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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
David C. Boyd	Commissioner
Marshall Johnson	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Application for a Pipeline Routing Permit and Partial Exemption from Pipeline Route Selection Procedures for the Nashwauk-Blackberry Natural Gas Pipeline Project

ISSUE DATE: August 23, 2007

DOCKET NO. PL, E-280/GP-06-1481

ORDER INITIATING FULL REVIEW, AUTHORIZING ADVISORY COMMITTEE, REFERRING TO OFFICE OF ADMINISTRATIVE HEARINGS AND ORDER AND NOTICE OF HEARING

PROCEDURAL HISTORY

On March 6, 2007, the Nashwauk Public Utilities Commission (NPUC) proposed to build a 23-mile, 24-inch diameter pipeline in Itasca County to carry natural gas from Blackberry Township to the City of Nashwauk for the purpose of serving a planned steel plant. NPUC filed an application for a pipeline route permit pursuant to Minn. Stat. § 216G.02 and requested partial exemption from the pipeline route permit procedures as provided by Minn. Rules Chapter 4415.

On April 3, 2007, the Commission accepted NPUC's application as fulfilling the requirements for an application seeking partial exemption from the pipeline route selection procedures.

On April 18 and May 19, 2007, the Commission convened public informational meetings.

By June 8, 2007, the Commission had received comments from roughly 85 residents and entities. Roughly 80 of them asked the Commission to, among other things, 1) deny NPUC's request to be exempt from parts of the pipeline route selection process and 2) establish a citizen advisory committee to identify and analyze alternative routes. The Commission also received comments from Great Northern Iron Ore Properties, the Minnesota Department of Transportation and the U.S. Army Corps of Engineers, identifying how the proposal might affect their interests. Finally, both BP Canada Energy Marketing Corp. and the Western Mesabi Mine Planning Board wrote generally in support of NPUC's proposal.

On July 12, 2007, NPUC asked this Commission to convert its initial application from a request for a permit pursuant to a partial exemption to a request for permit pursuant to a full proceeding under Minnesota Rules, Part 4415.0045, and filed additional information in support of its application.

The Commission met on August 9, 2007, to consider this matter. The Commission heard additional arguments from NPUC, the Department and resident Darrell White.

FINDINGS AND CONCLUSIONS

I. Legal Background

Except as otherwise provided by law, no one may build a pipeline without a pipeline routing permit issued by the Public Utilities Commission.

Minnesota Rules Chap. 4415 establishes the procedures and requirements for obtaining a pipeline route permit. Among other things, this chapter directs applicants to analyze multiple possible routes, provides for a citizen advisory committee to assist in evaluating alternatives, and requires the Office of Administrative Hearings to conduct evidentiary hearings on the matter. But where a proposed pipeline is not expected to have a significant impact on humans or the environment, the rules also provide for granting a partial exemption from these procedures.

When the Commission receives an application for a partial exemption, it convenes public meetings and receives comments on whether to grant the application. In deciding whether to grant the partial exemption, the Commission considers the information in the application, the record of the public meetings, and the filed comments. If the Commission denies the request, the applicant may ask the Commission to continue processing the application under full pipeline route selection procedures.

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[1] Minn. Stat. § 216G.02, subd. 2.

[2] Minn. Rules, Part 4415.0170.

[3] Minn. Rules, Parts 4415.0055 - .0060.

[4] Minn. Rules, Part 4415.0090.

[5] Minn. Rules, Part 4415.0020, subp. 3; Part 4415.0040; and Part 4415.0105, subp. 4. Regulatory references to "the Board" now refer to the Public Utilities Commission. Prior to recently enacted energy legislation, the Commission had the responsibility and authority to issue certificates of need and the Environmental Quality Board (the Board) had the responsibility and authority to issue site or route permits. In 2005, the Minnesota Legislature transferred the Board's siting and routing authority to the Commission and encouraged a certain level of combining of the two processes. See S.F. 1368 - 84th Legislative Session, Article 3, Section 17 and Minn. Stat. § 216B.243, subd. 4.

[6] Minn. Stat. § 216G.05; Minn. Rules, Part 4415.0035, subp. 4.

[7] Minn. Rules, Part 4415.0035, subp. 3.

[8] Minn. Rules, Part 4415.0035, subp. 5.

[9] Minn. Rules, Part 4415.0035, subp. 6.

II. Review Process and Application Requirements

NPUC initially sought to be exempted from the need to comply with the full review procedures, and filed an application designed to meet those more streamlined procedures. After participating in public meetings and reviewing public comments opposing this process, however, NPUC decided not to await Commission action on its exemption request and instead asked the Commission to process the application under full pipeline route selection procedures. In support of this request, NPUC filed information to supplement its initial application.

Having reviewed NPUC's original and supplemental filings and public comments, the Department recommends that the Commission grant NPUC's request to process the application under the full review process and to find that NPUC has met the filing requirements for that purpose. No party opposed this recommendation.

On the basis of its own review of the record and commentors' recommendations, the Commission finds the Department's recommendation reasonable. The Commission will grant NPUC's request to subject its application to the full review process and accept NPUC's application as complete. Consideration of NPUC's route permit application will now proceed in accordance with the requirements of Minn. Stat. § 216G.02 and Minn. Rules, Chapters 1405 and 4415.

III. Citizen Advisory Committee

Commission rules provide for the Commission to appoint a citizen advisory committee to assist in evaluating routes for the pipeline and for the Commission to define the committee's charge. While there is no upper limit on the committee's size, the rules provide for appointing one representative from each county, municipal corporation, town board and regional development commission operating in each county in which a route is proposed to be located.

A number of public commentors asked the Commission to organize a citizen advisory committee to analyze alternative routes for the proposed pipeline. NPUC supports this idea.

After considering the proposed pipeline's size, complexity, potential for controversy and the types of resources along the proposed route, the Department asked for authorization to establish a citizen advisory committee. Specifically, the Department proposes the following:

First, committee members would be solicited from the following governmental units:

- Arrowhead Regional Development Commission
- Itasca County
- City of Taconite
- City of Nashwauk
- City of Coleraine
- City of Bovey
- City of Calumet

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[10] Minn. Rules, Part 4415.0055.

[11] Minn. Rules, Part 4415.0060.

- Blackberry Township
- Trout Lake Township
- Greenway Township
- Nashwauk Township
- Arbo Township
- Iron Range Township
- Greenway Township
- Goodland Township
- Lone Pine Township
- Wawina Township
- Sago Township
- St. Louis County

The Department would compile a list of names for possible appointment to the committee.

Second, committee members would be charged with assisting the Commission in determining (1) what routes should be evaluated and (2) what impacts and issues should be considered in the comparative environmental analysis of all pipeline routes accepted for consideration by the Commission. Members would be expected to participate with Department in up to three working meetings and develop a summary report containing their recommendation.

Finally, the committee would expire upon the Commission's selection of routes to consider at the public hearing.

Based on the Department's analysis and the filed comments, the Commission finds that a citizen advisory committee is warranted. The Commission will authorize the Department to organize a citizens advisory committee in the manner described above.

IV. Referral to Office of Administrative Hearings

The Commission finds that it cannot satisfactorily resolve all questions regarding the reasonableness of the proposed route on the basis of the Applicant's filing. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

The Administrative Law Judge assigned to this matter will conduct hearings as described in this Notice and submit a Report to the Commission. Following receipt of the Administrative Law Judge's report, the Commission will proceed to make its final decision in accordance with Minn. Stat. Chapters 14, 116C and 216G.

V. Administrative Law Judge

The Administrative Law Judge assigned to this case is Steve Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2544.

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[12] Minn. Rules, Part 1405.2400.

[13] Minn. Rules, Part 1405.2500.

VI. Hearings

A. Prehearing Conference

A prehearing conference will be held in this case on Tuesday, September 18, 2007, at 2:00 p.m. in the Summit Room of the Minnesota Department of Commerce, 85 7th Place East, Suite 500, St. Paul, Minnesota 55101.

Pursuant to Minn. Rules, Part 1405.1100, the purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations to foundation for testimony or exhibits, to discuss schedules for hearings and other procedural events, and to resolve other matters that may be necessary or appropriate. Potential interveners, and other interested persons, may attend the prehearing conference.

The Administrative Law Judge may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the administrative law judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the Administrative Law Judge. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the Administrative Law Judge.

B. Public Hearing/Contested Case Hearing

A public hearing following the contested case format prescribed by Minnesota statutes and rules will be held in this matter. The hearing will include cross-examination by parties, questioning by interested persons, and direct testimony or comments from the public. Conduct of the hearing is addressed more fully below in Section IX (Procedural Outline), below.

Since this Order is transferring jurisdiction over this matter to the Office of Administrative Hearings for purposes of conducting the contested case proceeding, the date, time, and place of the public hearing or hearings will be determined by the Administrative Law Judge assigned to this matter by the Office of Administrative Hearings in light of the developing circumstances of this matter. This information will be duly noticed as required by applicable statute and rule.

VII. Public Participation

A. Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by legal counsel, or by a person of their choice, or they may represent themselves. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents. Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

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[14] Minn. Stat. Chap. 14.

[15] Minn. Rules, Chap. 1405.

B. Public Adviser

The Commission has authorized the Department to name a public adviser for the project. The public adviser is someone who is available to answer questions from the public about the permitting process. In this role, the public adviser may not act as an advocate on behalf of any person. The Department has named Suzanne Steinhauer of the Department's Energy Facilities Permitting Unit to serve as the Public Adviser for this project. Her address is Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St Paul, MN 55101-2198 and her phone number is (651) 296-2888.

C. Commission's Representative; Advice Regarding Procedures

The Commission's representative in this matter is Bob Cupit, Senior Facilities Planner, Minnesota Public Utilities Commission, 121-7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2255.

The member of the Attorney General's staff who may be contacted for advice on matters dealing with Commission procedures is Alison Archer, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-5945.

D. Availability of Materials

Interested persons may review all materials including all prefiled testimony at the Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St. Paul, MN 55101-2198 as soon as they have been filed. To arrange a viewing of these materials, interested persons may contact the Public Adviser, Suzanne Steinhauer, at the Minnesota Department of Commerce or by phone at (651) 296-2888.

E. Parties, Persons, and Intervention

Currently, the only party to this case is the Nashwauk Public Utilities Commission. The names and addresses of the persons designated to receive all notices on behalf of the Applicants are: Milt Latvalla, Chair, NPUC, 301 Central Avenue, Nashwauk, MN 55769-1311, 218.885.1210; and Jeff Davis, P.E., Project Manager, of the firm of Short Elliot Hendrickson Inc., 3535 Vadnais Center Drive, St. Paul, MN 55110-5196, (651) 490-2025 and (612) 616-4853.

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[16] "Party" refers to applicant, persons proposing routes or sites which the Commission orders to be considered, and persons granted permission to intervene pursuant to Minnesota Rules, Part 1405.0900. Minn. Rules, Part 1405.0200, subp. 3. State agencies, participating Department staff, and citizen committees appointed by the Commission must intervene to attain party status.

Other persons who wish to be granted permission by the Administrative Law Judge to intervene in this matter, must do so pursuant to Minn. Rules, Part 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition and Subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Minn. Rules, Chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the Administrative Law Judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention within seven days of service of the petition, the rights to submit direct testimony and conduct cross-examination of other parties' witnesses in the first stage of any two-stage hearing conducted by the administrative law judge pursuant to Minn. Rules, Part 1405.1500, subp. 2, and the responsibilities to submit pre-filed testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. Rules, Part 1405.0500, subp. 1, and is not intended to be comprehensive. Review Chapter 1405 to identify the scope of rights and authority to act given "persons" or restricted to "parties" under the various provisions of that Chapter.

VIII. Issues to be Addressed

Parties shall specifically and thoroughly address the requirements of Minn. Stat., Chapter 216G and Minn. Rules, Chapter 4415. The parties may also raise and address other issues relevant to the Applicant's proposed route.

IX. Procedural Outline

A. Hearing Procedures; Applicable Rules; Availability

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 and Minn. Rules, Parts 1405.0200 to 1405.2800. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. Rules, Parts 1400.5100 to 1400.8400 regarding contested cases shall apply and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, Parts 7829.0100 to 7829.3200.

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[17] "Person" refers to an individual, partnership, joint venture, private or public corporation, association or society, firm, public service company, cooperative, political subdivision, municipal corporation, governmental unit or agency, public utility district, or any other entity, public or private, however organized. Minn. Rules, Part 1405.0200, subp. 4.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association. Hearings may be recessed and reset by the Administrative Law Judge pursuant to Minn. Rules, Parts 1405.1400 to 1405.2300.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; 651.297.3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

B. Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

X. Time Constraints

Commission rules provide for the Commission to make a final decision on a route permit application within nine months after the Commission's decision that an application is complete. That decision on completeness of the application is made in this Order. The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of this time constraint.

XI. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to pipeline routing permit cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number 651.296.5148, with any questions.

XII. *Ex Parte* Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, Parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission grants NPUC's request to seek a pipeline routing permit under Minnesota Rules Chapter 4415's full review process.

2. The Commission accepts as complete under the full review process NPUC's revised pipeline route permit application.

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[18] Minn. Rules, Part 4415.0045. The deadline may be extended for cause. *Id.*

3. Consistent with the full review process, the Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.

4. A prehearing conference shall be held on Tuesday, September 18, 2007, at 2:00 p.m. at the Summit Room of the Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St. Paul, Minnesota 55101.

5. The date, time, and place of the public hearing will be set by the Administrative Law Judge and properly noticed in due course.

6. The Department shall establish a citizen advisory committee with the charge and structure as set forth in Section III of the Order.

7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Janet H. Gonzalez, for

Burl W. Haar
Executive Secretary

(S E A L)

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