

PL-9/CN-93-1244 ORDER GRANTING CERTIFICATE OF NEED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application by Lakehead
Pipe Line Company, Limited Partnership, for a
Certificate of Need for a Large Petroleum
Pipeline Facility

ISSUE DATE: April 20, 1994

DOCKET NO. PL-9/CN-93-1244

ORDER GRANTING CERTIFICATE OF
NEED

PROCEDURAL HISTORY

I. Initial Proceedings

On December 10, 1993, Lakehead Pipe Line Company (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, the Company filed a letter containing confidential shipper information required under Minn. Rules, parts 7853.0510 to 7853.0530.

On January 10, 1994, the Commission issued its ORDER ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE, accepting the Lakehead application as of December 13, 1993.

On January 10, 1994, the Commission also issued its NOTICE AND ORDER FOR HEARING. The Commission referred the matter to the Office of Administrative Hearings, which assigned Administrative Law Judge (ALJ) Steve Mihalchick to conduct contested case proceedings.

The ALJ held a prehearing conference on January 26, 1994 and issued a Prehearing Order on January 27, 1994.

On February 8, 1994, Lakehead submitted a supplement to its application for a certificate of need.

On April 7, 1994, Lakehead filed a letter expressing a commitment to pay all fees payable under Minn. Rules, part 7853.0210.

II. Parties and Representatives

Lakehead was represented in these proceedings by Paul W. Norgren, Lakehead Pipe Line Company, 400 Lake Superior Place, 21 West Superior St., Duluth, MN 55802, and Leo G. Stern, Fredrikson & Byron, P.A., 1100 International Centre, 900 Second Ave. South, Minneapolis, MN 55402.

The Department of Public Service (the Department) was represented by Brent Vanderlinden, Special Assistant Attorney General, Suite 1200 NCL Tower, 445 Minnesota St., St. Paul, MN 55101.

III. The Stipulation of Facts

The parties stipulated to proposed Findings of Facts, Conclusions of Law and Order. The ALJ's adopted Findings and Conclusions were "in the same general format and substance."
P. 3 of the ALJ's March 10, 1994 Findings of Fact, Conclusions of Law, and Recommendation.

IV. Public and Evidentiary Hearing

A public and evidentiary hearing was held by ALJ Mihalchick on March 8, 1994, in Thief River Falls, Minnesota. No party expressed opposition to the proposed pipeline expansion. Two members of the public asked for clarification of certain issues during the hearing.

The ALJ filed his Findings of Fact, Conclusions of Law and Recommendation on March 10, 1994.

V. Proceedings Before the Commission

The matter came before the Commission for consideration on April 7, 1994.

FINDINGS AND CONCLUSIONS

I. Factual Background

Lakehead proposes to add approximately 107 miles of 20-inch outside diameter pipe to its existing right-of-way and parallel to its existing pipelines in Minnesota from the North Dakota border to its terminal facility in Clearbrook, Minnesota. The new pipeline would be used to transport crude petroleum and other liquid hydrocarbons to Minnesota Pipe Line (MPL) at Clearbrook, Minnesota and to other delivery points east of Clearbrook. From Clearbrook, MPL connects with the Minneapolis/St. Paul metropolitan area.

Lakehead's proposed expansion would interconnect with a corresponding expansion of existing pipeline in western Canada.

The Company would begin construction on the new pipeline in June, 1994, and would place the new pipeline in service by December, 1994.

II. Certificate of Need Criteria; ALJ's Findings

The criteria for granting a certificate of need are set forth in Minn. Stat. § 216B.243 and Minn. Rules, parts 7853.0010-.0800.

Minn. Rules, part 7853.0130 states four criteria which must be met in order to establish need for the proposed pipeline expansion.

- A. The probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states.

The ALJ noted that the Company experienced a capacity shortfall in 38 of the 39 months prior to January, 1994. Based on shipper forecasts supplied to the Company, the capacity shortfall is expected to continue for the next eight years.

The ALJ found that the proposed expansion would bring advantages to the refining sector, the general public, and the Company. Advantages would arise from a broader, more stable and more flexible supply of crude oil. The expansion would bring lower operating costs for the Company and greater employment opportunities for Minnesota residents.

The ALJ found that the Company is engaging in substantial conservation efforts. Despite these efforts, the Company's capacity shortfall would not be alleviated without a pipeline expansion.

The ALJ also found that the proposed expansion would make efficient use of resources by allowing the continuing demand for crude petroleum and natural gas liquids from western Canada to be met by commodities transported by the safest and most efficient method.

For these reasons, the ALJ found that the first criterion for granting a certificate of need for the proposed pipeline expansion was met.

- B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant.

The Company identified five possible alternatives to its proposal: optimization of the Company's existing pipelines; alternative construction routes; construction of lines other than those proposed along existing routes; construction of an entirely new line to markets in Minneapolis and Chicago; and use of alternative modes of transportation. Lakehead asserted that none of the five alternatives was superior to the proposed expansion.

The Department analyzed the Company's five alternatives and examined two additional alternatives: alternative sources of oil; and conservation of the end-uses of the proposed facility. The Department concluded that neither its alternatives nor the Company's five alternatives were preferable to the proposed expansion.

The ALJ agreed with the Department that the proposed expansion was superior to the alternatives offered. The ALJ looked at the size, type and timing of the proposed facility, comparative costs, effects on the environment, and expected reliability of the proposed facility compared to alternatives.

The ALJ concluded that none of the proposed alternatives is a viable alternative to the Company's proposed pipeline expansion.

- C. The consequences to society of granting the certificate of need are more favorable than

the consequences of denying the certificate.

The ALJ found that the Company's proposed facility is consistent with overall state energy needs. ALJ Mihalchick found that the pipeline expansion would improve the reliability of Minnesota's crude oil sources by increasing the efficient transport of oil from western Canada.

The ALJ found that the proposed facility would have a limited, temporary impact on the natural and socioeconomic environments of Minnesota. The ALJ noted that the pipeline expansion would be constructed adjacent to the existing corridor and within existing right-of-way, except in certain special circumstances.

The ALJ stated that there was no evidence to suggest that the proposed expansion would have any direct impact on future development in the State of Minnesota.

Finally, the ALJ noted specific social benefits of the expansion, such as greater reliability of supply, further employment opportunities, and an increased tax base for the affected counties.

For these reasons, the ALJ concluded that the third criterion under the rule was fulfilled.

D. It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

The ALJ found that the Company has complied with or is in the process of complying with the relevant policies, rules, and regulations of the various state agencies, federal agencies and local governments which have jurisdiction over the proposed project. The ALJ noted that the project is extensively regulated by the U.S. Department of Transportation, the Office of Pipeline Safety, and the Federal Energy Regulatory Commission.

III. Commission Analysis

A. The Certificate of Need

The certificate of need proceeding was conducted in compliance with relevant Minnesota statutes and rules. The public was granted the opportunity to participate in a public hearing conducted by ALJ Mihalchick. No party expressed opposition to the proposed pipeline expansion.

The Department conducted a full investigation of the proposal. In that investigation the Department analyzed both the Company's proposed alternatives to the expansion and the Department's own alternatives. After a careful analysis the Department stated that no alternative was more cost-effective or beneficial than the proposal. The Department concluded that the proposed pipeline was reasonable and necessary.

In order to demonstrate agreement on all material facts, the Department and Lakehead submitted proposed Findings of Fact and Conclusions of Law to the ALJ. The ALJ accepted the stipulated Findings and Conclusions but also conducted a full evidentiary hearing. After taking testimony, receiving exhibits, and conducting full proceedings, the ALJ adopted Findings of Fact and Conclusions of Law which were like in form and substance to the parties' proposed version. The ALJ's Findings of Fact, Conclusions of Law and Recommendation presented a thorough analysis of the proposal under relevant statute and rule criteria.

Having examined the full record and listened to the statements of the parties, the Commission agrees with the ALJ that a certificate of need for Lakehead's proposed expansion is reasonable and necessary. The Commission adopts the ALJ's Findings of Fact and Conclusions of Law. The Commission will grant the Company its certificate of need.

B. Payment of Fees

There remains one area of concern in this proceeding. Minn. Rule, part 7853.0210, subpart 3 states that no certificate shall be issued until all fees owed by the applicant are paid in full. At this time, it is impossible to calculate the applicant's fees because further information must be obtained from the ALJ, the Department, the Office of Attorney General and the Commission. Lakehead has stated that a delay in granting the certificate would significantly delay construction of the facility. Lakehead has expressed its full commitment to payment of the fees when their assessment is complete.

Minn. Rules, part 7830.4400 states that the Commission may grant a variance if the following criteria are fulfilled:

1. Enforcement of the rule would impose an excessive burden upon the applicant or other affected by the rule;
2. Granting of the variance would not adversely affect the public interest; and
3. Granting of the variance would not conflict with standards imposed by law.

The Commission finds that the criteria of Minn. Rules, part 7830.4400 have been fulfilled and a variance to Minn. Rules, part 7853.0210 should be granted. Enforcement of the rule would impose an excessive burden on Lakehead by delaying pipeline construction in our short Minnesota construction season. Since the Company has assured the Commission of full payment the public interest should not be adversely affected. Granting the variance would not conflict with standards imposed by law.

The Commission grants Lakehead a variance to the fee payment provision of Minn. Rules, part

7853.0210, subpart 3. Lakehead is required to pay all applicant's fees when they have been fully assessed.

ORDER

1. The Commission grants Lakehead a certificate of need for its proposed pipeline expansion.
2. Lakehead is granted a variance to Minn. Rules, part 7853.0210, subpart 3 to allow the granting of the certificate of need prior to full payment of applicant's fees. Lakehead shall pay all applicant's fees when they are fully assessed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)