

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger  
David C. Boyd  
Nancy Lange  
Dan Lipschultz  
Betsy Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of Minnesota Pipe Line Company, LLC for a Certificate of Need for the Minnesota Pipe Line Reliability Project to Increase Pumping Capacity on Line 4 Crude Oil Pipeline in Hubbard, Wadena, Morrison, Meeker, McLeod and Scott Counties Minnesota

ISSUE DATE: October 17, 2014

DOCKET NO. PL-5/CN-14-320

ORDER FINDING APPLICATION  
SUBSTANTIALLY COMPLETE;  
NOTICE OF AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On July 25, 2014, Minnesota Pipe Line Company, LLC (Minnesota Pipe Line Company) filed a certificate of need application for the Minnesota Pipeline Reliability Project under Minn. R. Ch. 7853.

On July 31, 2014, the Commission issued a notice requesting comments on the application.

On August 19, 2014, the Department of Commerce (the Department) filed comments recommending that the Commission find the application complete pending the filing of additional information by the company. The Department also recommended that the Commission refer the case to the Office of Administrative Hearings for contested case proceedings.

On August 29, 2014, Minnesota Pipe Line Company filed supplemental information in response to the Department's request for additional information but stated that the company believed the application was substantially complete as initially filed. Additionally, the company requested that the Commission use informal proceedings to develop the record.

On September 9, 2014, the Department filed reply comments, stating that the company had sufficiently responded to the Department's request for additional information and recommending that the Commission find the application complete as of August 29, 2014.

On September 30, the matter came before the Commission.

**FINDINGS AND CONCLUSIONS**

**I. The Proposed Project**

The proposed project would increase the pumping capacity of the 305 mile-long Line 4, the newest pipeline on the company's system. The proposed project would increase the current pumping

capacity of Line 4 from approximately 165,000 barrels of crude oil per day to its original design capacity of approximately 350,000 barrels per day. The pipeline itself would not change, and no new pipeline would be installed. Additionally, the company stated that no new pipeline right-of-way would be required.

Line 4 supplies two refineries located in St. Paul Park and Rosemount. The company stated that the proposed project will increase the availability of crude oil within the company's pipeline system, which currently operates near current system capacity of 465,000 barrels per day. The company stated that the proposed project would give the company the flexibility to shift volume to its newest pipeline, Line 4, in the event of an outage on other segments of the pipeline system and to conduct maintenance.

The company has proposed to upgrade two existing stations on Line 4 in Clearbrook and Albany and to install six new pump stations along the current Line 4 route. The new pump stations would be located in the counties of Hubbard, Wadena, Morrison, Meeker, McLeod, and Scott on properties owned by the company. Work at the pump stations would be the only construction necessary to complete the proposed project.

## **II. Commission Jurisdiction**

Before increasing the capacity of a large energy facility, including increasing, within a period of two years, an existing large petroleum pipeline in excess of either 20 percent of its rate capacity or 10,000 barrels per day, a person must apply for a certificate of need demonstrating that the upgrade is needed. Because the company's proposed upgrade would increase capacity by more than 20 percent and by more than 10,000 barrels per day, the company filed an application for a certificate of need.

Minn. R. Ch. 7853 sets forth the requirements for making an application for a certificate of need, as well as the ultimate criteria for demonstrating need. Where material facts are in dispute, the Commission refers cases to the Office of Administrative Hearings for a contested case proceeding under Minn. R. 7829.1000. Otherwise, the Commission may develop the record using its informal proceedings under Minn. R. 7829.1200.

## **III. Application Completeness**

The Department recommended that the Commission find the application complete as of August 29, 2014, the date when the company filed additional information in response to the Department's request for additional information.

Having reviewed the Applicant's initial filing and its revised filing of August 29, 2014, the Commission concurs with the Department that the application is substantially complete as of that date and that the application substantially meets the filing requirements of Ch. 7853.

## **IV. Referral for Contested Case Proceeding and Environmental Review**

In its comments, the Department recommended that the Commission refer the case to the Office of Administrative Hearings for contested case proceedings to develop the record, in lieu of the Commission's informal proceedings under Minn. R. 7829.1200. The Department cited increasing interest in and participation by the public in pipeline upgrade projects and stated that the contested case process would allow for greater opportunity for public comment and further the development of a full and adequate record.

Minnesota Pipe Line Company recommended that the Commission proceed under its informal review process, rather than develop the record using contested case proceedings.

The Commission concurs with the Department that a contested case process will best assist development of a full and adequate record, and the Commission will therefore refer the case to the Office of Administrative Hearings for contested case proceedings.

As part of the evaluation of the proposed project, the Commission requests that the Department's Energy Environmental Review and Analysis (EERA) unit conduct an environmental review to analyze the potential effects of the proposed project, and alternatives identified in the application, on the natural and socioeconomic environment. The Commission requests that the EERA submit a report of its analysis into the record prior to the contested case hearings.

## **V. Review Process**

To facilitate review of the application, and the public's participation in that review, the Commission will do the following:

- Ask the Department to continue studying issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need to the Applicant.
- Direct the Applicant to facilitate in every reasonable way the continued examination of the issues by the Department.
- Direct the Applicant to place a compact disc and/or hard copy of the application for review in a government center and/or public library in each of the counties traversed by the proposed pipeline.
- Direct Commission staff to contact relevant state agencies to request their participation in the development of the record and public hearings under Minn. Stat. § 216B.243, subd. 7 (a), and request that state agencies submit comments prior to the last day of the public hearing.
- Direct Commission staff to work with the Administrative Law Judge in selecting suitable locations for public hearings on the application.
- Direct the Applicant to place all submitted materials on a publicly available website.
- Direct the Applicant to work with the staff of the Commission and the Department to publish notice of the hearings in newspapers of general circulation at least ten days before the hearings. Further direct that such notice be in the form of visible display ads and that proofs of publication be obtained and filed in the Commission's electronic filing system.

## **VI. Public Participation**

Minn. Stat. § 216B.243, subd. 4, encourages public participation in certificate of need proceedings. The statute requires at least one hearing to obtain public opinion on the application and requires the Commission to delegate an employee to facilitate public participation in the hearing process.

The Commission has designated the following staff member to facilitate and coordinate public participation in the proceeding:

Tracy Smetana, Public Advisor  
Public Utilities Commission  
121 7<sup>th</sup> Place East, Ste. 350  
St. Paul, Minnesota 55101-2147  
651-296-0406 or 1-800-657-3782  
[Consumer.puc@state.mn.us](mailto:Consumer.puc@state.mn.us)

## **VII. Procedural Outline**

### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Jeanne M. Cochran. Her address and telephone number are as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101 and (651) 361-7870. Her mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620.

### **B. Hearing Procedure**

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.3200.

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](http://www.revisor.leg.state.mn.us).

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.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, 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.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Bret Eknes, Manager, Energy Facilities Permitting Unit, Minnesota Public Utilities Commission, 121 7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2236.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *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.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

### **C. Parties and Intervention**

The current parties to this case are the Company and the Division of Energy Resources at the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. R. 1400.6200.

#### **D. Prehearing Conference**

A prehearing conference will be held on Monday, October 27, 2014, at 9:30 a.m. in the Large Hearing Room at the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

#### **VIII. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01, et.seq., apply to certificate of need 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, or 800-657-3889 with any questions.

#### **IX. 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. R. 7845.7300-7845.7400, which all parties are urged to consult.

### **ORDER**

1. The Commission hereby accepts the certificate of need application as substantially complete as amended by the applicant on August 29, 2014.
2. The Commission hereby refers the case to the Office of Administrative Hearings for contested case proceedings.
3. The Commission requests that the EERA staff conduct an environmental review of the potential effects of the applicant's proposed project, and the alternatives identified in the application, on the natural and socioeconomic environment. The Commission further requests that the EERA submit a report of its analysis into the record prior to the contested case hearings.
4. To facilitate the review process, the Commission will:
  - Ask the Department to continue studying issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need to the Applicant.
  - Direct the Applicant to facilitate in every reasonable way the continued examination of the issues by the Department.

- Direct the Applicant to place a compact disc and/or hard copy of the application for review in a government center and/or public library in each of the counties traversed by the proposed pipeline.
- Direct Commission staff to contact relevant state agencies to request their participation in the development of the record and public hearings under Minn. Stat. § 216B.243, subd. 7 (a), and request that state agencies submit comments prior to the last day of the public hearing.
- Direct Commission staff to work with the Administrative Law Judge in selecting suitable locations for public hearings on the application.
- Direct the Applicant to place all submitted materials on a publicly available website.
- Direct the Applicant to work with the staff of the Commission and the Department to publish notice of the hearings in newspapers of general circulation at least ten days before the hearings. Further direct that such notice be in the form of visible display ads and that proofs of publication be obtained and filed in the Commission's electronic filing system.

5. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar  
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
600 North Robert Street  
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of the Application of  
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Certificate of Need for the Minnesota Pipe  
Line Reliability Project to Increase Pumping  
Capacity on Line 4 Crude Oil Pipeline in  
Hubbard, Wadena, Morrison, Meeker, McLeod  
and Scott Counties Minnesota

MPUC Docket No. PL-5/CN-14-320

OAH Docket No. 68-2500-31889

**NOTICE OF APPEARANCE**

Name, Address, and Telephone Number of Administrative Law Judge: Jeanne M. Cochran,  
Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101 and  
(651) 361-7870. Her mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_