

PL-9/CN-93-1244 NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Marshall Johnson	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner

In the Matter of the Application by Lakehead Pipe Line Company, Inc. for a Certificate of Need for a Large Petroleum Pipeline Facility	ISSUE DATE: January 10, 1994 DOCKET NO. PL-9/CN-93-1244 NOTICE AND ORDER FOR HEARING
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PROCEDURAL HISTORY

On December 10, 1993, Lakehead Pipe Line Company, Inc. (Lakehead or the Company) filed a certificate of need application pursuant to Minn. Stat. §§ 216B.2421, subd. 2(c) and 216B.243. Under the statutes Lakehead's proposed pipeline addition is a large energy facility and as such requires a certificate of need prior to construction.

On December 13, 1993, Lakehead filed a letter containing confidential shipper information required under Minn. Rules, parts 7853.0510 to 7853.0530.

On December 22, 1993, the Company's application for a certificate of need came before the Commission for consideration. At that meeting the Commission found that the application was substantially complete, as of December 13, 1993.

A copy of the Company's application is on file in the offices of the Department of Public Service, 121 Seventh Place East, Suite 200, St. Paul, MN 55101, and is available for public inspection during regular office hours.

Copies of the application are also available for public inspection at the Company's offices at Suite 400, Lake Superior Place, 21 West Superior Street, Duluth MN 55802.

FINDINGS AND CONCLUSIONS

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over applications for certificates of need for pipelines under Minn. Stat. § 216B.243. That statute also requires at least one public hearing under the

Administrative Procedure Act in certificate of need proceedings. Minn. Stat. § 216B.243, subd. 4. The Commission's role is to determine whether the proposed facility complies with applicable criteria in statute and rule.

The Commission finds that it cannot satisfactorily resolve all issues raised by the Company's application on the basis of its filing and the single public hearing required under the statute. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

II. Issues to be Addressed

Minn. Stat. § 216B.243 and Minn. Rules, parts 7853.0010 to 7853.0800 set forth criteria which must be met to establish need for proposed large energy facilities, including pipelines. Parties to this proceeding shall address whether the proposed facility meets these criteria.

One criterion is found under Minn. Rules, parts 7853.0600 to 7853.0640, which require the applicant to file certain environmental data, including environmental information on each possible pipeline location.

III. 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 designate an employee to facilitate citizen participation in the hearing process.

The Commission has designated a staff member, David L. Jacobson, to coordinate public participation in this proceeding. Mr. Jacobson may be reached by telephone at (612) 297-4562. Mr. Jacobson's address is: Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.

Members of the public need not become formal parties to participate in the hearing process. They are encouraged to attend the public hearing(s) and to submit testimony and exhibits. Persons who cannot attend the public hearing(s) and wish to comment may submit written comments to the Administrative Law Judge. The Commission will require the Company to publish notice of the public hearings and evidentiary hearings in newspapers throughout the state, to encourage maximum public participation.

The Company shall provide notice of the public and evidentiary hearings in newspapers of general circulation along the route of the proposed pipeline at least ten days prior to the start of the hearings. Such notices shall be in the form of visible display ads. The Company shall consult with Commission staff on the

timing and text of such ads prior to publication. The Company shall submit proofs of publication of such ads from the newspapers selected.

IV. Procedural Outline

A. Administrative Law Judge

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

B. Investigation by the Department of Public Service; Information Requests

The Department of Public Service (the Department) shall initiate an investigation to determine the reasonableness of granting a certificate of need to the Company.

The Company shall facilitate the Department's investigation in every reasonable way.

All parties shall furnish adequate responses within 10 days to all reasonable information requests from other parties.

C. Hearing Procedure

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57 to 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. Rules, parts 7830.0100 to 7830.4400 and Minn. Rules, parts 7847.0010 to 7847.0320. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, MN 55155, (612) 297-3000.

Under these rules formal 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.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with Judge Mihalchick within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1992).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Margie Hendriksen, Special Assistant Attorney General, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (612) 296-0410.

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.

Within ten days of the date of this Order, the Company shall mail copies of the Order to affected landowners and the county boards of the affected counties.

D. Executive Secretary May Vary Time Requirements

The Commission authorizes the Executive Secretary to enter Orders on behalf of the Commission varying time requirements for the filing of pleadings and other documents and determining the conduct of this proceeding, according to the standards set forth in Minn. Rules, part 7830.4400. Any party adversely affected by such an Order may file a motion for reconsideration, vacation, or modification, no later than ten days from the date of its entry or one day before any such filing deadline or occurrence of an act directed in such Order.

E. Parties and Intervention

Currently, the Company is the only party to this proceeding. Others persons wishing to become formal parties to this proceeding 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. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held on January 26, 1994, starting at 9:00 A.M.. The conference will be held in the Small Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.

All parties and persons intending to intervene should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the scope of the hearing, the locations and dates of public hearings, discovery procedures, and similar issues.

E. Time Constraints

Under Minn. Stat. § 216B.243, subd. 5, and Minn. Rules, part 7855.0200, the Commission is required to act on the Company's application within six months of receipt of a filing which is substantially complete.

The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these time constraints. Parties should note the six-month statutory time frame at the outset and be prepared for the expedited hearing schedule that time frame requires.

F. Application of Lobbying Provisions

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to certificate of need proceedings. 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 Minnesota Ethical Practices Board, (612) 296-1720, with any questions.

G. 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 to 7845.7400, which all parties are urged to consult.

ORDER

1. A contested case hearing shall be held on the Company's certificate of need application. The proceeding shall begin with a prehearing conference on January 26, 1994, starting at 9:00 A.M.. The conference will be held in the Small Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.
2. All parties to this proceeding may serve information requests on any other party. Information requests shall be answered within ten days of receipt.
3. Public hearings shall be held in this matter at times and places determined by the Administrative Law Judge after consultation with the Commission.

4. At least ten days prior to the start of public and evidentiary hearings, the Company shall provide notice of the hearings in newspapers of general circulation along the route of the proposed pipeline. Such notices shall be in the form of visible display ads. The Company shall consult with Commission Staff on the timing and text of such ads prior to publication. The Company shall submit proofs of publication of such ads from the newspapers selected.
5. Within ten days of the date of this Notice and Order for Hearing, the Company shall mail copies of this Order to affected landowners and the county boards of affected counties.
6. The Commission authorizes the Executive Secretary to enter Orders on behalf of the Commission varying time requirements for the filing of pleadings and other documents and determining the conduct of this proceeding, according to the standards set forth in Minn. Rules, part 7830.4400. Any party adversely affected by such an Order may file a motion for reconsideration, vacation, or modification, no later than ten days from the date of its entry or one day before any such filing deadline or occurrence of an act directed in such Order.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

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

In the Matter of the Application MPUC Docket No. PL-9/CN-
by Lakehead Pipeline Company, Inc., 93-1244
for a Certificate of Need for a Large
Petroleum Pipeline Facility OAH Docket No.

NOTICE OF APPEARANCE

Date of Hearing:

Name and Telephone Number of Administrative Law Judge:

Judge Steve Mihalchick
(612) 349-2544

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:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____