

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of North  
Dakota Pipeline Company LLC for a Pipeline  
Routing Permit for the Sandpiper Pipeline  
Project in Minnesota

**ORDER FOR CONTINUANCE AND  
CERTIFICATION**

TO: All Persons on the Attached Service List

This matter came before Administrative Law Judge James E. LaFave for a prehearing conference on September 18, 2015.

Christina K. Bruvsen, Fredrikson & Byron, P.A., and James Watts, Attorney at Law, appeared on behalf of North Dakota Pipeline Company LLC (NDPC).

Brian Meloy, Stinson, Leonard, Street, appeared on behalf of Kennecott Exploration Company.

Gerald W. Von Korff, Rinke Noonan, appeared on behalf of the Carlton County Land Stewards (CCLS).

Frank Bibeau, Attorney at Law, appeared on behalf of Honor the Earth.

Jessica Miller, Tribal Attorney, appeared on behalf of the White Earth Band of Ojibwe (WEBO).

Leigh Currie, Minnesota Center for Environmental Advocacy, and Richard Smith, Steering Group Member, appeared on behalf of the Friends of the Headwaters (FOH).

Kevin Pranis, Business Representative, appeared on behalf of the Laborers' District Council of Minnesota and North Dakota (Laborers).

James Reents appeared on behalf of the Northern Water Alliance of Minnesota.

Linda S. Jensen, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce, Energy Environmental Review and Analysis (DOC-EERA).

David J. Zoll, Lockridge, Grindal Nauen, P.L.L.P. appeared on behalf of the Mille Lacs Band of Ojibwe.

Scott Ek and Tracy Smetana appeared on behalf of the Minnesota Public Utilities Commission (Commission).

Based upon the submissions of the parties, all of the files in the record, and for the reasons set forth in the Memorandum below,

**IT IS HEREBY ORDERED THAT:**

Proceedings on the route permit application are **CONTINUED** until the Minnesota Public Utilities Commission has made a decision on the certificate of need.

This ruling is **CERTIFIED** to the Commission for its review, based on the factors contained in Minn. R. 1400.7600 (B), (D), (E) (2015).

Date: October 21, 2015

s/James E. LaFave

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JAMES E. LAFAVE  
Administrative Law Judge

**MEMORANDUM**

**Background**

On November 13, 2013, NDPC submitted applications for a certificate of need and a route permit. The Commission accepted the route permit application as complete on February 11, 2014.<sup>1</sup> Initially, the certificate of need and route matters proceeded jointly. On October 7, 2014, the Commission issued an Order separating the certificate of need and route permit matters and staying the route permit proceeding to allow the Commission to first make a decision on the certificate of need matter.<sup>2</sup>

The Commission issued an Order granting a certificate of need to NDPC on August 3, 2015. On the same day, the Commission also issued an Order Authorizing Recommencement of the Route Permit Proceeding and Providing Direction for the Scope of the Comparative Environmental Analysis.<sup>3</sup>

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<sup>1</sup> Order Finding Application Substantially Complete and Varying Timelines – Notice for Hearing. MPUC Docket No. PL6668/pp1-13-474, edockets ID No 20142-96351 (February 11, 2014).

<sup>2</sup> Order Separating the Certificate of Need and Route Permit Proceedings and Order Environmental Review of System Alternatives, Docket Nos. PL6668/CN-13-473 and PPL-13-474, edockets ID No 20142-103639-01 (October 7, 2014).

<sup>3</sup> MPUC Docket No. PL/6668/RP-13-474, eDockets ID No. 20158-112978 (August 3, 2015).

On September 14, 2015, the Minnesota Court of Appeals reversed and remanded the proceeding back to the Commission to complete an environmental impact statement (EIS) before conducting further proceedings on the certificate of need.<sup>4</sup>

On September 18, 2015, a prehearing conference was held in this matter. Given the ruling by the Minnesota Court of Appeals and the uncertain procedural posture of this proceeding, the Administrative Law Judge declined to set a schedule and requested that the parties submit proposed questions that could be certified to the Commission in order to gain clarification regarding whether the route permit proceeding should proceed at this time.<sup>5</sup>

On September 21, 2015, NDPC filed with the Commission a Petition for Rejoinder and Comment Period.<sup>6</sup> The Petition seeks an Order from the Commission to rejoin the certificate of need and route permit proceedings.<sup>7</sup>

On October 7, 2015, the Commission issued an order that reopened and stayed the August 3, 2015, Order Granting Certificate of Need with Conditions, and also solicited comments from parties in both the certificate of need and route permit dockets on how to proceed going forward.<sup>8</sup>

## Discussion

In October of 2014 when the Commission decided to separate the certificate of need and route permit matters, it noted that the issues in the two proceedings were becoming more complex and that there was an increased likelihood of public confusion if they remained combined proceedings.<sup>9</sup> The Commission also noted that the statutory mandate found in Minn. Stat. § 216B.243, subd. 2 (2014), required a decision on the certificate of need to be made prior to making a decision on the route permit.<sup>10</sup> The Commission therefore found that “continuing to conduct simultaneous certificate of need and routing proceedings in this matter has become infeasible and inefficient, and, ... [is] no longer in the public interest.”<sup>11</sup> The Commission was clear that the route permit proceeding was to be stayed pending a decision on the certificate of need.

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<sup>4</sup> *In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota*, A15-0016 (Minn. Ct. App. September 14, 2015). The Minnesota Court of Appeals modified the decision with a substituted page 11 on September 30, 2015.

<sup>5</sup> Many thoughtful submission were received. The Administrative Law Judge thanks the parties for their help in navigating this uncertain situation.

<sup>6</sup> Petition for Rejoinder and Comment Period (September 21, 2015).

<sup>7</sup> *Id.*

<sup>8</sup> Order Denying Petitions for Reconsideration, Granting Petition to Amend, Reopening and Staying August 3, 2015, Order and Soliciting Comments, MPUC Docket No. PL6668/ppl-13-474, edockets ID No 201510-114658-02 (October 7, 2015).

<sup>9</sup> Order Separating the Certificate of Need and Route Permit Proceedings and Order Environmental Review of System Alternatives, Docket Nos. PL6668/CN-13-473 and PPL-13-474 at p. 4 (October 7, 2014).

<sup>10</sup> *Id.* at p. 5.

<sup>11</sup> *Id.* at p. 5-6.

The October 7, 2014, Order of the Commission separating the certificate of need and routing proceedings was not appealed and remains in effect. In the August 3, 2015, Order recommending the route permit proceeding the Commission stated, “[h]aving **concluded the certificate of need proceeding**, the Commission will now recommence the route permit proceeding.”<sup>12</sup> The recommencement of the route permit proceedings was premised on the Commission having ruled on and completed the certificate of need proceeding. However, based on the ruling of the Minnesota Court of Appeals which reversed the grant of the certificate of need, and the Commission’s Order of October 7, 2015, which reopened and stayed the certificate of need proceedings, that premise is no longer valid. In the current procedural posture, the Commission has not yet made a decision on the certificate of need.

The Administrative Law Judge concludes, based on the Commission’s Order of October 7, 2014, that a decision on the certificate of need must be made prior to recommencing the route permit proceeding. Therefore, further proceedings on the route permit must be continued pending the Commission’s decision regarding the certificate of need.

However, in light of the Court of Appeals decision and NDPC’s pending Petition for Rejoinder, the Administrative Law Judge has certified his order for continuance to the Commission.<sup>13</sup> Certification is governed by Minn. R. 1400.7600. The rule specifies six standards to guide a decision to certify. The question at issue meets three of the six standards and thus is appropriately certified. Certification will afford the Commission the opportunity to provide guidance as to how they desire the route permit be managed given the procedural uncertainties.

**J. E. L.**

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<sup>12</sup> *Id.* at p. 3 (Emphasis added.).

<sup>13</sup> See Minn. R. 1400.7600 (2015).