

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of Minnesota  
Pipe Line Company for a Routing Permit for a  
Crude Oil Pipeline

ISSUE DATE: July 19, 2006

DOCKET NO. PL-5/PPL-05-2003

ORDER ACCEPTING ALTERNATIVE  
ROUTE SEGMENT PROPOSALS FOR  
CONSIDERATION AT THE CONTESTED  
CASE HEARING

**PROCEDURAL HISTORY**

In early January 2006, Minnesota Pipe Line Company (MPL, the Applicant, or the Company) filed two applications with the Commission: the first for a Certificate of Need (CON) and the second for a pipeline routing permit.

On February 16, 2006, the Commission issued an Order finding that both applications met the filing requirements and initiating consideration of the merits of the applications. Review of the pipeline routing permit application is taking place in the current docket pursuant to the requirements of Minn. Stat. § 1161I.015 and the Pipeline Route Selection Procedures in Minn. Rules, Parts 4415.0045 to 4415.0100.

On February 21, 2006, the Department issued a Notice of Application Acceptance and Public Information Meetings. In addition to listing the upcoming public information meetings, the Notice instructed how to propose an alternative route or route segments and stated that all such proposals were due on May 30, 2006 and must be approved by the Commission to receive consideration at the public hearing.

Between March 13 and March 23, 2006, the Minnesota Department of Commerce's (the Department's) Energy Facility Permitting staff held 13 public information meetings, one in each county crossed by the Company's proposed pipeline alignment.<sup>1</sup> In conjunction with the

---

<sup>1</sup> The MPL proposed route for this project (the MinnCan Project) generally follows (parallels) and uses a portion of MPL's existing 65 to 70 foot wide pipeline right-of-way southward from the Clearbrook Station for about 112 of the first 119 miles in the counties of Clearwater, Hubbard, Wadena, Todd and Morrison. Near Cushing, Minnesota, in Morrison County, the MPL proposed route leaves the existing multiple-line crude oil pipeline

Department's public information meetings, MPL held an open house prior to each meeting to provide interested persons with an opportunity to find out more about the project and respond to questions. Approximately 925 people attended the information meetings/open houses and around 500 people have signed up to be added to the Department's project mailing list.

By May 30, 2006, the route proposal deadline, several alignment modifications and alternative route proposals had been received.

The Commission met to consider this matter on June 29, 2006.

## **FINDINGS AND CONCLUSIONS**

### **I. BACKGROUND**

Before it is authorized to build its proposed 24-inch diameter pipeline approximately 295 miles in length the Company must obtain two state authorizations from the Minnesota Public Utilities Commission. The first required authorization is a Certificate of Need presently pending before the Commission in Docket No. PL5/CN-06-2. In that proceeding the Company must prove that there is a need for the proposed project. The second required authorization is a pipeline routing permit, which is being examined in this docket. The pipeline routing permit authorizes the construction of the pipeline in a specific route.

In the period since the application for a route permit was accepted (January 2006), MPL's proposed alignment within its preferred route has been modified in numerous locations pursuant to landowner requests, land use plans, engineering refinements, environmental information and constraints in a number of places. MPL's new route segment proposal in the Belle Plaine area in Scott County is an example of a design change.<sup>2</sup>

---

right-of-way, which then requires a new permanent right-of-way approximately 50 feet in width, within MPL's preferred 1.25 mile wide route, for another 176 miles generally west and south of the Twin Cities area, in the counties of Morrison, Stearns, Meeker, Wright, McLeod, Carver, Sibley, Scott/Rice and Dakota.

<sup>2</sup> Pipeline alignment modifications or location changes within a route are common because a pipeline proposer is working with landowners and governmental agencies to locate the pipeline in such a way as to limit disruption to existing and proposed land uses and making engineering design changes because of infrastructure issues, while factoring in additional environmental factors and limitations. Changes are also expected as the record in this matter is developed and also as a result of additional information or evidence that is expected to be entered into the record before the Administrative Law Judge.

## **II. ISSUE TO BE DECIDED IN THIS ORDER**

In this Order, the Commission must decide what routes and route segments will be considered in the contested case hearing, now scheduled for August 24 to September 15, 2006, and in conjunction with the Certificate of Need proceeding. The Commission clarifies that it need not make that decision regarding minor location changes or alignment modifications (changes within MPL's proposed 1.25 mile wide route) because such changes may be presented directly to the Administrative Law Judge at the contested case hearing without prior Commission approval.

## **III. PROPOSED ALTERNATIVE ROUTES AND ROUTE SEGMENTS**

### **A. Staples Area Alternatives**

Three new alternative route segments/route proposals were suggested in the Staples area.

- Alternative 1, proposed by the Minnesota Department of Natural Resources (DNR), passes west and south of the Staples area to avoid wetlands because it believes MPL's preferred filed route and its existing right-of way would have more impacts on wetlands.
- Alternative 2, proposed by MPL on behalf of the city of Staples, would use the existing pipeline right-of-way through the Staples area rather than require a new right-of-way that passes north and east of the area. This alternative was also suggested by Carol and Al Lisson, Orville and Marjorie Meyer, and the Minnesota Department of Natural Resources.
- Alternative 3, proposed by Scott and Sheila Becker, is a variation of MPL's preferred route filed in its application, with a modification or route segment that requires new right-of-way and also uses the existing MPL right-of-way.

### **B. Belle Plaine Area Alternative**

MPL proposed a route segment alternative in the Belle Plaine area to avoid interference with plans to annex land located south and west of the city limits, which is crossed by the proposed pipeline route submitted to the Commission on January 5, 2006. The City of Belle Plaine and Scott County supported this proposal.

### **C. Existing Right-of Way Alternative**

Mike Eischens and Richard Eischens of New Prague proposed a route that would follow MPL's existing right-of-way through Morrison, Benton, Sherburne, Anoka, Washington and Dakota counties, passing through the north and east side of the Twin Cities metropolitan area. Their recommendation was a common theme at the Department's public information meetings in Scott and Dakota counties.

## **IV. COMMISSION ANALYSIS AND ACTION REGARDING PROPOSED ALTERNATIVE ROUTES AND ROUTE SEGMENTS**

Minn. Rules, Part 4415.0075, subp. 1. states:

The Commission **shall accept** for consideration at the public hearing the routes and route segments proposed by the applicant and **may accept** for public hearing any other route or route segment it considers appropriate for further consideration. No route shall be considered at the public hearing unless accepted by the Commission before the hearing. A proposer of a route or route segment that the Commission has accepted for consideration at the hearing shall make an affirmative presentation of facts on the merits of the route proposal at the public hearing. (Emphasis added.)

In this case, the Applicant proposed its preferred route in its initial filing and proposed two additional routes in subsequent filings: Staples Area Alternative 2 and the Belle Plain Area Alternative referred to above. The statute directs the Commission to accept for consideration at the public hearing the routes and route segments proposed by the applicant and the Commission will do so. See Order Paragraph 1, b and d.

With respect to the alternatives proposed by other parties, the Commission must first determine whether it will **consider** accepting those alternative routes for public hearing. The Commission is required to do so if the proposal contains certain required information.<sup>3</sup>

The Department stated that when MPL's response to the Department's information request # 1 and the data and information provided by the applicant are taken into account, the proposed route segment and route proposals submitted by the May 30, 2006 deadline meet the threshold requirements of Minn. Rules, Part 4415 .0075, subd. 3.<sup>4</sup>

Therefore the Commission must and will consider whether it will accept the "other" route segment proposals : Staples Alternatives 1 and 3 proposed by the DNR and the Beckers, respectively, and the Existing Right of Way Alternative proposed by the Eischens.

### **The DNR's Proposed Route Segment (Staples Alternative #1)**

The DNR supported its proposed route segment (Staples Alternative #1) stating that 1) the applicant's proposed alignment would impact the Villiard Wildlife Management Area, causing a loss of forest cover and fragmentation of forest lands; 2) the proposed alignment encroaches close to the Crow Wing River, which is a high-value river for mussels, fish, waterbirds, and recreation; and 3) the proposed alignment crosses tributaries to the Crow Wing River. The DNR stated that alternative alignments would avoid the Villiard Wildlife Management Area and maintain a buffer along the Crow Wing River.

No party objected to the Commission's accepting the DNR's proposed route for consideration in the contested case proceeding and, based on the DNR's assertions on behalf of its proposal, the

---

<sup>3</sup> Minn. Rules, Part 4415.0075, subs. 3 and 4.

<sup>4</sup> Minn. Rules, Part 4415.0075, subp. 3 states: The pipeline route or route segment proposal must contain the data and analysis required in parts 4415.0140, subpart 3, and 4415.0145, unless the information is substantially the same as provided by the applicant. (Emphasis added.)

Commission finds that it is in the public interest to do so.

### **The Beckers' Proposed Route Segment (Staples Alternative #3)**

Scott and Sheila Becker supported their proposed route segment stating among other things that 1) its proposal will not have any new environmental impact and the human impact will be slight compared with the applicant's proposed route; 2) the applicant's proposed route is more expensive, being 4,000 feet longer than the existing route and requiring new rights of way from at least a dozen new property owners; and 3) the applicant's proposed route goes through wetlands currently untouched by the pipeline while staying on the existing route would affect the wetlands no more than they are already affected.

No party objected to the Commission's accepting the Beckers' proposed route for consideration in the contested case proceeding and, based on the Beckers' assertions on behalf of their proposal, the Commission finds that it is in the public interest to do so.

### **The Eischens' Proposed Route**

Mike and Richard Eischens supported their proposed alternative route (the entire length of MPL's existing right of way) by stating that the Company has acknowledged that to do so would be less expensive. The Eischens stated that MPL has not adequately explained why it was not choosing the lowest cost route and has not borne its burden of proof to show that the pipeline cannot be placed in the existing right of way. The Eischens countered the Company's assertion that it cannot use the existing right of way because the pipeline must be 25 feet from the existing pipelines by stating that the Company's asserted 25 foot requirement was not a requirement of the Office of Pipeline Safety and that it is not uncommon for pipelines to be laid within several feet of each other. The Eischens concluded that the Company should use the existing right of way instead of impacting a whole new group of landowners.

In response, MPL recommended that the Commission not accept the Eischens' proposed route for review. The Company argued that it was unnecessary to do so since the record of this proceeding will contain a full discussion of the issues related to placing the new pipeline in the Company's existing right-of-way as requested by the Eischens. Indeed, the Company argued, the Company's Route Permit Application contains considerable discussion of the existing route, including a discussion of environmental and construction constraints such as the presence of the Sherburne National Wildlife Refuge and the significant residential and commercial development that has occurred along the existing route. The Company stated that it will provide expert witnesses during the hearings regarding its proposed route who will be prepared to respond to any further questions regarding the existing route.

Similarly, Randy Piasecki, Planner/Coordinator for the City of Zimmerman, opposed using the existing route. He stated that rapid growth and development of the City of Zimmerman and Sherburne and Anoka counties would make construction of pipelines or acquisition of additional easements extremely difficult. He said that existing urban residential, commercial, industrial, institutional and rural residential development adjacent to the existing easements would be negatively impacted and that in many instances, it would be necessary to acquire or demolish entire properties to accommodate additional right-of-way.

In addition, Minnesota State Senator Brian LeClair argued against the Eischens' proposal, stating that his constituents would be adversely affected by the Commission's decision to consider

expansion of the existing pipeline route.

Finally, at the hearing a representative of the Office of Pipeline Safety indicated that due to the expanded population and development along the existing route and the inadequate amount of space to construct a new pipeline along the existing route, construction of an additional pipeline in that right of way would pose significant safety concerns.

Based on the record as a whole, therefore, and finding persuasive the comments of MPL, Randy Piasecki, Senator Brian LeClair, and the Office of Pipeline Safety, the Commission concludes that the public interest would not be served by accepting the Eischens' proposed route (the existing route) for specific development and examination in the contested case proceeding. The Commission does so with the understanding that MPL continues to bear the burden of proof and persuasion that its proposed route minimizes human and environmental impact when compared to all other proposed routes and has specifically undertaken to do that with respect to the existing route.<sup>5</sup> To that end, the Company has assured that it will provide expert witnesses at the contested case hearing to address its proposed route and any questions regarding the existing route to adequately fill out the record in that regard.

## V. PROPOSED ALIGNMENT MODIFICATIONS

Some of the persons proposing alignment modifications requested that the Commission approve them for consideration at the public hearing to insure development of a record. It is not necessary for the Commission to take formal action on alignment modification proposals.

Recommendations for minor locational changes or alignment modifications within MPL's proposed 1.25 mile wide route may be presented directly to the Administrative Law Judge (ALJ) at the upcoming public hearings without prior Commission authorization.

As a courtesy to the proposers of alignment modifications, however, the Commission recognizes that these proposals have been made, including an alignment modification related to Gardens of Eagan, which was submitted at the Commission's June 29, 2006 hearing, and will forward them (Alignment Modifications B-1 - B6) to the ALJ for inclusion in the contested case hearing. The Commission clarifies that the burden to develop the record in the contested case hearing regarding any proposed alignment modification and the burden of persuasion regarding such a proposal remains with the proposer.

### ORDER

1. The Commission hereby accepts the following route segment proposals for consideration at the contested case hearing:

---

<sup>5</sup> See Minn. Rules, Part 4415.0100 CRITERIA FOR PIPELINE ROUTE SELECTION, especially Subp. 2 (Standard) and Subp. 3 (Criteria). Subp. 2 states:

Subp. 2. **Standard.** In determining the route of a proposed pipeline, the [Commission] shall consider the characteristics, the potential impacts, and methods to minimize or mitigate the potential impacts of all proposed routes so that it may select a route that minimizes human and environmental impact.

- a. the route segment proposed by the DNR in the Staples area in Wadena and Todd counties (Alternative 1 on Attachment A, Staples Route Alternatives);
  - b. the route segment proposed by MPL on behalf of the City of Staples in the Staples area in Wadena and Todd counties (Alternative 2 on Attachment A, Staples Route Alternatives);
  - c. the route segment proposed by Scott and Sheila Becker in the Staples area in Scott County (Alternative 3 on Attachment A, Staples Route Alternatives); and
  - d. the route segment proposed by MPL the Belle Plaine area in Wadena and Todd counties (Attachment B, Potential Pipeline Reroute in Belle Plain Area).
2. 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 651-201-2202 (voice) or 1-800-627-3529 (MN relay service)