

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye	Chair
David C. Boyd	Commissioner
Marshall Johnson	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Application of Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for a Crude Oil Pipeline for the Southern Lights Crude Oil Pipeline Project

ISSUE DATE: July 27, 2007

DOCKET NO. PL-9/CN-07-464

ORDER ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE, REFERRING MATTER TO OFFICE OF ADMINISTRATIVE HEARINGS AND ISSUING NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On April 20, 2007, Enbridge Pipelines, LLC (Enbridge or the Company) filed a certificate of need for its Southern Lights Crude Line Project. The matter was assigned to this docket, PL-9/CN-07-464.

On May 11, 2007, John and Linda Reinhardt filed comments recommending the Commission require landowner notice in accordance with the Commission's notice requirements under Minn. Rules, Part 7829.2550 subp. 3 and 4 for large electric transmission projects. The Reinhardts also argued that the application, as submitted, is incomplete with respect to new lands required for the project, the environmental information contained in the Application, and whether the Applicant examined the appropriate alternatives to the projects.

On May 25, 2007, Enbridge filed a reply to the comments of the Reinhardts. The Company stated that it had previously communicated with landowners with respect to the proposed projects and that the other information suggested as missing by the Reinhardts could be found in Docket No. PL-9/PPL-07-361, the docket which has been opened to process the Company's Route Permit Application for this route.

On June 28, 2007, the Minnesota Department of Commerce (the Department) filed comments on the completeness of the April 20, 2007 application. The Department indicated that Enbridge has met the filing requirements for completeness.

The Commission met on July 12, 2007 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

The Commission finds that it has jurisdiction over applications for certificates of need for large energy facilities, including the crude oil pipeline at issue in this matter (the Southern Lights Crude Line Project) , under Minn. Stat. §§ 216B.2421 and 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.

II. Substantial Completeness of the Filing

The Department filed comments on the completeness of the Company's April 20, 2007 application. The Department indicated that Enbridge has met the filing requirements for completeness.

The items identified by the Reinhardts as missing for this application have been filed as part of a companion docket, Enbridge's application for a site permit to construct and operate the Southern Lights 20" Crude Oil Pipeline, filed April 24, 2007 and assigned to Docket No. PL9/PPL-07-360.

Taking into account information available in the companion docket, the site permit Docket No. PL9/PPL-07-360, the Commission will accept the Company's certificate of need application as substantially complete as submitted on April 20, 2007.

III. Referral for Contested Case Proceedings

The Commission refers matters involving material disputed facts to the Office of Administrative Hearings (OAH) for contested case hearing. Based on the Commission's experience with such proceedings, the Commission concludes that it is quite likely there will be material facts in dispute with respect to the Application. In addition, delaying referral for contested case treatment until specific factual disputes arise could well result in a more lengthy proceeding than if referral occurs at this time, thereby jeopardizing the Commission's statutory deadline for deciding this matter, one year from receipt of the Company's substantially complete Application.

IV. Issues to be Addressed, Witnesses to be Produced

Minn. Stat. § 216B.243, subd. 3 and Minn. Rules, Part 7853.0130 set forth criteria that must be met to establish need for proposed large energy facilities, including the pipeline project at issue in this docket.

The parties to this proceeding should address whether the proposed projects meets these criteria.

The Commission requests that the Department of Commerce continue to study the issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need to the Company. The Commission will direct the Company to facilitate in every reasonable

way the continued examination of the issues by the Department of Commerce and requests that the Company place the application and any required supplement on a website so that it can be accessed electronically (if it has not already done so)

At the end of this process, the Commission is required to make a specific written finding with respect to each of the criteria set forth in Minn. Rules, Part 7853.0130.¹ If an application for a certificate of need is denied, the Commission is required to state the reasons for the denial.² The parties are requested to construct the record accordingly.

V. Public Participation in the Certificate of Need Proceeding

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 Bret Eknes to facilitate and coordinate public participation in this proceeding. He may be reached by telephone at (651) 201- 2236 and by fax at (651) 297-7073. His address is Suite 350, 121 7th Place East, 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 the Company to publish notice of the public and evidentiary hearings in newspapers throughout the state, to encourage public participation.

Regarding notification to landowners, the Commission will require the Company to work with Commission staff to develop a notification letter to be sent out upon the issuance of this Order. In addition, the Commission will exercise its discretion to direct that the Company distribute a second notification letter at least ten, but no sooner than 20 days, before the public hearings on the need applications.

Commission staff will work with the Administrative Law Judge in selecting suitable locations for the public and evidentiary hearings on the application.

The Company will be required to 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 must be in the form of visible display ads. The Company will be required to obtain proofs of publication of such ads from the newspapers selected and consult with Commission staff on the timing, text, and distribution of such ads prior to publication.

¹ Minn. Rules, Part 7853.0100.

² Minn. Rules, Part 7853.0200, subpart 9.

VI. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Eric L. Lipman. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7601.

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 1400.5010 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, 660 Olive Street, 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.

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. For more information on becoming a party, see Section VI, C of this Order.

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 Bret Eknes, Public Utilities Statistical Analyst, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2236; or Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

- *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 Commission staff and intervening parties.

Regarding joint public hearings on need and routing, the Commission requests that public hearings be scheduled in such a way that landowners and other affected (non-party) members of the public are allowed to address both need and routing issues

Regarding variance to the 80-day requirement of Minn. Rules, Part 7853.0200, subp. 5, the Commission will vary the 80-day requirement based on the three-part test in Minn. Rules, Part 7829.3200, to ensure that the parties and the administrative law judge have sufficiently flexibility in setting a hearing schedule to ensure due process

- *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 Company 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. See Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on August 7, 2007 in the Commission's Small Hearing Room on the 3rd Floor of the Metro Square Building, 121 East 7th Place, St. Paul, Minnesota, commencing at 1:00 PM.

The ALJ may wish to consider, in conjunction with Commission staff, the practicality and desirability of holding a joint prehearing conference to deal with both this matter (the certificate of need application) and the routing permit application for the Southern Lights Crude Line Project, which was filed with the Commission on April 24, 2007 and assigned to Docket No. PL9/PPL-07-360. The routing permit application is also being referred to the Office of Administrative Hearings (OAH) for a contested case proceeding by an Order issued contemporaneously with this Order.³

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 prehearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

Minn. Stat. § 216B.243, subd. 5 directs the Commission to act on this application within twelve months of the date it is submitted substantially complete. In this Order, the Commission has found that the application was substantially complete as filed. The twelve-month period, therefore, will therefore begin as of the date it was filed, April 20, 2007, the date on which it was submitted substantially complete. The Commission asks the Office of Administrative Hearings to take this statutory provision into consideration when conducting the contested case proceeding. Parties should also note the twelve-month statutory time frame at the outset and use due diligence to advance the schedule as feasible.

VII. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to certificate of need cases. 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 or (800) 657-3889, with any questions.

³ See *In the Matter of the Application of Enbridge Pipelines (Southern Lights) L.L.C. for a Route Permit for the Southern Lights Crude Oil Pipeline Project*, Docket No. PL9/PPL-07-360, ORDER ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE, REFERRING MATTER TO OFFICE OF ADMINISTRATIVE HEARINGS AND ISSUING NOTICE AND ORDER FOR HEARING (July 27, 2007).

VIII. *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. The Commission hereby accepts as substantially complete the April 20, 2007 application by Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for a crude oil pipeline for the Southern Lights Crude Oil Pipeline Project and refers the matter to the Office of Administrative Hearings to hold a contested case proceeding.
2. A prehearing conference shall be held on Tuesday, August 7, 2007, at 1:00 p.m. in the Small Hearing Room at the offices of Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101
3. Regarding notification to landowners, the Company shall work with Commission staff to develop a notification letter to send to landowners upon the issuance of this Order and a second letter that the Company shall distribute to landowners at least ten, but no sooner than 20 days, before the public hearings on the need application.
4. Regarding compliance filing on notifications, the Company shall submit a compliance filing demonstrating that it has notified the individuals and entities listed in Minn. Rules, Part 7829.2550, subparts 3 and 4 as required for each notification required under Order Paragraph number 2.
5. 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.
6. Regarding joint public hearings on need and routing, the Commission requests that public hearings be scheduled in such a way that landowners and other affected (non-party) members of the public are allowed to address both need and routing issues.
7. The Commission hereby varies the 80-day requirement of Minn. Rules, Part 7853.0200, subp. 5, using the three-part test in Minn. Rules, Part 7829.3200, to ensure that the parties and the administrative law judge have sufficiently flexibility in setting a hearing schedule to ensure due process.
8. The Commission requests the Department of Commerce to continue to study the issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need to the Company.
9. The Company shall facilitate in every reasonable way the continued examination of the issues by the Department of Commerce.

10. The Commission requests that the applicants place the application and any required supplement on a website so that it can be accessed electronically.
11. Commission staff will work with the Administrative Law Judge in selecting suitable locations for the public and evidentiary hearings on the application.
12. The Company 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, that such notice shall be in the form of visible display ads. The Company shall obtain proofs of publication of such ads from the newspapers selected and consult with Commission staff on the timing, text, and distribution of such ads prior to publication.
13. 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).

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 the Application of Enbridge
Pipelines (Southern Lights) LLC for a
Certificate of Need for a Crude Oil Pipeline for
the Southern Lights Crude Oil Pipeline Project

MPUC Docket No. PL-9/CN-07-464

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Eric Lipman, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 341-7601.

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: _____