

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayner	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of an Application by Hutchinson  
Utilities Commission for a Certificate of Need  
to Construct a Large Natural Gas Pipeline

ISSUE DATE: January 30, 2002

DOCKET NO. G-252/CN-01-1826

ORDER ACCEPTING FILING AS  
SUBSTANTIALLY COMPLETE UPON  
RECEIPT OF CERTAIN INFORMATION  
AND NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On December 13, 2001, the Hutchinson Utilities Commission (Hutchinson, HUC, or the Applicant) submitted its application for a certificate of need. Hutchinson proposes to construct, own and operate an 89 mile long natural gas pipeline between Trimont, Minnesota and Hutchinson, Minnesota. The proposed pipeline is a “large energy facility” as defined in Minn. Stat. § 216B.2421, subd. 2(4). Therefore, Hutchinson must receive a certificate of need prior to construction under the provisions of Minn. Stat. § 216B.243.

On December 24, 2001, the Commission issued its ORDER EXTENDING PERIOD TO DETERMINE ADEQUACY OF FILING, thus giving all parties additional time to review the filing.

On December 26, 2001, the Department of Commerce (DOC) submitted comments regarding the completeness of the application. The DOC recommended that the Commission find that the Application was not substantially complete as of the December 13, 2001 filing date.

On January 14, 2002, in response to the DOC’s comments, HUC submitted revised portions of its application, a letter from New Ulm Public Utilities dated December 31, 2001, and a copy of a letter from HUC to Northern Natural Gas Company (Northern).

On January 15, 2002, the DOC submitted reply comments recommending that the application be found substantially complete upon receipt of a feasibility study from Northern and a cost-comparison analysis by HUC.

On January 17, 2002, the matter came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### **I. Hutchinson's Proposed Pipeline**

Hutchinson proposes building an 89 mile long pipeline between Trimont, Minnesota and Hutchinson, Minnesota that will connect with the Northern Border Pipeline Company in Martin County, Minnesota and provide an alternative to the Northern Natural Gas Company Pipeline. The pipeline will be used to transport natural gas to the City of New Ulm, New Ulm's electric generating facilities, the City of Hutchinson and Hutchinson Utilities Commission's electric generating facilities.

The proposed pipeline will be designed for a capacity of 60,000 Mcf/day through 46 miles of 16-inch diameter pipe (from Trimont to New Ulm) and 40,000 Mcf/day through 43 miles of 12-inch diameter pipe (from New Ulm to Hutchinson). The cost of this project has been estimated to be approximately 26 million dollars. Hutchinson proposes to begin construction in May, 2003 and have the pipeline in service by November, 2003.

### **II. Jurisdiction**

The Commission has jurisdiction over applications for certificates of need for large energy facilities under Minn. Stat. § 216B.243. The statute requires the Commission to hold at least one public hearing under the Administrative Procedure Act before acting on this or any other application for a certificate of need. Minn. Stat. § 216B.243, subd. 4.

### **III. Comments of the Parties**

#### **A. The DOC**

The DOC stated that upon receipt of the feasibility study Hutchinson requested from Northern Natural Gas and a cost-comparison analysis by Hutchinson the application would be substantially complete. The DOC argued that when the above items are received, the application should be accepted and the statutory six month time-line should begin.

#### **B. Hutchinson Utilities Commission**

At the Commission meeting, Hutchinson agreed that the application be considered substantially complete, and the statutory six month time line begin, when it submitted Northern's feasibility study and its own cost comparison. Hutchinson stated that the feasibility study would be available within four weeks and the cost study would be done shortly thereafter. However, Hutchinson requested that the Commission refer the matter for a contested case hearing at this time so as to avoid further delay.

#### **IV. Commission Action**

##### **A. Finding Filing Substantially Complete**

Upon review of the Company's filing, and on the basis of the record, the Commission will accept Hutchinson's filing as substantially complete as of the date Hutchinson submits the feasibility study requested from Northern and a cost comparison by Hutchinson of Hutchinson's proposed pipeline and Northern's proposal. The Commission clarifies that its assessment of the completeness of the filing does not prejudice the merits of Hutchinson's application, which will be thoroughly examined in the course of this docket.

##### **B. Referral for Contested Case Proceedings**

The Commission finds that it cannot satisfactorily resolve all issues raised by the Hutchinson'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.

##### **C. 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 statistical analyst Robert Harding to facilitate and coordinate public participation in this proceeding. He may be reached by telephone at (651) 296-7125 and by FAX at (651) 297-7073. His address is 121 Seventh Place East, Suite 350, St. Paul, Minnesota 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 Hutchinson to publish notice of the public and evidentiary hearings in relevant newspapers to encourage public participation.

#### **IV. Procedural Outline**

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

The Administrative Law Judge assigned to this case is Kenneth A. Nikolai. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7604.

## **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. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, 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. Rules, part 1400.5900 should be directed to Robert Harding, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651)296-7125; or Jim Alexander, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 282-9965.

### *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 Hutchinson Utilities Commission and 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. Rules, part 1400.6200.

## **D. Prehearing Conference**

A prehearing conference will be held in this case on Monday, March 4, 2002, at 1:30 p.m. in the Small Hearing Room of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101. 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.

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

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. 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, with any questions.

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

### **ORDER**

1. Hutchinson Utilities Commission's application shall be accepted as substantially complete as of the date Hutchinson submits Northern Natural Gas Company's feasibility study and Hutchinson's cost comparison of the two proposals.
2. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings as set forth above.
3. A prehearing conference shall be held on Monday, March 4, 2002, at 1:30 p.m. in the Small Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101.
4. The Department of Commerce shall examine this application and other information and develop testimony on the reasonableness of granting a certificate of need to the Applicant.
5. The Applicant shall facilitate in every reasonable way the DOC's participation in this proceeding.
6. The Commission staff shall work with the Administrative Law Judge and the parties in selecting suitable times and locations for the public and evidentiary hearings on the application.
7. The Applicant shall provide notice of the public and evidentiary hearings in newspapers of general circulation at least ten days prior to the start of the hearings. Such notice shall be in the form of visible display ads. The Applicant shall obtain proofs of publication of such ads from the newspapers selected. The Applicant shall consult with Commission staff on the timing, text, and distribution of such ads prior to publication.

8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

ATTACHMENT A

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 an Application by Hutchinson      MPUC Docket No. G-252/CN-01-1826  
Utilities Commission for a Certificate of Need to  
Construct a Large Natural Gas Pipeline      OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Kenneth A. Nickolai, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,  
Minneapolis, Minnesota 55401; (612) 341-7604.

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: \_\_\_\_\_