

ISSUE DATE: August 5, 1998

DOCKET NO. PL-9/CN-98-327

ORDER GRANTING CERTIFICATE OF NEED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayer
Gregory Scott

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

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PROCEDURAL HISTORY

I. Initial Proceedings

On March 9, 1998, Lakehead Pipe Line Company, Limited Partnership (Lakehead), filed a certificate of need application for approval to construct a large petroleum pipeline facility in northwest Minnesota. This project fits the definition of “large energy facility” pursuant to Minn. Stat. § 216B.2421, subd. 2(c). Under Minn. Stat. § 216B.243, Lakehead is required to obtain a certificate of need prior to siting or construction of a large energy facility.

On March 11, 1998, Lakehead filed a supplemental explanatory letter concerning maintenance of confidential information and an affidavit of mailing for the application.

On March 25, 1998, the Commission issued its ORDER ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE, accepting the Lakehead application.

On March 25, 1998, 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) Allan W. Klein to conduct contested case proceedings.

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 Julia E. Anderson, 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 and Conclusions. The ALJ issued his own Findings of Fact, Conclusions and Recommendation in the same general format and substance as the stipulation.

IV. Public and Evidentiary Hearings

Public and evidentiary hearings were held on June 10 and 11, 1998, in Thief River Falls, Minnesota. One member of the public attended and participated in the hearings. No party expressed opposition to the construction of the proposed facility.

On June 15, 1998, Lakehead filed a letter committing to pay appropriate fees assessed pursuant to Minnesota Rules, part 7853.0210.

The ALJ issued his Findings of Fact, Conclusions and Recommendations on June 23, 1998.

V. Proceedings Before The Commission

The matter came before the Commission for consideration on July 23, 1998.

FINDINGS AND CONCLUSIONS

I. Factual Background

Lakehead owns and operates an interstate common carrier crude petroleum and natural gas liquids pipeline system in the Great Lakes region of the United States. Lakehead has connected its system to the Interprovincial Pipe Line Inc. (IPL) pipeline system. The combined systems cover approximately 3200 miles, connecting the Canadian coasts to the Great Lakes region. Nearly all of the crude petroleum and natural gas liquids transported by Lakehead are delivered to markets in the United States and eastern Canada.

Lakehead proposes to add approximately 68.6 miles of 36-inch outside diameter pipe parallel to its existing pipelines in Minnesota in four separate segments. The addition would stretch from where IPL's new pipeline meets the North Dakota border to a point near Gully, in Polk County, Minnesota. The new pipeline would permit the transport of crude petroleum and other liquid hydrocarbons to Minnesota Pipe Line at Clearbrook, Minnesota, and points east. In Minnesota, the new pipeline would cross Kittson, Marshall, Pennington, Red Lake and Polk Counties, mostly within Lakehead's existing right-of-way.

Lakehead proposes to begin construction on the new pipeline in September, 1998, and to place the new pipeline in service in January, 1999.

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 demand for Lakehead's transmission capacity exceeded its supply in 29 out of 36 months. Based on shipper forecasts supplied to Lakehead, the capacity shortfall is expected to continue beyond the year 2010.

The ALJ found that the proposed expansion would bring advantages to the refining sector, the general public and Lakehead. Advantages would arise from a broader and more stable supply of crude oil at more predictable prices. The expansion would bring lower operating costs for Lakehead, an increased tax base, more economic development and greater employment opportunities for Minnesotans.

The ALJ found that Lakehead has not engaged in any promotional activities to increase the demand for crude oil to be shipped through its pipeline system. To the contrary, the ALJ found that Lakehead is engaging in substantial efficiency and conservation efforts. Despite these efforts, Lakehead'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.

- B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record.**

Lakehead identified four possible alternatives to its proposal: optimization of Lakehead's existing pipelines without adding new pipelines; 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 truck transportation. Lakehead asserted that none of the four alternatives was superior to the proposed expansion.

At the Department's request, Lakehead analyzed four additional alternatives: identifying unused capacity in other pipelines; expansion of Lakehead's pipeline along a different route; use of rail transportation; and use of water transportation. Lakehead asserted that none of these four alternatives was superior to the proposed expansion either.

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 Lakehead'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 Lakehead's proposed facility is consistent with overall state energy needs. The ALJ 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 Lakehead's existing pipeline corridor and generally within Lakehead's existing right-of-way.

The ALJ stated that there was no evidence to suggest that the proposed expansion would have any direct adverse 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.

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 Lakehead 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.

Based on the foregoing facts, the ALJ recommended that the Commission grant Lakehead's application.

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 the ALJ. No party expressed opposition to the proposed pipeline expansion.

The Department investigated the proposal. In that investigation the Department analyzed both Lakehead's proposed alternatives to the expansion and the Department's own alternatives. After 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 and conclusions which were like in form and substance to the parties' proposed version. The ALJ's Findings of Fact, Conclusions and Recommendation presented a thorough analysis of the proposal under relevant statute and rule criteria.

Having examined the full record and provided an opportunity for all parties to address the Commission, the Commission now agrees with the ALJ that granting 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 Lakehead's petition.

B. Payment of Fees

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 before the onset of winter. Since Lakehead 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. To the contrary, the Commission has previously granted a variance to this rule under similar circumstances.¹

¹See, for example, In the Matter of the Application by Lakehead Pipe Line Company, Limited Partnership, for a Certificate of Need for a Large Petroleum Pipeline Facility, Docket No. PL-9/CN-93-1244, ORDER GRANTING CERTIFICATE OF NEED (April 20, 1994); In the Matter of the Application of Minnegasco, a Division of NorAm Energy Corp., for a Certification of Need for a Large Liquefied Gas Storage Facility, Docket No. G-008/CN-95-

Therefore, the Commission will grant Lakehead a variance to the fee payment provision of Minn. Rules, part 7853.0210, subpart 3. Lakehead will be 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

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