

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Application of
Minnesota Pipeline Company for a
Certificate of Need for a Large Petroleum
Pipeline

ISSUE DATE: April 13, 2007

DOCKET NO. PL-5/CN-06-2

ORDER GRANTING A CERTIFICATE OF
NEED

PROCEDURAL HISTORY

On January 3, 2006, the Minnesota Pipeline Company, LLC (MPL or the Company) filed an application with the Commission for a certificate of need for a petroleum pipeline, known as the MinnCan project. The Company supplemented its need application on January 18, 2006.

On February 16, 2006, the Commission issued its ORDER GRANTING VARIANCE AND ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE and its NOTICE AND ORDER FOR HEARING.

On April 18, 2006, MPL filed its prefiled direct testimony in this matter.

On June 21, 2006, the Department of Commerce filed direct testimony in this matter.

Between August 24, 2006 and September 14, 2006, a public hearing was held in each of the 14 counties crossed by the proposed project as well as one in St. Paul.

On October 13, 2006, MPL filed proposed findings.

On October 18, 2006, the Department sent a letter to the Administrative Law Judge (ALJ) indicating it did not object to the findings proposed by the Company.

On November 17, 2006 the Administrative Law Judge filed her Findings of Fact, Conclusions and Recommendation.

On December 4, 2006, the Minnesota Public Interest Research Group (MPIRG), Laura and John Reinhardt, Scott County, and the Company filed exceptions to the ALJ's Report.

On December 11, 2006, MPL filed an objection to the exceptions of others.

On December 15, 2006, the Reinhardts filed a reply to the Company's objection.

This matter, in conjunction with MPL's petition for a pipeline route permit¹, came before the Commission for oral argument on February 13, 2007 and for deliberations on February 15, 2007.

FINDINGS AND CONCLUSIONS

I. MPL and its Proposed MinnCan Project

Minnesota Pipeline Company, LLC (MPL or the Company) owns a 256-mile pipeline system that carries approximately 300,000 barrels of Canadian crude oil per day to two Minnesota refineries, the Marathon Petroleum Company in St. Paul and Flint Hills Resources Refinery in Rosemount. MPL's system is supplied by the Enbridge Pipeline at Clearbrook. The assets of MPL are operated by Koch Petroleum Company, an affiliate of Flint Hills Resources (FHR).

The Company's proposed MinnCan Project is a system expansion project estimated to cost around \$300 million. The proposed pipeline is approximately 303 miles of 24-inch diameter pipe with a capacity of 165,000 barrels per day, on an annual average. The entire project is within the borders of Minnesota, would mostly be underground and would run from Clearbrook to Rosemount. For the northern section of the proposed project, from Clearbrook to near Cushing (119 miles), the pipeline would be buried within existing rights-of-way and would run parallel to MPL's existing pipeline system. From Cushing to Rosemount, however, the pipeline would be placed in new rights-of-way to the west and south of the metropolitan area.

II. Notice to Landowners Regarding the Certificate of Need Process

A. Applicable Requirements

The rules governing the certification of need for petroleum pipelines, Minn. Rules, Chapter 7853, do not impose landowner notification requirements.

At the Commission's February 2, 2006 hearing, however, the Reinhardts requested that the Company be required to provide landowner notice in a manner similar to what is required in certificate of need proceedings for high voltage transmission lines. The Company stated that it intended to send a notification letter regarding the certificate of need process to landowners on the proposed pipeline's centerline and in the vicinity of the proposed route. The Commission's subsequent Order directed the Company to work with Department and Commission staff on the notification letter. It also specified that the notification letter was to include the date, time, and

¹ The Commission addresses MPL's petition for a pipeline route permit for the MinnCan Project in a separate Order issued in Docket No. PL-5/PPL-05-2003.

place of the Administrative Law Judge's prehearing conference if that information was known at the time the letter was issued.²

In addition, in its February 16, 2006 NOTICE AND ORDER referring MPL's certificate of need request to the Office of Administrative Hearings for a contested case proceeding, the Commission directed MPL to publish notice of the public and evidentiary hearings at least 10 days in advance in visible display ads in newspapers of general circulation throughout the state. The Commission further directed the Company to 1) work with Commission staff and Department staff to develop a plan to meet this notice requirement, including a proposed text, a list of the newspapers it proposed to use, and proposed publication dates prior to publication; 2) publish notice of the public and evidentiary hearings at least 10 days in advance in visible display ads in newspapers of general circulation throughout the state; and 3) obtain proofs of publication of the ads required above.

B. Company Compliance With the Applicable Notification Requirements

The ALJ found that the Company gave proper notice of the public hearings and met all procedural requirements for the Certificate of Need³ and the Commission finds likewise. Notice of the Certificate of Need proceeding to landowners, which the Commission's rules do not require, was undertaken by the Company consistent with the Commission's directives in its February 16, 2007 Order accepting the Company's filing as substantially complete and in its NOTICE AND ORDER FOR HEARING issued the same day.

First, as directed by the Order accepting the Company's filing as substantially complete, the Company, in consultation with Commission staff, developed a letter to centerline and adjacent landowners, and Commission staff drafted a Notice that basically tracked the notice requirements established for transmission lines in Minn. Rules, Part 7829.2550, subps. 3 and 4. The Company has affirmed on the record that it sent a copy of its letter (as revised in conjunction with Commission staff) along with the Notice drafted by Commission staff to each landowner within the proposed route.⁴

Second, the Department and Commission staff have confirmed that the Company worked with them, as required by the NOTICE AND ORDER FOR HEARING, to develop newspaper ads providing notice of the public and evidentiary hearings. The Company has submitted proofs of timely publication of the required ads.⁵

² See *In the Matter of the Application of Minnesota Pipeline Company for a Certificate of Need for a Large Petroleum Pipeline*, ORDER GRANTING VARIANCE AND ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE, Docket No. PL-5/CN-06-2 (February 16, 2006), Order Paragraph 3, page 5.

³ See ALJ Conclusion #3 in her Findings of Fact, Conclusions and Recommendation issued November 17, 2006 at page 69.

⁴ Exhibit 86; Transcript 10, p. 73; Transcript 12, p. 79.

⁵ Exhibits 100, 17, and 115.

Third, MPL maintained a website (www.minncanproject.com) that not only contained the Company's application for a Certificate of Need, as required by the NOTICE AND ORDER FOR HEARING⁶, but also presented the date, time, and location of public meetings and hearings.⁷

Finally, assertions that the Commission's February 16, 2007 ORDER GRANTING VARIANCE AND ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE impose the same notice requirements on the Company as those required of proponents of a high voltage transmission line (HVTL) misinterpret the Order. The Order stated the Commission would issue a notice soliciting comments on why the notice requirements applying to high voltage transmission lines (HVTL) should not be incorporated into the rules regarding pipeline facilities but did not direct the Company to provide landowner notice in this docket pursuant to the rules governing HVTL applications.

III. Substantive Statute and Rule Requirements For a Certificate of Need

A. Certificate of Need Statutory Factors

The certificate of need statute originally identified eight factors for the Commission to consider in evaluating the need for a proposed large energy facility such as MPL's proposed pipeline⁸ and directed the Commission to "adopt assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section."⁹ Although the statute has subsequently been amended, none of the added provisions apply to pipelines.

⁶ See Order Paragraph 8 of the Commission's February 16, 2006 NOTICE AND ORDER FOR HEARING I this docket at page 8.

⁷ See MPL's January 16, 2007 response to Commission staff's request for a summary of MPL communications, including notifications of public meetings to landowners and others regarding this docket and the route permit docket (PL-5/PPL-05-2003). The Company reported that its website not only contained the information already cited, but also included county-specific maps, a "Frequently Asked Questions" section, project newsletters, contact information, links to the Department, the Commission, and the Commission's e-dockets website, and additional relevant documents. See MPL filing dated January 16, 2007 at page 3.

⁸ Minn. Stat. § 216B.243, subd. 3. The statute also prohibited the Commission from granting any certificate of need unless the applicant demonstrates that the need for electricity cannot be met more cost effectively through energy conservation and load-management measures. This provision does not apply to a pipeline since it does not aim to meet the need for electricity. Subd. 3 was subsequently amended to add four additional considerations but none of them apply to pipelines. In addition, Subd. 3a was added to the statute but the requirement imposed by Subd. 3a likewise does not apply to a pipeline.

⁹ Minn. Stat. § 216B.243, subd. 1.

B. The Rules

In 1983, to comply with its statutory obligation to establish assessment of need criteria, the Commission adopted certificate of need rules for certain large energy facilities, including large petroleum pipelines: Minnesota Rules Chapter 7853. One of those rules, Minn. Rules, Part 7853.0130, encompasses the eight factors identified in the statute and directs the Commission to issue a certificate of need when the applicant demonstrates four things:

- (A) the probable result of denial would be an adverse effect upon 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, considering five specified factors;
- (B) a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record, considering four specified factors;
- (C) the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering four specified factors; and
- (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.

IV. The ALJ's Report

Following a contested case proceeding that addressed both the Certificate of Need and the Route Permit applications, the Administrative Law Judge (ALJ) issued her Findings of Fact, Conclusions and Recommendation (ALJ's Report) on November 17, 2006. In pages 14 through 29, the ALJ examined MPL's Certificate of Need application with respect to the criteria established in Minn. Rules, Part 7853.0130 and explained why she believed the Company's application met those criteria.

An itemization of the criteria addressed and where the ALJ addressed them in her Findings of Fact, Conclusions, and Recommendation follows:

<p align="center">Regulatory Criteria: Minn. Rules, Part 7853.0130</p>	<p align="center">ALJ's Finding or Conclusion</p>
<p align="center">Considerations A,1 - A,5</p>	<p align="center">Findings of Fact 60 - 86</p>
<p>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.</p>	<p align="center">Conclusion 4</p>

Regulatory Criteria: Minn. Rules, Part 7853.0130	ALJ's Finding or Conclusion
Considerations B,1 - B,4	Findings of Fact 88 - 110
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.	Conclusion 4
Considerations C,1 - C,4	Findings of Fact 112 - 133
C. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.	Conclusion 4
Consideration of D	Findings of Fact 134 - 135
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.	Conclusion 4

The ALJ concluded that the record of the proceeding demonstrates that MPL has satisfied the criteria set forth in Minn. Stat. § 216B.243 and Minn. Rules, Part 7853.0130 and recommended that the Commission grant MPL's application for a Certificate of Need for the MinnCan Project.

V. Exceptions to the ALJ's Report Regarding Certificate of Need

A. MPIRG's Exceptions

MPIRG's exceptions alleged 1) inadequate notice to landowners and 2) failure of the Company to appropriately consider alternatives. Its exceptions to ALJ findings regarding notice pertain to the route permit docket and will be discussed in the Order addressing the Company's request for a route permit.

However, MPIRG's assertion that MPL has not adequately examined alternatives to the proposed pipeline, including a "no build" alternative, appears to question the need for the pipeline and so will be addressed in this Order. MPIRG suggested that MPL's asserted failure in that regard warrants denial of the Certificate of Need and requiring the Company to restart the process of environmental review so that the Company can provide better information regarding the alternatives, thereby providing a better record for the Commission to determine need for the proposed project.

The rule in question, however, places the burden of proof on those asserting that another alternative, including the “no build” alternative, is more reasonable and prudent than the proposed pipeline. Regarding alternatives, the rule states:

A. certificate of need shall be granted to the applicant if it is determined that:

...

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, . . (emphasis added).

In this case, the ALJ reviewed the evidence on the record¹⁰ and correctly found that

No party or person has demonstrated a more reasonable and prudent alternative to the proposed pipeline by a preponderance of the evidence.¹¹

Indeed, regarding the “no build” alternative, the record shows that MPL and the Department accounted for the development of alternative fuels in finding a need for more crude oil and that the Company’s need cannot be met through the use of alternative fuels. The Department and the ALJ properly concluded that the “no build” alternative was not a reasonable and prudent alternative because it would not assure that the demand for crude oil in the state and region will be met.

B. The Reinhardts’ Exceptions

The Reinhardts took exception to the ALJ’s Finding #308 regarding the quality of public notice and to the ALJ’s statement in her Memorandum that MPL complied with all the required notice provisions. The Reinhardts argued that it was unfair not to notify landowners along alternate routes approved for consideration. These arguments go to whether the current pipeline notification requirements should be changed in the future, but do not alter the fact that the Commission’s current pipeline notice rules do not require such notification.

Likewise, the fact that the notice language that the Reinhardts support has been issued in a working draft of new rules underscores the status of that language: this kind of landowner notice has not yet been adopted into the pipeline application rules. Instead of individual landowner (mailed) notice, the applicable notice requirement for pipeline cases is stated in Minn. Rules, Part 4415.0085:

Prior to public hearings, the board [now the Commission] shall provide published notice of route location in each county in which a route is accepted for consideration at the public hearings according to the requirements of this chapter.

Absent a Commission Order, then, mailed notice to individual landowners outside the initially proposed route is not currently required in pipeline Certificate of Need proceedings. In this docket, no such Order has been issued, as stated above regarding the February 16, 2006 Order.

¹⁰ Findings 87-109.

¹¹ Finding 110.

In their filing, the Reinhardts also questioned the Department's role in this proceeding, challenged the reported tactics of MPL's land agents, and complained about the Company's attempt to obtain easements before the Commission's need and routing proceedings were completed. These complaints are not exceptions to the ALJ's Report, nor are they grounds for denying a Certificate of Need, since they do not go to the certificate of need review criteria established in Minn. Rules, Part 7853.0130.

C. Scott County Exceptions

Scott County took exception to ALJ Conclusion 6, the ALJ's conclusion that MPL had conducted an appropriate environmental assessment consistent with Minn. Rules, Parts 4415.0115 to 4415.0170 and met the requirements for alternative environmental review in Minn. Rules, Part 4410.3600. The County argued that notice to governmental units regarding the availability of the Company's environmental review materials was inadequate and questioned the adequacy of the environmental review process for the MinnCan project.

Conclusion 6 and the rules cited therein apply to MPL's application for a route permit and not to the Certificate of Need process that is the subject of this docket and Order. The County's concerns will be addressed in the route permit docket, PL-5/TL-05-2003.

D. MPL's Exceptions

MPL raised clarifying exceptions to language in three of the ALJ's findings regarding the Certificate of Need. The Company proposed clarifying the corporate name and structure and revising the location of the mid-point of the pipeline as identified in ALJ finding #46. These clarifications do not alter the ALJ's Report in any substantive way and will be accepted.

VI. Commission Analysis of the Merits of the Certificate of Need Application

The statutory criteria for pipeline Certificates of Need are stated in Minn. Stat. § 216B.243, subd. 3, (1) to (8). These criteria have been effectively incorporated into Minn. Rules, Part 7853.0130, Subparts A-D.¹²

¹² Subsequent to the adoption of these rules, the legislature enacted additional statutory criteria that do not apply to MPL's pipeline project. See Minn. Stat. § 216B.243, subd. 3(9) - (12). These considerations apply only to electric utilities or to electric generation or transmission facilities and not to a pipelines such as MPL has proposed in this matter. The statute was also amended after the rules were adopted to prohibit the Commission from granting a certificate of need for any large energy facility that transmits electric power generated by means of a nonrenewable energy source, unless the applicant demonstrates that it has explored using renewable resources and that the total costs of the project it proposes, including environmental costs, are lower than the cost of using renewables. See Minn. Stat. § 216B.243, subd. 3a. That criterion is also inapplicable to pipelines.

The ALJ's findings and conclusions summarized above in Section III of this Order are set forth in full in her FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION dated November 17, 2006. The ALJ's findings and conclusions are reasonable and well-founded. The Commission will adopt them with minor clarifying amendments specified in Order Paragraph 1.¹³ These amendments do not affect the basis for the ALJ's ultimate recommendation to grant a certificate of need for the proposed pipeline.

The record in this matter demonstrates that MPL has satisfied the relevant criteria set forth in Minn. Stat. § 216B.243, subd. 3, (1) to (8) and incorporated into Minn. Rules, Part 7853.0130, Subparts A-D. Specifically and based on consideration of the factors identified in the applicable rule, the Commission finds as follows:

1. 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.
2. 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.
3. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.
4. 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.

VII. Commission Action

Based on its review of the record and the analysis and findings stated above, the Commission concludes that MPL is entitled to receive a certificate of need for its proposed MinnCan petroleum pipeline and the Commission will issue it forthwith.

¹³ At the final hearing on this matter, the Commission approved minor clarifying amendments to the ALJ's findings and conclusions related to MPL's certificate of need application. The Commission restated the location of the mid-point pump station (MPL Exception), rephrased language regarding the corporate structure (MPL Exception), adopted a conclusion implicit but unstated in the ALJ's findings, and clarified the joint role of the Company, the Department, and the Commission in giving proper notice of the public hearings (Department proposal).

ORDER

1. Except as set forth explicitly herein, the Commission accepts, adopts, and incorporates the findings 2 - 135, conclusions 1 - 5, and the recommendation of the Administrative Law Judge regarding the Company's application for a Certificate of Need.
 - A. ALJ Finding 46 related to the mid-point pump station is modified as recommended by MPL as follows:
 46. The project will also include two new pump stations, one inside the originating station at Clearbrook Minnesota, and ~~a mid-point pump station to be constructed between proposed Mileposts 140 and 146 in Morrison County.~~ one at the approximate mid-point of the pipeline (MP 153) in northern Stearns County.
 - B. ALJ Finding 54 regarding corporate structure is modified as recommended by MPL as follows:
 54. MPL does not operate its pipelines. Its assets are operated by Koch Pipeline Company, ("KPL"), with northern operations headquartered in Rosemount. ~~MPL, Koch Pipeline Company~~ KPL and Flint Hills Resources are ~~all~~ wholly owned subsidiaries of Koch Industries, Inc.
 - C. ALJ's Findings 56-135 on the criteria for granting a certificate of need are modified by adding Finding 77A, as follows:
 - Finding 77A - The record evidence demonstrates that the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of the energy supply to MPL, its customers, or to the people of Minnesota and neighboring states.
 - D. ALJ Conclusion 3 is modified as follows:
 3. Public hearings were conducted in 14 locations along the proposed pipeline route. The Department of Commerce, Public Utilities Commission and Minnesota Pipe Line Company ~~MPL~~ gave proper notice of the public hearings, and the public was given the opportunity to appear at the hearings or to submit public comments. All procedural requirements for the CON and Routing Permit were met.
2. The Commission hereby issues Minnesota Pipeline Company, LLC a certificate of need for its proposed MinnCan petroleum pipeline.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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