

The Commission met on **Thursday, February 15, 2007**, with Chair Koppendrayer and Commissioners Nickolai, Pugh and Reha present.

Comment [COMMENT1]: Minutes by Eric Witte, Marcia Johnson, & Peter Brown. 7 motions were made.

The following matters were taken up by the Commission:

ENERGY AGENDA

G-022/M-06-1223

In the Matter of a Request for Approval of Greater Minnesota Gas' 2005 – 2006 Design Day and the Related Demand Entitlements

Commissioner Nickolai moved to do the following:

1. Approve the requested changes in the overall transportation firm - negotiable and system management service entitlements of Greater Minnesota Gas (GMG) and the recovery of the costs associated with the requested changes.
2. Direct GMG, with any needed assistance of the Minnesota Department of Commerce (the Department), to develop a methodology for forecasting the design day that produces a reasonable result.
3. Direct GMG to acquire any demand entitlements required to provide that level of service for the 2007–2008 heating season.

The motion passed 4 - 0.

G-001/M-06-1525

In the Matter of a Petition for Approval of Changes in Interstate's Demand Entitlements to Serve the Company's Firm Customers

Commissioner Pugh moved to do the following:

1. Approve the TF-12B/TF-12V reallocation requested by Interstate Power and Light (IPL).
2. Approve the requested changes in IPL's overall system management service and firm deferred delivery entitlements.
3. Approve the requested increase in IPL's overall design day capacity.
4. Approve the purchased gas adjustment recovery of the costs associated with the requested changes, effective November 1, 2006.

The motion passed 4 - 0.

G-001/M-06-1166

In the Matter of a Request for a Declaratory Ruling for Accounting Treatment of the Recovery of Former Manufactured gas Plant Clean Up Costs

Commissioner Reha moved to do the following:

1. Allow IPL to continue to record \$494,017 per year as recovery of deferred former manufactured gas plant cleanup costs effective September 1, 2006. The Commission preserves the right to determine in future rate cases the prudence and reasonableness of the deferred costs as well as the appropriate treatment of the legal costs of pursuing third party recovery of former manufactured gas plant cleanup costs.
2. Determine that IPL did not recover former manufactured gas plant cleanup costs effective with the implementation of interim rates and that no adjustment of the deferral is required.

The motion passed 4 - 0.

E-002/M-04-1970

In the Matter of Xcel Energy's Petition for Affirmation that MISO Day 2 Costs are Recoverable Under the Fuel Clause Rules and Associated Variances

E-015/M-05-277

In the Matter of Minnesota Power's Petition for Approval of Revision to Rider for Fuel Adjustment to Recover Costs and Pass-Through Related to MISO Day 2

E-017/M-05-284

In the Matter of Otter Tail Power Company's Petition for Approval of Revision to Rider for Fuel Adjustment to Recover Costs and Pass-Through Related to MISO Day 2

E-001/M-05-406

In the Matter of Interstate Power and Light Company's Petition for Approval of Revision to Rider for Fuel Adjustment to Recover Costs and Pass-Through Related to MISO Day 2

Commissioner Nickolai moved to reconsider the Commission's ORDER ESTABLISHING ACCOUNTING TREATMENT FOR MISO DAY 2 COSTS (December 20, 2007) for purposes of establishing an expiration date.

The motion failed 1-3. Chair Koppendrayner and Commissioners Pugh and Reha voted no.

IP-6603/WS-06-1327

In the Matter of the Application of Ridgewind Power Partners, LLC, for a Site Permit for a Large Wind Energy Conversion System in Pipestone and Murray Counties, Minnesota

Commissioner Nickolai moved to do the following:

1. Adopt the draft FINDINGS OF FACT AND CONCLUSIONS and issue the draft Site Permit with conditions proposed by the Department's Energy Facility Permitting staff to Ridgewind Power Partners, LLC, for a large wind energy conversion system with generating capacity up to 27 megawatts to be located in Pipestone and Murray counties, Minnesota.
2. Authorize Ridgewind Power Partners, LLC, to construct and operate the proposed large wind energy conversion system and associated facilities in accordance with the conditions contained in the site permit and in compliance with Minnesota Statutes § 216F.04 and Minnesota Rules Chapter 4401.

The motion passed 4 - 0.

IP-6605/WS-06-1445

In the Matter of the Application of Kenyon Wind, LLC, for a Large Wind Energy Conversion System Site Permit for a 18.9 Megawatt Wind Farm in Goodhue County

Commissioner Pugh moved to do the following:

1. Make a preliminary determination that the draft site permit may be issued pursuant to Minnesota Rules part 4401.0500, and approve the proposed draft site permit for the Kenyon Wind, LLC, project for distribution and public comment.
2. Authorize the Department's Energy Facility Permitting staff to initiate the public participation process found in Minnesota Rules part 4401.0550.
3. Take no action on an advisory task force at this time.

The motion passed 4 - 0.

PL-5/CN-06-2

In the Matter of the Application of Minnesota Pipeline Company for a Certificate of Need for a Large Petroleum Pipeline

PL-5/PPL-05-2003

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

Commissioner Reha moved to do the following.

Regarding MPL's Request for a Certificate of Need (06-02)

1. Adopt the following Findings of Fact and Conclusions, as amended, as follows:
 - a. Adopt Findings 2-44 regarding procedural background.
 - b. Adopt Findings 45-55 regarding the description of the applicant, amended as follows:
 1. Modify Finding 46 related to mid-point as recommended by Minnesota Pipe Line Company, LLC (MPL or "Company"):
 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.
 2. Modify Finding 54 regarding corporate structure as recommended by MPL:
 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.
 - c. Adopt Findings 56-135 on the criteria for granting a certificate of need with the addition of Finding 77A, as follows:
 - 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.
 - d. Adopt Conclusions 1-5 on page 69 of the Report except as to Conclusion 3 which is modified as follows:
 3. Public hearings were conducted in 14 locations along the proposed pipeline route. The Department of Commerce, Public Utilities Commission and Minnesota Pipe Line Company ~~MPL~~ gave proper notice of the public hearings, and the public was given the opportunity to appear at the hearings or to submit public comments. All procedural requirements for the CON and Routing Permit were met.

2. Issue a Certificate of Need (CON) for the construction of the MinnCan petroleum pipeline.

Regarding MPL's Request for a Pipeline Route Permit (05-2003)

3. Adopt 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 below.
4. Issue the Department's recommended pipeline route permit to MPL for a 303 mile, 24-inch diameter steel, high-pressure (1,462 pounds per square inch gauge) underground crude oil pipeline and associated aboveground facilities (e.g. pump stations, meter stations) originating at MPL's Clearbrook Station in Clearwater County and terminating at the Flint Hills Resources refinery in Dakota County, as modified below:

I. GENERAL EXCEPTIONS

- a. Modify Finding 1 regarding the applicant's legal name as recommended by MPL:
 1. ~~The Minnesota Pipe Line Company, LLC (MPL)~~ ("MPL" or "Company") has applied for a certificate of need (CON) and a routing permit to construct a new 24-inch diameter crude oil pipeline known as the MinnCan Project, originating at MPL's existing interconnection with the Enbridge crude oil pipeline system in Clearbrook, Minnesota, located in Clearwater County, and running to Flint Hills Resources in Rosemount, Minnesota.
- b. Incorporate the modifications of Findings 46 and 54 (see 1,b above) and the addition of Finding 77A (see 1,c above).
- c. Modify Finding 201 by adopting MPL's suggested language to address concern about the Red Tail Ox Cart Trail Network, as follows:
 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.
- d. Adopt Finding 207 as written.
- e. Modify Finding 267 and Footnote 332 correcting the name of S. Allen Friedman as follows:
 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.

II. EXCEPTIONS RELATED TO EVALUATION OF ALTERNATIVE

- f. Adopt ALJ Findings 88 and 89 as written.
- g. Adopt Findings 97 and 103 as written.

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

- h. Adopt 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:
 - 94. Many members of the public alleged that prime agricultural land is being lost to development, and that the loss was not factored into the comparison of the existing route and the proposed route. Not only will the placement of the pipeline through prime agricultural land affect crop production, but it also places additional agricultural land at risk of a future pipeline leak or break. The increase in property placed at risk was not taken into consideration in comparing the expansion of the existing route with the proposed route, but Alternative 1 would require an expanded right-of-way to assure adequate separation from the existing lines. Almost any pipeline route in Minnesota will have some impact on agricultural land. However, while agricultural land is being crossed by the pipeline, it is not being lost, since this land will still usually support farming operations after construction of the pipeline and proper restoration of the rightof-way. In addition, MPL has agreed to an Agricultural Impact Mitigation Plan and Appendix to address issues associated with the crossing of such lands.
- i. Adopt Finding 121, modified according to the Department’s suggestion as follows:
 - 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.~~
- j. In response to MPL’s exception concerning Stormwater Pollution, adopt Conclusion 9, modified according to the Department’s suggestion as follows:
 - 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.

- k. In response to MPL's exception concerning effect on crop production, adopt Finding 131 with the following modification suggested by the Department, which is itself modified by Garden of Eagan's suggestion to add the word "usually" between "will" and "still":
 - 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.
- l. In response to MPL's exception related to site sediment control, adopt Finding 169 and Conclusion 10 as written.
- m. In response to Scott County's comments on environmental review procedures, adopt the ALJ's Finding 187 and Conclusion 6 as written.
- n. In response to MPL's exception to wording on restoring habitat,
 - 1) Adopt ALJ Finding 206 and Conclusion 25 as written.
 - 2) Amend the Departments's proposed Route Permit V, C, 14 by adding the language at Section D, items a and b on page 8 of the Upland Restoration Plan:
 - a) MPL is responsible for revegetation of soils disturbed by project-related activities, except in actively cultivated fields.
 - b) Disturbed areas will be restored in accordance with recommendations from soil conservation agencies or as requested by the landowner or land management agency.
 - 3) Clarify 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.

- o. In response to comments of the Minnesota Public Interest Research Group on adverse impacts on the environment of pipeline spills, adopt Finding 212 as written.

IV. FINDINGS AND CONCLUSIONS RELATED TO PIPELINE SAFETY ISSUES

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

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

- q. 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.

- r. Relating to Finding 161 and Conclusion 20 in response to MPL's exception concerning contacting landowners for maintenance, adopt Finding 161 as written and the Department's suggested replacement for Conclusion 20 as follows:
 - 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.
- s. Relating to 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:
 - 264. Absent environmental or engineering concerns requiring an adjustment to the September 15 Alignment, Alignment, ~~W~~with the exception of the route width between MP 98 and 105, the Staples Alternative, and MP 242 and 248, the Belle Plaine Alternative, MPL agreed that it would not cross the property of any landowner not crossed on the September 15 Alignment unless that landowner agreed to the placement.
- t. 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:
 - 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.
- u. Relating to 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:
 - 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's acceptance of the landowner requests for access to their property across their easement shall not be unreasonably withheld.

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's acceptance of the landowner requests for access to their property across their easement shall not be unreasonably withheld.

- v. Insert the requirements of Conclusions 24 and 26, as modified above, into the Pipeline Permit.
- w. Reject the additional Conclusions proposed by MPL and Paula Maccabee.

VI. NOTICE TO LANDOWNERS

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

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.

- y. Adopt Findings 307-311 as written.

VII. ROUTE DESIGNATION

- z. Adopt Finding 263 as written and adopt Conclusion 7 with the following modification suggested by the Department:

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;

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

VIII. OTHER CONDITIONS RECOMMENDED BY THE ALJ
IN HER CONCLUSIONS

aa. Adopt Conclusion 8 and 11 as written.

bb. Adopt Conclusion 12 as written.

cc. Adopt the Department's suggested modification of Conclusion 13 as follows:

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

dd. Adopt Conclusion 14 as written.

ee. Adopt Conclusion 15 with the Department's suggested modification as follows:

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

ff. Adopt Conclusion 16 with the following modification proposed by the Department:

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.

gg. Adopt ALJ Conclusion 21 as written.

hh. Adopt ALJ Conclusion 24 as previously amended (see 3,u above) as follows:

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's acceptance of the landowner requests for access to their property across their easement shall not be unreasonably withheld.
- ii. Adopt Conclusion 28 with the following modification suggested by the Department:
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.
- jj. Adopt Conclusion 29 as written.
- kk. Adopt Conclusion 30 as written.
- ll. Amend Section VII of the Department's proposed Pipeline Routing Permit at page 11 to direct MPL to send to landowners a copy of the Pipeline Routing Permit within 10 days of MPL's receipt of that permit from the Commission; clarify that this requirement is in addition to the Minnesota Rule requirement that MPL send a copy of the Pipeline Permit to the landowners 10 days prior to entering upon the landowner's land to begin construction thereon.
- mm. Attach to the Pipeline Routing Permit 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 Permit provided to landowners is also to be accompanied by a cover letter drafted by 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 MPL and landowners.
- nn. Amend 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. Allen and Sharon Friedman in order to locate the pipeline with less proximity to their home.

The motion passed 4 - 0.
There being no further business, the meeting was adjourned.

APPROVED BY THE COMMISSION: APRIL 25, 2007

Burl W. Haar, Executive Secretary