as a result, should be stricken as outside the scope of this proceeding. The Commission, however, does not accept the Company's characterization of these findings. For the Commission, these findings report on conditions likely to affect the pipeline's impact on humans and the environment: the dynamics between the Company's land agents and affected landowners. As such they are directly relevant to the Commission's primary concerns in this matter and the Commission will adopt them as written.[12]

B. The Reinhardts' Exceptions

The Reinhardts took exception to the ALJ's Finding #308 that the public was adequately informed about the proposed project and to the statement in her Memorandum (page 75) that MPL complied with all the required notice provisions. The Reinhardts acknowledged that the Company gave notice to landowners within the originally proposed route but argued that it was unfair not to notify landowners along alternate routes later approved for consideration. These arguments go to whether the current pipeline notification requirements should be changed in the future. They do not alter the fact that the Commission's current pipeline routing permit notice rules do not require such notification.[13]

The Reinhardts also argued that the ALJ would not have made the finding that the Company had provided adequate notice if she had been advised of the Commission's February 2, 2006 ORDER GRANTING VARIANCE AND ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE. The Commission disagrees that the Order cited by the Reinhardts leads to a different conclusion than the ALJ reached.

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[11] Minn. R. 4415.0100, subp. 2 .

[12] In fact, these specific findings regarding the land agent-landowner dynamics in this project form a substantial part of the basis for some of the Permit Conditions adopted by the Commission in this Order, particularly those attempting to make land agent-landowner negotiations fairer, more open, informed, and arms-length, thereby minimizing the project's impact on humans and the environment.

[13] See Minn. Rules, Part 4415.0085 which states: "Prior to public hearings, the board [now the Commission] shall provide published notice of route location in each county in which a route is accepted for consideration at the public hearings according to the requirements of this chapter."

First, the Order cited did not confer on landowners affected by proposed pipelines the same rights to notice as are held by landowners affected by proposed large electric power facilities (transmission lines and generating plants) as asserted by the Reinhardts. The Order simply stated:

> 5. MPL shall work with Department and Commission staff to develop a landowner notification letter. The letter shall include the date, time, and place of the prehearing conference if this information is known at the time the letter is issued.

Moreover, the February 16, 2006 Order cited by the Reinhardts was issued in Docket No. PL-5/CN-06-2, the docket devoted exclusively to MPL's pipeline certificate of need process, not the pipeline routing permit process which is the subject of the current docket and this Order. The Commission did issue another Order in this docket on February 16, 2006 regarding the pipeline routing process, but that Order did not specify a notice requirement.[14] The only other Order issued in the current docket (the pipeline routing permit docket) was issued July 19, 2006 and that Order does not impose additional landowner notice requirements either.[15]

The fact noted by the Reinhardts that the notice language they support appears in a working draft of rules for the pipeline certificate of need process underscores the status and non-relevance of that language to the current pipeline routing permit proceeding: this kind of landowner notice has not been adopted into the pipeline application rules, either for the certificate of need process or for the routing permit process.

Mailed notice to individual landowners outside the initially proposed route is not required in pipeline Routing Permit proceedings by Commission rule and no Order has been issued requiring such notice in this docket. Instead of individual landowner (mailed) notice as preferred by the Reinhardts, therefore, the applicable notice requirement for pipeline routing permit application proceedings is stated in Minn. Rules, Part 4415.0085:

> Prior to public hearings, the board [now the Commission] shall provide published notice of route location in each county in which a route is accepted for consideration at the public hearings according to the requirements of this chapter.

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[14] *In the Matter of the Application to the Minnesota Public Utilities Commission for a Pipeline Routing Permit for a Crude Oil Pipeline and Associated Aboveground Facilities*, Docket No. PL-5/PPL-05-2003, ORDER ACCEPTING APPLICATION, AUTHORIZING NAMING OF PUBLIC ADVISOR, APPROVING BUDGET AND GRANTING VARIANCE (February 16, 2006).

[15] ORDER ACCEPTING ALTERNATIVE ROUTE SEGMENT PROPOSALS FOR CONSIDERATION AT THE CONTESTED CASE HEARING (July 19, 2006).

As the record indicates, MPL has satisfied that requirement.[16] The Commission therefore will adopt the ALJ's Finding #308 as written.

In their filing, the Reinhardts also questioned the Department's role in this proceeding, challenged the reported tactics of MPL's land agents, and complained about the Company's attempt to obtain easements before the Commission's need and routing proceedings were completed. These complaints are not exceptions to the ALJ's Report and do not serve as a basis for denying a routing permit. As noted above, however, the Commission has taken into consideration the ALJ's findings regarding the reported tactics of the Company's land agents in determining the appropriateness of several permit conditions.

C. Exception of Scott County's Environmental Health Department

Scott County's Environmental Health Department (County Health Department or Scott County) took exception to ALJ Conclusion 6, the ALJ's conclusion that MPL had conducted an appropriate environmental assessment consistent with Minn. Rules, Parts 4415.0115 to 4415.0170 and met the requirements for alternative environmental review in Minn. Rules, Part 4410.3600. First, Scott County challenged the adequacy of the Company's notice to governmental units regarding the availability of the Company's environmental review materials. Second, it questioned the adequacy of the environmental review of the MinnCan project.

1. Notice to Governmental Units

The Department defended the adequacy of the notice given to governmental units. The Department stated that Minn. Rules, Chapter 4415, containing the environmental review process rules for pipelines,[17] was adopted by the Environmental Quality Board in 1989, consistent with the requirements for alternative review in Minn. Rules, Part 4410.3600. The pipeline rules adopted by the Environmental Quality Board (EQB) in 1989 set forth a different process and notice requirements than the standard environmental review process.

The Department stated 1) that more than 25 projects have been permitted under that process (Chapter 4415); 2) that at least four governmental units (the Office of Pipeline Safety, the Department of Natural Resources, the Department of Agriculture, and the Metropolitan Council) actively participated in this proceeding; and 3) that over the years and numerous pipeline projects before the EQB, no agency indicated that it did not understand the permitting process for pipelines.

Moreover, the Department stated, Scott County received copies of MinnCan's application for a Certificate of Need and for the Pipeline Routing Permit, which included an "Environmental Assessment to the Pipeline Routing Application." The Department concluded that Scott County received proper notification of the Environmental Assessment required under Minnesota rules.

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[16] See Exhibits 100 (for examples of the published notification), 17 (affidavits of publication for public information meetings), and 115 (affidavits of publication for public and evidentiary hearings.)

[17] Minn. Rules, Parts 4415.0115 to 4415.0170.

The Commission notes that Scott County did not assert any violations or failure to comply with the requirements of Chapter 4415. Instead, Scott County relied on requirements for alternative environmental review in Minn. Rules, Part 4410.3600 and also cited requirements in Minn. Rules, Part 4410.7030 to argue that the Company's notice to governmental units was defective. For pipeline route permit applications, however, the requirements of Minn. Rules, Part 4410.3600 have been effectively subsumed into the EQB's pipeline permit rules (Chapter 4415) since 1989. And Minn. Rules, Part 4410.7330 applies to applications for certificates of need for high voltage lines (HVTLs) rather than pipeline routing permit applications.

Scott County also asserted that it did not receive clear written notice of the availability of the Company's environmental review document for review and comment. However, Chapter 4415 does not require preparation of a separately issued environmental review document and the record indicates that Scott County received a copy of MPL's 255 page application which includes 89 page Environmental Assessment Supplement that expands upon the information provided in the following four sections of the application: 1) Location of Preferred Routes and Description of Environment - Minn. Rules, Part 4415.0140; 2) Environmental Impacts of the Preferred Route - Minn. Rules, Part 4415.0145; 3) Right-of-Way Protection and Restoration Measures - Minn. Rules, Part 4415.0150; and 4) Evidence of Consideration of Alternative Routes.

The Supplement describes the existing environment along the proposed route, analyzes the human and environmental impacts that may result from construction and operation of the pipeline, and identifies protection and restorative measures to be implemented to avoid and minimize environmental impacts.

2. Asserted Inadequacy of the Company's Environmental Review

Scott County asserted that MPL's environmental assessment document, the Environmental Supplement to the Pipeline Routing Permit Application, failed to identify necessary mitigation measures because it lacked the normal specificity needed to evaluate impacts. In support of this contention, the County identified two areas that it stated were not addressed by the Company's document and which were of concern to Scott County: excavation in areas known to be contaminated with Anthrax and ground water protection in "unusually sensitive areas."[18]

1. Anthrax

Regarding the anthrax issue, the Department cited a letter dated November 30, 2006 from the Minnesota Department of Health. In that letter, the Department of Health clarified the potential risk to humans of acquiring anthrax as a result of soil excavation during pipeline construction. The Department of Health stated:

> Soil excavation activities occur all over the world, and anthrax spores exist in soil in nearly all continents, but the medical and public health communities have not heard of one case of human anthrax that has been linked to soil disruption. Unlike anthrax spores that have been manipulated for terrorism use to improve their ability to stay aloft in the air, naturally occurring anthrax spores have an affinity to quickly fall to the ground and remain there. And since humans do not graze, they are not at risk of ingesting the spores.

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[18] According to 49 C.F.R 195.450, an "unusually sensitive area" is one type of "High Consequence Area" (HCA) and is specifically defined in 490 C.F.R. 195.6.

Regarding the risk of anthrax to grazing animals due to pipeline excavation, the Department noted that MPL has developed an Anthrax Mitigation Plan in consultation with the Minnesota Board of Animal Health and the Minnesota Department of Health. The Anthrax Mitigation Plan was prepared with specific reference to the Company's proposed pipeline. It 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.

In light of the Minnesota Department of Health's advice that anthrax due to pipeline excavation poses a negligible risk to humans and given the reasonable Anthrax Mitigation Plan adopted by the Company to prevent anthrax infection in grazing animals, the Commission finds that the absence of specific discussion of anthrax in the Company's environmental assessment document does not render the document inadequate.

2. Ground Water

In a letter dated December 12, 2006 to the Scott County Community Development Director, MPL indicated that the Office of Pipeline Safety had identified for the Company all the relevant "High Consequence Areas" (HCAs)[19] and that in designing the pipeline and considering potential routes, the Company had given full consideration to the HCAs. The Company stated it is aware of and fully complies with all safety regulations applicable to those HCAs. The Company further stated that the federal Pipeline and Hazardous Materials Safety Administration, the Office of Pipeline Safety, and the Minnesota Office of Pipeline Safety exercise jurisdiction over compliance with these regulations.

MPL also indicated that it has adopted an Integrity Management Plan for HCAs. The Company stated that it manages all its pipelines consistent with that Plan. MPL stated that the Plan requires the Company's Integrity and Reliability staff to identify additional mitigative practices that will be employed to further protect HCAs once the pipeline is in operation.

In light of the Company's demonstrated awareness and attention to HCA issues, adoption of an Integrity Management Plan, and deployment of Integrity and Reliability staff, together with the involvement of other state and federal governmental units to superintend the Company's operations regarding HCAs, the Commission does not believe that the absence of specific discussion of ground water issues in the Company's environmental assessment document renders that document inadequate.

D. Jason Giesen's Exception

Jason Giesen took exception to the ALJ's Conclusions 7 and 8. Mr. Giesen asserted that the ALJ's Conclusions were inaccurate and incomplete. He recommended that the Commission remove from consideration the Belle Plaine Alternative on grounds that the Commission's acceptance of that route for consideration in the contested case proceeding violated Minn. Rules, Part 4415.0075 because, he asserted, the rule does not allow an applicant, after filing its application, to subsequently submit an alternative route.

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[19] Federal regulations (49 C.F.R 195.450) define the term "High Consequence Area" (HCA) as encompassing four categories, the fourth of which is "unusually sensitive area." In its comments, Scott County expressed concern about this last category of HCAs, the "unusually sensitive areas."

He claimed that in allowing the Company to submit the Bell Plaine Alternative, the Commission violated the rights of Minnesota citizens. He also insisted that the route described in MPL's route permit application must be considered MPL's preferred route. Finally, he maintained that the Company has not demonstrated that its September 25 Alignment (which includes the Belle Plaine Alternative route) meets the requirement of Minn. Rules, Part 4415.0100 because the Company made no attempt to compare an alignment change within the proposed route buffer to the Belle Plaine Alternative.

The Commission does not find the claims presented by Mr. Giesen to be supported by the law or record in this case. First, Minn. Rules, Part 4415.0075 does not prohibit applicants from submitting alternatives to the route initially proposed in their application, as Mr. Giesen asserted. The rule states in relevant part:

> Subpart 1. **Acceptance for consideration.** The board shall accept for consideration at the public hearing the routes and route segments proposed by the applicant and may accept for public hearing any other route or route segment it considers appropriate for further consideration.

No language in that rule supports Mr. Giesen's contention that once it has submitted an application an applicant may not submit an alternative route. In its July 19, 2006 Order, the Commission recognized its obligation under the rule to include for consideration at the public hearings the applicant's timely submission of the Belle Plaine Alternative.[20]

Second, Mr. Giesen suggested that recognizing whether and when the Belle Plaine Alternative became the Company's preferred route would make a substantive difference in this proceeding. He did not explain why that would be the case or what he believes that difference would be. The Commission finds that making such findings would have no impact on its consideration and decision regarding the merits of the Company's ultimately proposed route: the September 15, 2007 Alignment.

Mr. Giesen objected that the Company's information about the Belle Plaine Alternative is inadequate because it does not convey relevant facts. This objection must fail, however, because it relies on facts not in the record and that have not been subject to discovery and cross-examination.

Finally, Mr. Giesen objected that the Company's route comparison information was inadequate because while it compared the Belle Plaine Alternative Route to the route proposed in the application, it did not compare the Belle Plaine Alternative with possible alignment changes within the original route. This objection misconstrues and overstates the obligation of an applicant regarding the presentation of information about the alternative routes it proposes for consideration at the public hearings. The proposer of a route or route segment need not compare its proposal with all possible alignments within the original route. The Commission finds that its rules do not impose such an overwhelming and unreasonable burden.

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[20] *In the Matter of the Application of Minnesota Pipe Line Company for a Routing Permit for a Crude Oil Pipeline*, Docket No. PL-5/PPL-05-2003, ORDER ACCEPTING ALTERNATIVE ROUTE SEGMENT PROPOSALS FOR CONSIDERATION AT THE CONTESTED CASE HEARING (July 19, 2006), page 4.

In sum, the Commission finds that Mr. Giesen has presented no basis for rejecting the ALJ's Conclusions.

E. MPIRG's Exception

In her Conclusion #3, the ALJ concluded that the Company had given proper notice of the public hearings and all procedural requirements for the Certificate of Need and the Routing Permit were met. MPIRG did not base its exception to the ALJ's conclusion on any alleged failure to comply with statutory or rule notice requirements. Instead, MPIRG asserted that the notice provided in this proceeding violated landowners' constitutionally guaranteed due process of law.

MPIRG's position is that MPL's compliance with Minnesota's current statutes and rules regarding notice to landowners potentially affected by the Company's proposed pipeline, augmented by its compliance with additional notice requirements imposed by the Commission, is inadequate to bring the Company in line with the due process requirements of the United States Constitution. The Commission disagrees.

Here are the ways the Company provided notice to landowners in this case:

First, within 20 days of the Commission's acceptance of MPL's application, the Company published the notice required by Minn. Rules, Part 4415.0050 in newspapers in each county in which the route was initially proposed. Minnesota statutes and rules impose no further notice obligation upon an applicant for a pipeline routing permit.

Second, at the direction of the Commission,[21] the Company mailed written notice to all affected landowners within the route proposed in the Company's application.

Third, at the direction of the Commission,[22] the Company placed and maintained the Certificate of Need and Routing Permit applications on a website so that they could be accessed electronically. The website also included additional items including county-specific maps, a "Frequently Asked Questions" section, project newsletters, contact information, links to the Department, the Commission, and the Commission's e-dockets website, and additional relevant documents.

Fourth, the Company sent copies of the full notice of acceptance and notice of public information meetings, as published in the newspapers, to both centerline and adjacent landowners.

Fifth, the Company published newsletters in April, August and October of 2006. The newsletters were sent to thousands of people, including landowners whose property would be crossed by the proposed pipeline, local officials, and other interested persons. The August newsletter included information on the public and evidentiary hearings.

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[21] See *In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline*, Docket No. PL-5/CN-06-2, ORDER GRANTING VARIANCE AND ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE (February 16, 2006) at page 5.

[22] *In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline*, Docket No. PL-5/CN-06-2, NOTICE AND ORDER FOR HEARING (February 16, 2006) at page 8.

Sixth, the Company maintained a toll-free number from prior to the beginning of the regulatory process to take comments and answer citizen and landowner questions.

In challenging the constitutional adequacy of this level of notice, MPIRG suggests that the Constitution requires that each time the applicant or other party proposes a change to the initially proposed pipeline route or alignment that a new round of mailed notice must be sent to landowners potentially affected by the new proposals, alerting them to the fact that they are now in the path of a proposed route or alignment and giving those landowners exactly the same opportunities that landowners within the initially proposed route had to intervene in the proceeding and suggest other routes and alignments before public and evidentiary hearings are held.

Given the likelihood that numerous additional routes will be proposed and that even more numerous alignment changes are likely to occur during any pipeline routing procedure, a rule of reasonableness applies, limiting the number of times written notice must be mailed to newly potentially affected landowners, thereby setting off another round of petitions to intervene from persons now in the path of a newly proposed route or alignment, together with their proposals for additional routes and alignments, before the process can move forward. There is a public interest value (for landowners as well as for the applicant) in reaching a final decision on where a needed pipeline will be located. This public interest value must be balanced against landowners' desire to be personally notified by mail that their land is now potentially in the path of a proposed route or alignment.

The pipeline routing process is by its nature dynamic. In the course of such a proceeding, land not in the initially proposed route or alignment regularly becomes directly in the path of someone's alternative proposal. In such a process, the pipeline's route is never fully settled until the Commission's Order defining that route at the end of the process. And even after that Order the exact alignment can shift within the route thereafter, essentially leaving the alignment somewhat malleable until the pipe is in the ground. Given the nature of the pipeline routing process, then, it is not reasonable to require direct mailed notice to every landowner potentially affected by every routing permutation proposed by anyone in the course of this proceeding.

Given these considerations and the record of notification to landowners in this case, which has complied with and exceeded the requirements of applicable rules and Commission Orders, the Commission cannot agree with MPIRG that the notice given to landowners by MPL in this case does not comport with constitutional due process requirements. The Commission will adopt the ALJ's Conclusion 3 as written.

V. Adoption of ALJ's Findings and Conclusions, as Modified

As reviewed in the foregoing Section IV, the Commission has considered many exceptions to the ALJ's Report. Commission action taken on those Findings, Conclusions and Exceptions is recorded as follows:

A. General Exceptions

1. The Commission modifies ALJ Finding 1 regarding the applicant's legal name as recommended by MPL:

   Finding 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.

2. The Commission modifies ALJ Finding 46 related to mid-point as recommended by MPL:

   Finding 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. The Commission modifies ALJ Finding 54 regarding corporate structure as recommended by MPL:

   Finding 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.

4. The Commission makes a new **Finding 77A**: The record evidence demonstrates that the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of the energy supply to MPL, its customers, or to the people of Minnesota and neighboring states.

5. The Commission modifies ALJ Finding 201 by adopting MPL's suggested language to address concern about the Red Tail Ox Cart Trail Network, as follows: 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.

6. The Commission adopts ALJ Finding 207 as written.

7. The Commission modifies ALJ Finding 267 and Footnote 332 correcting the name of S. Allen Friedman as follows:

   Finding 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.

B. Exceptions Related to Evaluation of Alternatives

1. The Commission adopts ALJ Findings 88 and 89 as written.

2. The Commission adopts Findings 97 and 103 as written.

C. Exceptions Concerning Impact on the Environment and the Environmental Assessment

1. The Commission adopts Finding 94, adding the underlined sentence suggested by the Department, further modified at the suggestion of Gardens of Eagan by inserting the word "usually" between "still" and "support" so that the Finding reads as follows:

   Finding 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. <u>However, while agricultural land is being crossed by the pipeline, it is not being lost, since this land will still usually 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.</u>

2. The Commission adopts Finding 121, modified following the Department's suggestion, as indicated:

   Finding 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. In response to MPL's exception to Conclusion 9, adopt the Department's proposed modification as indicated below:

   Conclusion 9. The ~~Routing Permit should require a~~ <u>Permittee shall obtain</u> a Stormwater Pollution Prevention Plan <u>or equivalent that is</u> 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. In response to MPL's exception concerning effect on crop production, adopt Finding 131 with the Department's suggested modification, which is itself modified by Garden of Eagan's suggestion t add the word "usually" between "will" and "still":

   Finding 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 **usually** 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. Mitigative Actions for Organic Agricultural Land are also addressed in the Appendix to the Agricultural Impact Mitigation Plan.

5. In response to MPL's exception related to site sediment control, the Commission adopts ALJ Finding 169 and Conclusion 10 as written.

6. In response to Scott County's comments on environmental review procedures, adopt the ALJ's Finding 187 and Conclusion 6 as written.

7. In response to MPL's exception to wording on restoring habitat, the Commission

   a) adopts ALJ Finding 206 and Conclusion 25 as written;

   b) amends the Departments's proposed Route Permit V, C, 14 by adding the following language from Section D, items a and b on page 8 of the Upland Restoration Plan:

      1. MPL is responsible for revegetation of soils disturbed by project-related activities, except in actively cultivated fields.

      2. Disturbed areas will be restored in accordance with recommendations from soil conservation agencies or as requested by the landowner or land management agency.

   c) clarifies that the permit language, consistent with Finding 206 and Conclusion 25, should include language requiring MPL to work with landowners and the DNR local wildlife management programs to restore the land in accordance with the Upland Erosion Control, Revegetation and Maintenance Plan, including providing useful and functional habitat if the landowner so requests.

8. In response to MPIRG's comments on adverse impacts on the environment of pipeline spills, the Commission adopts Finding 212 as written.

D. Findings and Conclusions Related to Pipeline Safety Issues

1. Relating to the ALJ's Findings 213-214 and Conclusions 22-23 and in response to MPL's comments on pipeline safety conditions, the Commission decides that the routing permit will require the Company to comply with all federal and state safety regulations.

E. Exceptions Related to Impact on Landowners Whose Property is Crossed by the Pipeline

1. In response to MPL's exception regarding organic farming as reflected in Findings 158 and 163 and Conclusion 18, adopt those Findings and Conclusion modified as follows:

   Finding 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 documented active transition to become so.

   Finding 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.

   Conclusion 18. The Routing Permit should require MPL to retain ~~an Organic Certifier~~ a qualified organic consultant at its expense to assist any landowner to identify site-specific construction practices ~~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 documented active transition to become organic certified. that will minimize damage during construction and delay or loss of organic certification for any farm that is Organic Certified or in documented active transition to become Organic Certified.

2. Relating to ALJ Finding 161 and Conclusion 20 in response to MPL's exception concerning contacting landowners for maintenance, the Commission adopts Finding 161 as written and the Department's suggested replacement for Conclusion 20:

Conclusion 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. Relating to ALJ Finding 264 and in response to MPL's proposed qualification of its prior commitment, adopt Finding 264 with the following modification suggested by the Department:

   Finding 264. Absent environmental or engineering concerns requiring an adjustment to the September 15 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.

4. Relating to ALJ Finding 294 and in response to the Reinhardt exception regarding Department conduct, adopt Finding 294 with the following modification suggested by the Department, including deletion of the associated footnote:

   Finding 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.

5. Relating to ALJ Findings 318-333 and Conclusions 26 and 27 and in response to MPL's exceptions concerning the scope of the Routing Proceeding, adopt ALJ Findings 318-333, Conclusion 27 as written, and Conclusions 24 and 26 modified as follows:

   Conclusion 24. The Routing Permit should require MPL to work with landowners to provide access to their property, 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. MPL shall not unreasonably deny a landowner's request to cross the easement to access the landowner's property.

   Conclusion 26. The Routing Permit should require MPL to negotiate agreements with landowners that will give the landowners access to their property, 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. MPL shall not unreasonably deny a landowner's request to cross the easement to access the landowner's property.

6. The Commission will insert the requirements of Conclusions 24 and 26, as modified above, into the Pipeline Permit.

7. The Commission rejects the additional Conclusions proposed by MPL and Gardens of Eagan.

F. Notice to Landowners

1. Relating to ALJ Finding 234 and in response to MPL's exceptions to findings related to adequate notice to landowners along alternative routes selected for consideration, the Commission adopts Finding 234 with the following modification suggested by the Department:

   Finding 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.~~

2. The Commission adopts ALJ Findings 307-311 as written.

G. Route Designation

1. The Commission adopts Finding 263 as written and adopts Conclusion 7 with the following modification suggested by the Department:

   Conclusion 7. MPL has demonstrated that its ~~September 15, 2007~~ January 5, 2007 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 mile post (MP) 0 to ~~199~~ 119 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~~ January 5, 2007 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~~ January 5, 2007 Alignment;

© from approximately MP 274.5 to 275.5, a route width consistent with MPL's Stipulation with GOE.

H. Other Conditions Recommended by the ALJ in Her Conclusions

1. The Commission adopts ALJ Conclusion 8, 11, and 12 as written.

2. The Commission adopts the Department's suggested modification of Conclusion 13 as follows:

   Conclusion 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. The Commission adopts ALJ Conclusion 14 as written.

4. The Commission adopts Conclusion 15 with the following the modification suggested by the Department:

   Conclusion 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.

5. The Commission adopts Conclusion 16 with the following modification suggested by the Department:

   Conclusion 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.

6. The Commission adopts adopt ALJ Conclusion 21 as written.

7. The Commission adopts Conclusion 28 with the following modification suggested by the Department:

   Conclusion 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.

8. The Commission adopts Conclusion 29 and 30 as written

9. The Commission amends Section VII of the Department's proposed Pipeline Routing Permit at page 11 to direct the Company to send to landowners within the approved route a copy of the Pipeline Routing Permit

within 10 days of the Company's receipt of that permit from the Commission; clarify that this requirement is in addition to the Minnesota Rule requirement that the Company send a copy of the Pipeline Permit to the landowners 10 days prior to entering upon the landowner's land to begin construction thereon.

10. The Commission amends Section V, L of the Department's proposed Site Permit by adding a new Special Condition, item 9, as follows: "MPL is authorized to acquire up to 50 feet of additional maintained right-of-way at milepost 46 requested by landowners S. Alan and Sharon Friedman in order to locate the pipeline with less proximity to their home."

VI. Commission Analysis and Action Regarding Proposed Route

Based on her 339 Findings of Fact and 31 Conclusions, the ALJ recommended that the Commission grant MPL's application for a Routing Permit for a crude oil pipeline, conditioned as specified in her Conclusions 8-30 and located within a route which is referred to as the September 15 Alignment and is described as follows:

> (a) from Mile Post (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;
>
> (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 Gardens of Eagan (GOE).

The standard applicable to the Commission's determination of the route of a proposed pipeline is stated in Minn Rules, Part 4415.0100, subp. 2:

> In determining the route of a proposed pipeline, the board [now the Commission] shall 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.

Consistent with that standard, the Commission has, over the course of this matter, considered the factors identified in Minn. Rules, Part 4415.0100, subp. 2: the characteristics, the potential impacts, and the methods to minimize or mitigate the potential impacts of all proposed routes and has selected a route that minimizes human and environmental impact. The extensive discussion in Section IV regarding the ALJ's Report and the exceptions taken to that Report, as well as the summary of Commission response to those issues in Section V, demonstrates that the Commission has taken these considerations into account in reaching its decision in this matter.

Based on these considerations, as well as its considerations detailed below regarding additional criteria identified in Minn. Rules, Part 4415.0100, Subp. 3, the Commission concludes that it will

grant MPL a Routing Permit, conditioned as specified herein, for a route slightly narrowed at one point from what the ALJ recommended. As recommended by the Department, the Commission will approve narrowing the ALJ's proposed route to 150 feet on each side of the September 15 Alignment from Mile Post (MP) 0 to 119. Since this route parallel's MPL's existing pipeline system, narrowing the route appropriately removes additional land from the potential path of the pipeline.

As indicated above, the Commission's selection of this identified route is consistent with its consideration of the criteria identified in Minn. Rules, Part 4415.0100, Subp. 3[23] which are as follows:

> A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;
>
> B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;
>
> C. lands of historical, archaeological, and cultural significance;
>
> D. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;
>
> E. pipeline cost and accessibility;
>
> F. use of existing rights-of-way and right-of-way sharing or paralleling;
>
> G. natural resources and features;
>
> H. the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 4415.0185 for pipeline right-of-way preparation, construction, cleanup, and restoration practices;
>
> I. cumulative potential effects of related or anticipated future pipeline construction; and
>
> J. the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minnesota Statutes, section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

First Criterion (A): the Commission has considered the impact of the selected route on human settlement, existence and density of populated areas, existing and planned future land use, and management plans. The Commission concludes that the selected route, together with the conditions incorporated into the Routing Permit, has less impact upon those items than the other routes proposed in this proceeding.

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[23] The ALJ properly cited those criteria in her Report at Finding of Fact #136 and found that MPL's application and Environmental Assessment Supplement addressed each criterion for selection of a route. ALJ's Report, Finding of Fact #245.

A primary example of the impact of this criterion on route selection in this matter is the decision not to select the existing route beyond MP 119. The option of following the existing pipeline after MP 119 was extensively addressed by the ALJ in her Report.[24] The Commission has considered these findings and the record that supports them. The Commission adopts these findings in support of its decision to reject the existing route option after MP 119 and to select the Company's September 15 Alignment, as narrowed herein.

As applied to the Staples Alternative portion of the selected route[25], consideration of these items (impact on human settlement, existence and density of populated areas, existing and planned future land use, and management plans) favors the Staples Alternative over the Company's initially proposed route. MPL conducted a comparative analysis of each alternative.[26] Regarding these particular considerations, the Company's analysis demonstrated among other things that, compared to the proposed route, the Staples Alternative comes within 300 feet of 14 more residences.[27] Nevertheless, commenting landowners were split: while some voiced opposition to the Staples Alternative, others acknowledged the proximity concern but believed the Staples Alternative was preferable because landowners along the existing line have already been affected and following the initially proposed line rather than the Staples Alternative would adversely affect potential development.[28] Significantly, the Staples Alternative was supported by the City of Staples and Lakewood Health System because it is more consistent with their future development plans.[29]

As applied to the Belle Plaine Alternative portion of the selected route[30], consideration of these items (impact on human settlement, existence and density of populated areas, existing and planned future land use, and management plans) also favors the Belle Plaine Alternative over the Company's initially proposed route. A landowner expressed concern at a public hearing that the Belle Plain Alternative might decrease the potential to develop her property, which is located 1/4 mile from land that Belle Plaine intends to annex. The ALJ found, however, that the Belle Plaine

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[24] ALJ Report, Findings of Fact #237-243.

[25] The Staples Alternative follows the existing pipeline system farther than the proposed pipeline. As proposed, the new pipeline left the existing system route near MP 98 whereas the Staples Alternative follows the existing pipeline to approximately MP 119.

[26] ALJ Report, Finding of Fact #220.

[27] The originally proposed route came within 300 feet of 6 residences; the Staples Alternative is located within 300 feet of 20 residences.

[28] ALJ's Report, Finding of Fact #224.

[29] ALJ's Report, Finding of Fact #222.

[30] The Belle Plaine Alternative crosses out of the initially proposed route corridor between MP 242 and 243 and re-enters the initially proposed route corridor near MP 248. As depicted on the September 15 Alignment, it appears that the Belle Plaine alignment largely follows property lines. ALJ's Report, Finding of Fact 229.

Alternative would avoid planned developments and urban growth areas around Belle Plaine and was supported by the City of Belle Plaine and Scott County.[31] The ALJ found and the Commission agrees that the record as a whole demonstrates that the BellePlaine Alternative minimizes the human impacts when compared with the portion of the initially proposed route it replaces.[32]

Second Criterion (B): The selected route, together with the conditions incorporated into the Routing Permit, minimizes the impact upon the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands. MPL evaluated the environmental impact of several route alternatives. In evaluating new proposed routes, it quantified and compared potential environmental impacts and also compared the environmental impact of following the existing pipeline.[33] Overall, no other route is better than the selected route in terms of minimizing impact on these resources.

The ALJ's Report addresses the impacts of the selected route on these items (natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands) in Findings 119, 142 - 167 and 187, 191 - 199, 202 - 208. The Commission has reviewed these findings and the record on which they are based and adopts them, as slightly modified in the preceding section in response to certain exceptions. The cited ALJ's findings provide a sound basis to conclude, that the selected route properly respects the items identified in the second criterion: natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands.

As applied to the Staples Alternative portion of the selected route, consideration of these items (natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands) favors the Staples Alternative over the Company's initially proposed route. MPL conducted a comparative analysis of each alternative. The Company's analysis demonstrated that, compared to the proposed route, the Staples Alternative is shorter, crosses one less perennial waterbody, crosses one additional intermittent waterbody, maintains a greater distance from the Crow Wing River, and avoids the Villiard Wildlife Management Area.[34] The Department of Natural Resources (DNR) stated at hearing that the Staples Alternative addressed its concerns about the potential impact on the Villiard Wildlife Management Area and the Crow Wing River.[35] The ALJ found and the Commission agrees that the record as a whole demonstrates that the BellePlaine Alternative minimizes the environmental impacts when compared with the portion of the initially proposed route it replaces.

Third Criterion (C): The selected route, together with the conditions incorporated into the Routing Permit, minimizes the impact upon lands of historical, archaeological, and cultural significance. MPL reviewed existing site data maintained by the Minnesota Historical Society to identify

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[31] ALJ's Report, Finding of Fact #227.

[32] ALJ's Report, Finding of Fact #236.

[33] ALJ's Finding of Fact #118.

[34] ALJ's Report, Finding of Fact #220.

[35] ALJ's Report, Finding of Fact #218.

previously recorded cultural resources within the proposed construction right-of-way. Three were identified; none have been verified by field survey or assessed for listing in the National Register of Historic Places. MPL has conferred with the U.S. Army Corps of Engineers and the Minnesota State Historic Preservation Officer to review the project and the model for occurrence of unanticipated or undocumented discoveries along the pipeline route.[36]

Regarding cultural resources, the ALJ found that MPL has evaluated existing cultural resources, consulted with federal and state agencies, and is relying upon the Corps of Engineers to initiate the required contacts with Indian tribes. MPL has promised to assist the Corps of Engineers with tribal consultations as directed, conduct a field survey to identify cultural resources along the pipeline route, and report any identified cultural resources to the appropriate agency. MPL has also promised to develop and implement an "unanticipated discoveries plan" to follow in the event that an undocumented cultural resource is discovered during construction.[37]

Regarding impact upon archaeologically significant sites, the ALJ has recommended and the Commission will include as a Permit Condition the requirement that the Company 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 will be required to mark and preserve any archaeological sites that are found during construction and shall promptly notify the Historical Society and Commission of the discovery. MPL will also be prohibited from excavating at such locations until so authorized by the Historical Society.[38]

No cultural, historical, or archeological sites were identified in either the Staples Alternative or the Belle Plaine Alternative or the route segments they replaced. Therefore consideration of these items (impact upon lands of historical, archaeological, and cultural significance) did not affect the Commission's choice of the selected route.

Fourth Criterion (D): the selected route, together with the conditions incorporated into the Routing Permit, minimizes the impact upon economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations. In reaching this conclusion, the Commission considered relevant ALJ's Findings of Fact and the basis for those findings in the record, including the following: Finding of Fact 142, 145, 147, 149, 150, 153, 154, 155, 156, 193, 194, 195, and 196. The Commission finds that these findings, some of which have been modified slightly in the foregoing section regarding exceptions, provide a sound basis for considering the impact of the selected route on the items identified in the Fourth Criterion: economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations.

Having considered those items, the Commission concludes that the selected route minimizes negative impacts on humans and the environment with respect to the items listed in the fourth criterion and is preferable to the alternative route segments not selected.

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[36] ALJ's Report, Finding of Fact #168.

[37] ALJ's Report, Finding of Fact #200.

[38] ALJ's Report, Conclusion #14.

By departing from the existing route after MP 119, the selected pipeline route avoids significant disruption of commercial and industrial economies that would occur if the existing pipeline route were followed entirely.

The principal economy impacted by the pipeline is agriculture. Approximately 72 percent of the length of the pipeline route crosses predominantly agricultural land[39] some of which is are Organic Certified or in the process of becoming certified. MPL's Environmental Assessment Supplement includes an analysis of several items relevant to agriculture: land use, terrain and geology, and soil.[40]

The Environmental Assessment Supplement also includes an Upland Erosion Control, Revegetation and Maintenance Plan. MPL's compliance with this Plan is required by the Routing Permit.[41] The Plan includes appointment of an Environmental Inspector whose specified responsibilities include 1) identifying and marking the boundaries of sensitive resource areas, waterbodies, wetlands, or areas with special requirements along the construction work area; 2) verifying that subsoil and topsoil are tested to measure compaction and determine the need for corrective action; 3) regularly inspecting erosion control measures; and 4) assuring compliance with all federal, state, and local permit conditions, as well as negotiated landowner requirements.[42]

The Upland Erosion Control, Revegetation and Maintenance Plan also requires preconstruction planning; protection during installation; restoration, including cleanup and permanent erosion control devices, soil compaction mitigation and revegetation; as well as post-construction monitoring and maintenance. As part of the plan, topsoil and subsoil will be stockpiled separately in agricultural areas so that it may be appropriately replaced.[43]

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[39] ALJ Finding of Fact #193.

[40] ALJ Finding of Fact #142.

[41] Routing Permit, Article V,C,1 requires the Permittee to comply with "those practices set forth in its Route Permit Application and Environmental Supplement." Among the practices set forth in the Environmental Supplement are those detailed in

1) Appendix B to that Supplement, the Company's Upland Erosion Control, Revegetation, and Maintenance Plan;

2) Appendix D, the Wetlands and Waterbody Construction and Mitigation Plan; and

3) the Right-of-Way Preparation Procedures and Construction Activity Sequence detailed in the Application and Environmental Assessment Supplement to the Application.

[42] ALJ Finding of Fact #144.

[43] ALJ Finding of Fact #145.

Most directly related to agricultural concerns, MPL has developed an Agricultural Impact Mitigation Plan (AIMP) in consultation with the Minnesota Department of Agriculture (MDA) to identify measures that MPL will implement to avoid, mitigate, or provide compensation for negative agricultural impact from pipeline construction. MPL will continue to consult with MDA during the Routing Permit process and will incorporate the final AIMP into specifications for construction on agricultural land.[44] The Routing Permit requires the Company to comply with the AIMP.[45] Highlights of the AIMP are summarized in the following paragraphs.[46]

The AIMP addresses several of the concerns raised during the public hearings including pipeline depth, separation and replacement of topsoil, soil compaction, drain tile protection and repair, conservation reserve land, ingress and egress to the right-of-way, weed control, and advance notice of access to property.[47]

The AIMP states that MPL will develop and put into place a procedure for the processing of anticipated landowners' or tenants' claims for construction-related damages to standardize and minimize landowner and tenant concerns about recovery of damages. Ultimately, if the landowner or tenant and MPL are unable to reach an agreement on the amount of compensation, the landowner or tenant may seek recourse through the state court system.[48]

In the AIMP, MPL agreed to retain and fund an Agricultural Monitor to audit MPL's compliance with the AIMP. The Agricultural Monitor will report directly to MDA. The Monitor will have no direct authority over construction, but will report instances of noncompliance to MPL's Agricultural Inspector and prepare regular compliance reports and submit them to MDA.[49]

MPL also agreed to retain an Agricultural Inspector. The Agricultural Inspector will be a full-time member of MPL's environmental inspection team, with authority to stop construction activities that are out of compliance with the AIMP, implement appropriate corrective actions, and train construction personnel on the provisions of the AIMP prior to construction, and on specific topics as needed.[50]

After the AIMP was prepared, MPL and the MDA were asked to add protections to the AIMP to address organic farms. In response, MPL, the MDA , and Gardens of Eagan, an organic farm,

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[44] ALJ Finding of Fact #147.

[45] Routing Permit, Article V,B.

[46] ALJ Finding of Fact #153-156.

[47] ALJ Finding of Fact #149.

[48] ALJ Finding of Fact #150.

[49] ALJ Finding of Fact #153.

[50] ALJ Finding of Fact #154.

negotiated an Appendix to Agricultural Impact Mitigation Plan for Organic Agricultural Land which was also supported by Dakota County.[51]

The Appendix defines organic agricultural lands, adds provisions to increase preservation of organic soils, control erosion, prevent contamination of organic lands with prohibited substances, provide soil restoration more consistent with organic management plans, and provide compensation for crop yield and crop quality losses as well as organic decertification. The Appendix identifies reasonable and prudent mitigation measures that apply specifically to farms that are Organic Certified or farms that are in active transition to become Organic Certified. Requiring that the Routing Permit include the Appendix to the AIMP will assure that organic agriculture issues are adequately addressed for farms that are Organic Certified or in the process of becoming certified.

The Commission concludes that in choosing the selected route it has properly considered the impact of the pipeline on relevant economies pursuant to Criterion 4.

Fifth Criterion (E): The selected route does not suffer from consideration of pipeline cost and accessibility. Information filed by the Company on September 28, 2006 demonstrates that the agreements with landowners have added roughly nine miles to the length of the pipeline with little substantive difference in the environmental impact.[52] The alignment changes were made for a variety of reasons, including following roads, fence lines or property lines, avoiding drain tiles, and, in some instances, placing more of the pipeline on landowners' property.[53] While the selected route is longer and hence more costly than earlier proposed routes, the changes resulting in a longer route are to minimize impact on humans and the environment, thereby supporting the overall goal of this process.

Regarding accessibility, the ALJ found that MPL's Environmental Assessment Supplement states that the Company had not identified any instances where the construction right-of-way could not be accessed by an existing public or private road.[54] There is no evidence on the record that the new route segments proposed and accepted by the Commission present accessibility problems.

Sixth Criterion (F): The record shows that the Company has considered using existing rights-of-way and right of way sharing and paralleling and has used it to the extent warranted, i.e., from MP 0 to MP 119.3.

First, the Company's initially proposed route parallels the existing pipeline system from MP 0 to MP 98. At that point, the Company's preferred route diverted from the existing system, running south and west of the Twin Cities metropolitan area to the KPL interconnect in Rosemount. As the ALJ found, the option of following the existing pipeline system for the full length of the route was properly rejected by the Company because of the residential and commercial development along its existing pipelines in Anoka, Dakota, and Washington Counties. Because of that development,

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[51] ALJ Finding of Fact #155.

[52] ALJ Finding of Fact #261.

[53] ALJ Finding of Fact #260.

[54] ALJ's Finding of Fact #184.

expansion of existing pipeline right-of-way would significantly disrupt settled areas in these counties, as is apparent from the aerial maps of the existing pipeline route.[55]

Second, the Staples Alternative which the Company later proposed and which the Commission has adopted as part of the selected route follows the existing pipeline system farther than the originally proposed pipeline route. As initially proposed, the new pipeline left the existing system route near MP98. With the Staples Alternative, the proposed pipeline follows the existing to approximately MP119.[56] Use of this additional portion of the existing system is warranted because, as the ALJ properly found, the record as a whole supports the selection of the Staples Alternative to the proposed route because, as shown above in the context of the Second Criterion, the Staples Alternative will have less human and environmental impact.[57]

In total, then, the selected route follows the existing pipeline system from MP 0 to MP 119.3. At that point (MP 119.3), to avoid significant residential and commercial development the selected route properly diverts from the existing pipeline route for the remainder of the distance. The record shows that following the existing pipeline route after MP 119.3 would have greater adverse impact on human settlement, the natural environment and economies than the proposed route. It would also be more expensive to follow the existing route.[58]

Seventh Criterion (G): In making its route selection in this case, the Commission has considered the natural resources and features affected by the proposed pipeline and the selected route..

In reaching its selection, the Commission has reviewed the entire record, including the Company's application, which contained important and extensive information regarding the pipeline's impact upon natural resources. First, the application presented several sections relevant in whole or in part to the pipeline's impact on natural resources: 1) Location of Preferred Routes and Description of Environment - Minn. Rules, Part 4415.0140; 2) Environmental Impacts of the Preferred Route - Minn. Rules, Part 4415.0145; 3) Right-of-Way Protection and Restoration Measures - Minn. Rules, Part 4415.0150; and 4) Evidence of Consideration of Alternative Routes.

In addition, the Commission reviewed the Company's Environmental Assessment Supplement. This document analyzed the impact of the proposed pipeline route on land use, terrain and geology, soil, vegetation, wildlife and fisheries, including endangered and threatened species, and groundwater and surface water resources, including waterbodies and wetlands.[59]

The Commission also considered (and has amended to strengthen in some instances) the plans and procedures that the Company has adopted to safeguard natural resources, including the Upland

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[55] ALJ's Finding of Fact #140.

[56] ALJ's Finding of Fact #221.

[57] ALJ's Finding of Fact #226. The Commission approves and adopts the ALJ's analysis and Findings of Fact 217-225 that lead to Finding of Fact #226.

[58] ALJ's Finding of Fact # 243.

[59] ALJ's Finding of Fact # 142.

Erosion Control, Revegetation, and Maintenance Plan, the Agricultural Impact Mitigation Plan and Appendix, and the Wetland and Waterbody Construction and Mitigation Procedures.

Based on a thorough review of the impacts and safeguards for natural resources, the Commission concludes that the selected route, together with the mitigation plans adopted by the Company and the conditions incorporated into the Routing Permit regarding that route, minimizes negative consequences to natural resources.

Eighth Criterion (H): The Commission has considered the extent to which human or environmental effects are subject to mitigation 1) by regulatory control and 2) by application of the permit conditions contained in Minn. Rules Part 4415.0195 for pipeline right-of-way preparation, construction, cleanup, and restoration practices. The Commission concludes that the Permit Conditions adopted in the Routing Permit reasonably minimize the human and environmental effects of the selected route. In addition, the record does not demonstrate that the selected route is less subject to regulatory control or less amenable to the mitigative effects of the permit conditions adopted in this matter than the route segments not chosen. Consideration of this criterion, then, does not weigh against the selected route.

- **Conditions Contained in Minn. Rules Part 4415.0195**

Reasonable and prudent regulatory control to safeguard humans and the environment is exercised through the conditions the Commission has made part of the Routing Permit issued to MPL in this Order. Those conditions include the permit conditions contained in Minn. Rules. Part 4415.0195 regarding pipeline right-of-way preparation, construction, cleanup, and restoration practices.

- **Other Permit Conditions**

Reasonable and prudent regulatory control to safeguard humans and the environment is also exercised by adopting Permit Conditions requiring the Company to comply with the mitigation plans and procedures the Company has committed to implement. Accordingly, the Permit Conditions section of the Routing Permit contains a requirement that the Permittee comply with its Agricultural Impact Mitigation Plan and associated Appendix[60] and a further requirement that the Permittee comply with "those practices set forth in its Route Permit Application and Environmental Supplement."[61] Among the practices set forth in the Environmental Supplement are those detailed in

1) Appendix B to that Supplement, the Company's Upland Erosion Control, Revegetation, and Maintenance Plan;

2) Appendix D, the Wetlands and Waterbody Construction and Mitigation Plan; and

3) the Right-of-Way Preparation Procedures and Construction Activity Sequence detailed in the Application and Environmental Assessment Supplement to the Application.

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[60] Routing Permit, Article V, B.

[61] Routing Permit, Article V,C,1.

See also Article V - PERMIT CONDITIONS of the attached Routing Permit for a full list of permit conditions safeguarding humans and the environment.

Ninth Criterion (I): The Commission has considered the cumulative potential effects of related or anticipated future pipeline construction by the Company. Several members of the public were concerned about the possibility of additional pipeline construction by the Company in the future. They feared that once a right-of-way is established for this pipeline future regulators would favor the route over other possible routes. Such a preference would, in their opinion, increase the risk of a broader right-of way and commensurate loss of property value to the landowners.

As the ALJ noted, however, MPL has stated on the record that it has no plans to run a parallel pipeline along the proposed route in the future. Instead, the Company has explained that the capacity of the pipeline could be expanded simply by adding additional pump stations. MLP stated that the design would accommodate up to eight pump stations with a maximum throughput capacity of approximately 350,000 barrels per day,[62] a very significant increase over the pipeline's current design which has a design capacity ranging from 60,000 to 165,000 barrels per day (bpd).[63]

The ALJ concluded and the Commission agrees that based on the evidence in the record, it is more likely that MPL would seek to expand capacity by increasing the pumping stations on the proposed pipeline than by broadening the right-of-way and lay another line.[64]

Finally, the record does not demonstrate that selection of the September 15 Alignment would make it more likely that the Company would require additional pipeline construction in the future than if it selected the other route segments. Consideration of the Ninth Criterion therefore does not weigh against the selected route.

Tenth Criterion (J): The Commission has considered the impact of the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minn. Stat. § 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.[65] Specifically, the Commission has reviewed the list of federal, state, and local agencies and authorities supplied by MPL, together with the types of permits required by those agencies and authorities for the pipeline and associated facilities, as part of its application. In choosing between the selected route (the

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[62] ALJ's Finding of Fact #179.

[63] ALJ's Finding of Fact #45.

[64] ALJ's Finding of Fact #181.

[65] On the general subject of approval by other agencies, the ALJ found that no state agency objected to the Environmental Assessment Supplement. In addition, 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 is complete and accurate with respect to regional concerns and raises no major issues of consistency with Council policies." ALJ Finding of Fact 169.

Company's September 15, 2006 Alignment) and the other route segments proposed in this proceeding these considerations do not weigh against the selected route.

VII. The Commission's Routing Permit

The Department submitted a Routing Permit that reflected its proposed terms and conditions. The Department's proposed Routing Permit incorporated some of the ALJ's recommended conditions, modified some, and did not include some. The Commission has clarified and amended the Department's proposed Routing Permit so that the final product reflects the Commission's decisions herein. The Commission will issue the resulting Routing Permit as an attachment to this Order.

The Commission will require that MPL send within ten days of receiving the Routing Permit a copy of the Routing Permit to all landowners within the approved route, accompanied by two attachments: the two primary documents referred to in the Permit, i.e., the Agricultural Impact Mitigation Plan including the appendix and the Upland Erosion Control, Revegetation, and Maintenance Plan. The Routing Permit is also to be accompanied by a cover letter drafted by Commission staff 1) informing landowners where all the other relevant environmental mitigation plans are located, e.g., on which websites, at what libraries, etc. and 2) clarifying that the requirements of the Permit take precedence over any easement agreements made between the Company and landowners.

ORDER

1. Except as modified above, the Commission adopts the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations submitted

2. The Commission hereby adopts the Administrative Law Judge's Recommendation 2 to grant MPL's Application for a Routing Permit, subject to the conditions that are set forth by the ALJ in her Conclusions, as modified in this Order.

3. The Commission issues to Minnesota Pipe Line Company, LLC the attached pipeline Routing Permit.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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 (MN relay service)

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 13th day of April, 2007 she served the attached

ORDER GRANTING ROUTING PERMIT.

MNPUC Docket Number: PL-5/PPL-05-2003

XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

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Peter Brown
Eric Witte
Marcia Johnson
Kate Kahlert
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Bob Cupit
Ken Wolf
David Jacobson
Bret Eknes
Mary Swoboda
Jessie Schmoker
Sharon Ferguson - DOC
Julia Anderson - OAG
Curt Nelson - OAG

Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 13 day of

April, 2007

Mary E. Reid
Notary Public

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