OAH 68-2500-31889
MPUC PL-5/CN-14-320

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Minnesota Pipe Line Company, LLC For a Certificate of Need for the Minnesota Pipe Line Reliability Project To Increase Pumping Capacity on the Line 4 Crude Oil Pipeline In Hubbard, Wadena, Morrison, Meeker, McLeod and Scott Counties

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

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This matter came before Administrative Law Judge Jeanne M. Cochran for an evidentiary hearing on March 10, 2015, in the Large Hearing Room at the Minnesota Public Utilities Commission (Commission or MPUC) in St. Paul, Minnesota. Public Hearings were held in Park Rapids and Motley, Minnesota, on February 24, 2015, and in Litchfield and New Prague, Minnesota, on February 25, 2015. The Office of Administrative Hearings (OAH) record closed on April 29, 2015, following receipt of the last post-hearing submission.

Eric F. Swanson, Winthrop & Weinstine, P.A., appeared on behalf of Minnesota Pipe Line Company, LLC.

Peter Madsen, Assistant Attorney General, appeared on behalf of the Department of Commerce, Division of Energy Resources (DOC-DER).

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

Cezar Panait, P.E., Regulatory Engineer and Staff Analyst, and Tracy Smetana, Public Advisor with the Consumer Affairs Office, participated on behalf of the Commission Staff.

STATEMENT OF THE ISSUE

Minnesota Pipeline Company, LLC (MPL or the Company) proposes to increase the pumping capacity of its MPL Line 4 pipeline from its current capacity of approximately 165,000 barrels per day to its original design capacity of approximately 350,000 barrels per day.

Has MPL met the criteria set forth in Minnesota law for a Certificate of Need (CON) for its proposed project?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that MPL has demonstrated the need for the proposed increase in pumping capacity on MPL Line 4, and no party or person has demonstrated there is a more reasonable and prudent alternative. Therefore, the Administrative Law Judge recommends that the Commission grant a CON to MPL for the MPL Reliability Project.

Based on the submissions of the parties and the contents of the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. THE MPL SYSTEM

1. MPL owns a pipeline system (MPL System) located wholly in the state of Minnesota. The MPL System transports crude oil from Clearbrook, Minnesota, to two refineries in Minnesota. Those refineries are: (1) the Pine Bend Refinery in Rosemount, Minnesota, which is owned by Flint Hills Resources; and (2) the St. Paul Park Refinery in St. Paul Park, Minnesota, which is owned by New Tier Energy LLC (a/k/a St. Paul Park Refining Co. LLC) (together Minnesota Refineries or Refineries).[1]

2. The MPL System is comprised of four pipelines, each of which originates at a crude oil terminal in Clearbrook, Minnesota. The first pipeline in the MPL System was installed in 1954. A second pipeline was built in the 1970s, and the third in the 1980s. Finally, MPL Line 4 was added to the system in 2008.[2]

3. The MPL System receives crude oil for transport from Canadian and North Dakota sources through connections to the Clearbrook crude oil terminal. MPL is a common carrier pipeline and therefore offers transportation services from Clearbrook to shippers of crude oil who request such service and comply with the terms in the applicable tariffs filed with the Federal Energy Regulatory Commission (FERC).[3]

4. Currently, Flint Hills Resources and Northern Tier Energy LLC are the only two shippers using the MPL System, and the MPL System is the only pipeline system that supplies the Minnesota Refineries.[4]

5. The Minnesota Refineries use crude oil supplied by MPL to produce most of the transportation fuels used in the State, as well as other petroleum products. These Refineries also contribute to fuel supplies used throughout the Upper Midwest.[5]

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[1] Exhibit (Ex.) 2 at 1-2 (Application); Ex. 25 at 4 (O'Hair Direct).
[2] Ex. 2 at 6 (Application); Ex. 25 at 4 (O'Hair Direct).
[3] Ex. 2 at 2 (Application); Ex. 25 at 4-5 (O'Hair Direct).
[4] Ex. 2 at 2, 6-7 (Application); Ex. 25 at 5 (O'Hair Direct); Comment by Jason R. Akey, Vice President-Logistics, St. Paul Park Refining Co., LLC (March 20, 2015) (SpeakUp Comment) (eDocket No. 20153-108457-01).
[5] Ex. 2 at 1 (Application).

6. The MPL System is currently operating at close to its total capacity of 465,000 barrels per day.[6]

7. As pipelines age, they require more frequent inspections and maintenance, and occasionally must be taken out of service for extended periods of time in order to remain in good working condition. The MPL System currently lacks the pumping capacity needed to perform preventive maintenance on segments of the pipelines without disrupting crude oil supplies to the Minnesota Refineries.[7]

II. SUMMARY OF THE PROJECT

8. The proposed MPL Reliability Project (Project) will increase the pumping capacity of the 305 mile-long MPL Line 4 from its current throughput capability of approximately 165,000 barrels per day (bpd) to its original design capacity of approximately 350,000 bpd.[8]

9. The Project was anticipated at the time MPL Line 4 was originally permitted in 2006. The Administrative Law Judge in that proceeding found that MPL Line 4 "will add capacity of approximately 165,000 bpd initially to the MPL system, with the ability to expand to a capacity of approximately 350,000 bpd with the placement of additional pump stations along the pipeline."[9]

10. The Project is designed to address reliability issues and sprint capacity needs on the MPL System.[10] The Project will improve reliability on the MPL System by giving MPL the flexibility to shift volumes from Lines 1, 2, or 3 onto Line 4 when performing maintenance on the other lines.[11] The MPL System also currently has insufficient sprint capacity, which is the ability to transport surplus barrels to refineries when needed to satisfy a sudden increase in demand or to make up for prior production or pipeline outages. The Project is designed to address this need as well.[12]

11. The Project will not change the pipeline itself but will simply change the potential throughput capability by adding pumping capacity.[13]

12. The Project will upgrade the two existing pump stations on MPL Line 4 in Clearbrook and Albany, Minnesota, and install six new pump stations along the current MPL Line 4 route.[14]

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[6] *Id.* at 2 (Application).
[7] *Id.* at 6 (Application).
[8] *Id.* at 2 (Application); Ex. 25 at 5-6 (O'Hair Direct); Ex. 100 at 2 (Otis Direct).
[9] *In the Matter of the Application of Minnesota Pipe Line Co. for a Certificate of Need for a Crude Oil Pipeline*, PUC Docket No. PL-5/CN-06-02, FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION at 12 (November 17, 2006).
[10] Ex. 2 at 2-3, 6 (Application).
[11] *Id.* at 2-3, 6 (Application).
[12] *Id.* at 6 (Application).
[13] Ex. 2 at 2, 28-29 (Application); Ex. 25 at 6 (O'Hair Direct); Ex. 100 at 2-3 (Otis Direct).
[14] Ex. 2 at 2 (Application); Ex. 25 at 6 (O'Hair Direct); Ex. 100 at 3 (Otis Direct).

13. The new pump stations will be located entirely on land owned by MPL in rural areas in the counties of Hubbard, Wadena, Morrison, Meeker, McLeod, and Scott.[15]

14. No new pipeline will be installed beyond that necessary to connect the pump stations to the existing MPL Line 4 infrastructure, and no new pipeline right-of-way will be acquired for this Project.[16]

15. The expected maximum operating pressure of MPL Line 4 will not change from its current 1,470 pounds per square inch (psig) as a result of the Project. Rather the pump stations will allow the pipeline to maintain a more consistent pressure, increasing the pipeline's throughput capability.[17]

16. The estimated capital cost for the Project is $125 million. Operating and maintenance costs for the MPL System will increase by $1 to 2 million after the Project's completion due to the personnel and material costs associated with maintaining six additional pump stations.[18]

17. The Project will bring increased property tax benefits to the counties where construction will occur and create about 40 to 50 new construction jobs. MPL also anticipates some permanent jobs will be created.[19]

18. For planning purposes, MPL targeted January 1, 2016, as a start date for construction with a full in-service date in the fourth quarter of 2017. The Company indicated that contingency plans may be employed to start construction sooner if the Certificate of Need is granted earlier in 2015.[20]

III. PARTIES

19. MPL and DOC-DER are the two parties in this proceeding.

20. MPL owns the MPL System and is the Applicant. MPL's assets are operated by Koch Pipeline Company (KPL), with its regional northern operations headquartered in Rosemount, Minnesota. KPL operates more than 4,000 miles of pipelines in Texas, Wisconsin, Minnesota, Missouri, Iowa, and Illinois transporting crude oil, refined products, ethanol, natural gas liquids, and chemicals.[21]

21. The DOC-DER represents the public interest in CON proceedings. DOC-DER, among other things, reviews the Applicant's filing to assure its completeness and reviews the testimony and schedules, conducts discovery and otherwise investigates

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[15] *Id.*
[16] Ex. 2 at 2 (Application); Ex. 25 at 6 (O'Hair Direct); Ex. 100 at 3 (Otis Direct).
[17] Ex. 2 at 7 (Application).
[18] Ex. 2 at 26 (Application).
[19] Ex. 2 at 3 (Application).
[20] Ex. 2 at 29 (Application).
[21] *Id.* at 2 (Application); Ex 25 at 5 (O'Hair Direct).

the relevant issues, and files testimony and argument addressing whether the Applicant has met the necessary criteria for the granting of a CON.

22. The DOC-EERA is not a party to the proceeding but, at the request of the Commission, provided an environmental report analyzing the potential environmental impacts of the Project and alternatives.[22]

IV. PROCEDURAL BACKGROUND

23. On July 25, 2014, MPL filed a Certificate of Need Application (Application) for the Project pursuant to Minn. R. ch. 7853 (2013).[23]

24. On July 31, 2014, the Commission issued a notice requesting comments on the Application.[24]

25. On August 19, 2014, DOC-DER filed comments recommending that the Commission find the Application complete pending the filing of additional information by the Company. The DOC-DER also recommended that the Commission refer the case to the Office of Administrative Hearings for contested case proceedings.[25]

26. On August 29, 2014, MPL filed supplemental information in response to the DOC-DER's request for additional information but stated that the Company believed the Application was substantially complete as initially filed. Additionally, the Company requested that the Commission use informal proceedings to develop the record.[26]

27. On September 9, 2014, the DOC-DER filed reply comments, stating that the Company had sufficiently responded to the Department's request for additional information. The DOC-DER also recommended that the Commission find the Application complete as of August 29, 2014.[27]

28. On October 17, 2014, the Commission issued an order finding the Application complete and referring the matter to the Office of Administrative Hearings for contested case proceedings.[28]

29. In that same order, the Commission requested that the DOC-EERA conduct a review of the potential environmental effects of the Applicant's proposed Project, and the alternatives identified in the Application. The Commission further

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[22] *See* ORDER FINDING APPLICATION SUBSTANTIALLY COMPLETE; NOTICE OF AND ORDER FOR HEARING AT 6 (October 7, 2014) (eDocket No. 201410-103931-01).
[23] CERTIFICATE OF NEED APPLICATION (July 25, 2014) (eDocket No. 20147-101765-10).
[24] NOTICE OF COMMENT PERIOD (July 31, 2014) (eDocket No. 20147-101879-01).
[25] COMMENTS (August 19, 2014) (eDocket No. 20148-102368-01).
[26] REPLY COMMENTS (August 29, 2014) (eDocket No. 20148-102656-02).
[27] LETTER (September 9, 2014) (eDocket No. 20149-102943-01).
[28] ORDER FINDING APPLICATION SUBSTANTIALLY COMPLETE (October 17, 2014) (eDocket No. 201410-103931-01).

requested that the DOC-EERA submit a report of its analysis into the record prior to the evidentiary hearing in this matter.[29]

30. A Prehearing Conference was held on October 27, 2014, in the Large Hearing Room at the Commission's Office in St. Paul, Minnesota.

31. On October 29, 2014, the Administrative Law Judge issued the First Prehearing Order in this matter, setting the procedural schedule.

32. On November 17, 2014, MPL filed the Direct Testimony of Bob O'Hair, Terry Baker, Luther Ottaway, and Daniel Jones.[30]

33. DOC-DER filed the Direct Testimony of Laura Otis on January 9, 2015.[31]

34. On January 26, 2015, the Commission issued its Notice of Public Hearing.[32]

35. On January 29, 2015, the Commission sent a letter to state agency representatives notifying them of the proposed Project and requesting comments from the state agencies regarding the Project's ability to comply with state agency standards, rules, and policies. The letter was sent to representatives of the Department of Natural Resources; the Minnesota Pollution Control Agency; the Department of Employment and Economic Development; the Department of Commerce; the Department of Agriculture; the Department of Health; the Department of Public Safety; and the Minnesota Historical Society.[33]

36. The Notice of Public Hearing was published in local newspapers between February 4, 2015, and February 19, 2015, including the Albany Express; Arlington Enterprise; Belle Plaine Herald; Chaska Herald; Dakota County Tribune; Dassel Cokato Enterprise Dispatch; Delano Herald Journal; Farmers Independent; Henderson Independent; Hutchinson Leader; Independent Review; Independent Town Pages; McLeod Country Chronicle; Morrison County Record; New Prague Times; Norwood Young America Times; Park Rapids Enterprise; Review Messenger; Staples World; St. Cloud Times; and the Verndale Sun. The Notice of Public Hearing was also published in the St. Paul Pioneer Press on February 16, 2015.[34]

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[29] ORDER FINDING APPLICATION SUBSTANTIALLY COMPLETE (October 17, 2014) (eDocket No. 201410-103931-01).
[30] Testimony of Robert O'Hair (November 17, 2014) (eDocket Nos. 201411-104712-02, 201411-104712-03, 201411-104712-04); Testimony of Terry Baker (November 17, 2014) (eDocket No. 201411-104712-05); Testimony of Daniel Jones (November 17, 2014) (eDocket No. 201411-104712-06); Testimony of Luther Ottaway (November 17, 2014) (eDocket No. 201411-104712-07).
[31] Testimony of Laura Otis (January 9, 2015) (eDocket No. 20151-106079-03).
[32] NOTICE OF PUBLIC HEARING (January 26, 2015) (eDocket No. 20151-106656-01).
[33] LETTER TO STATE AGENCY TECHNICAL REPRESENTATIVES (January 30, 2015) (eDocket No. 20151-106911-01).
[34] AFFIDAVITS OF PUBLICATION (April 6, 2015) (eDocket No. 20154-108991-01).

37. On February 6, 2015, MPL filed the Rebuttal Testimony of Bob O'Hair and Terry Baker.[35] Also on February 6, 2015, DOC-EERA filed its environmental report entitled "A Comparative Environmental Review of the Proposed Minnesota Pipe Line Reliability Project and the Alternatives Identified in the Certificate of Need Application" (Comparative Environmental Review or CER).[36]

38. Public hearings were held on February 24 and 25, 2015, in Park Rapids, Motley, Litchfield, and New Prague, Minnesota.

39. On February 27, 2015, DOC-DER filed the Surrebuttal Testimony of Laura Otis.[37]

40. On March 10, 2015, the contested case hearing was held at the Commission Office in St. Paul.

41. On April 9, 2015, the Parties filed Initial Briefs and MPL filed its Proposed Findings of Fact, Conclusions of Law and Recommendation.

42. On April 23, 2015, the Parties filed Reply Briefs and DOC-DER filed its Proposed Findings of Fact, Conclusions of Law and Recommendation.

43. On April 24, 2015, MPL filed a letter brief responding to DOC-DER's position on a legal issue.

44. On April 29, 2015, the DOC-DER filed a letter stating that it has no objection to the Administrative Law Judge considering MPL's letter brief dated April 24, 2015.

V. SUMMARY OF PUBLIC COMMENTS

45. Over 40 members of the public provided comments on the proposed Project during the public comment period, either at the public hearings or written submissions. Some of the comments supported the Project, and others raised concerns about the Project. The comments are summarized below.

46. Those commenting in favor of the proposed Project focused on the need for the Project and the benefits of the proposed Project. For example, Flint Hills Resources submitted comments stating that it believes the Project is needed to improve reliability of the MPL System and to help meet the demand for crude oil by Flint Hills' Pine Bend Refinery in Rosemount, Minnesota. Flint Hills relies exclusively on the MPL System for its crude oil supply. The Flint Hills' refinery produces approximately 50

[35] Rebuttal Testimony of Terry Baker (February 6, 2015) (eDocket No. 20152-10797-02); Rebuttal Testimony of Robert O'Hair (February 6, 2015) (eDocket No. 20152-107101-01).
[36] COMPARATIVE ENVIRONMENT REVIEW (February 6, 2015) (eDocket No. 20152-107101-01).
[37] Surrebuttal Testimony of Laura Otis (February 6, 2015) (eDocket Nos. 20152-107755-03, 20152-107755-05, 20152-107755-04, 20152-107755-02).

percent of the motor fuel used in Minnesota, and is a leading supplier of jet fuel to the Minneapolis-St. Paul International Airport.[38]

47. St. Paul Park Refining Co. L.L.C. (SPPRC), which owns the refinery in St. Paul Park, also provided comments supporting the Project. Like Flint Hills Resources, SPPRC indicated that it relies on the MPL system to supply crude oil to its refinery. SPPRC converts up to 97,880 barrels of crude oil per day into transportation fuels. SPPRC specifically noted that a reliable supply of crude oil "is important to the recent optimization improvements SPPRC has made at the St. Paul Park refinery."[39]

48. The Minnesota Chamber of Commerce (Chamber) filed comments echoing the comments of Flint Hills Resources and SPPRC. The Chamber noted that MPL is the only pipeline system that supplies crude oil to the two Minnesota Refineries. The Chamber asserted that if the Commission does not grant a CON for this Project, Minnesota consumers could be hurt by disruptions to the Minnesota Refineries. The Chamber also noted that the Project will provide increased jobs and tax revenue. Finally, as compared to other alternatives, the Chamber believes pipelines are the safest, most cost effective, and most environmentally friendly means of transporting crude oil.[40]

49. A few individuals also provided comments in support of the Project. For example, Mark Olson believes there is a need for crude oil and the products that come from it.[41] He has worked on pipelines and pointed out that pipelines are subject to stringent safety standards.[42] Likewise, David Mach, an employee of United Piping in Duluth, believes the Project will help solve the ever-growing problem of petroleum product transportation. He noted that pipelines are the safest method of transporting crude oil.[43] Similarly, Robert Wagner stated that Minnesotans need oil, and pipelines are a better option than rail.[44]

50. In contrast to the comments favoring the Project, there were comments questioning the need for the Project. For example, Florence Hedeen and others asked whether conservation could serve an alternative to the Project.[45] Likewise, Pamela

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[38] Comment by Scott Lindemann, Vice President of Operations, Flint Hills Pine Bend Refinery (March 20, 2015) (SpeakUp Comment) (eDocket No. 20153-108457-01).
[39] Comment by Jason R. Akey, Vice President Logistics, St. Paul Park Refining Co., L.L.C. (March 20, 2015) (SpeakUp Comment) (eDocket No. 20153-108457-01).
[40] Letter from Benjamin Gerber, Manager, Energy Policy, Minnesota Chamber of Commerce to the PUC (March 20, 2015) (eDocket No. 20153-108436-01).
[41] Park Rapids Public Hearing Transcript (Park Rapids Tr.) at 63-64 (February 24, 2015) (Olson).
[42] *Id.*
[43] Motley Public Hearing Transcript (Motley Tr.) at 18-21 (February 24, 2015) (Mach). *See also* Motley Tr. at 42-46 (February 24, 2015) (Seelen); Motley Tr. at 64-69 (February 24, 2015) (Tureson); Park Rapids Tr. at 60-62 (February 24, 2015) (Schultz).
[44] New Prague Public Hearing Transcript (New Prague Tr.) at 45 (February 25, 2015) (Wagner).
[45] Park Rapids Tr. at 38-39 (February 24, 2015) (Hedeen). *See also* Park Rapids Tr. at 39-50 (February 24, 2015) (Mattison).

Shinigoi and others asked if renewable energy resources have been considered in determining whether there is need for the Project.[46]

51. Members of the public also raised a number of concerns about the potential environmental and human impacts from the Project. Some of the concerns related to the Project as a whole, while other concerns were specific to particular proposed pump station locations.

52. A number of citizens expressed concern that the increased volume associated with the Project will result in greater harm to the environment in the event of a pipeline leak. Citizens are particularly concerned about impacts to lakes and drinking water sources.[47] For example, Kevin Mauer, a Morrison County Commissioner, is concerned about spills from the pipeline and the need to protect the Mississippi River and other water resources in the area that could be affected by a spill.[48] Likewise, Robert Follis and Dr. Eldon Morey expressed concern about the impact to drinking water if there is a leak at or near the proposed Fish Trap Station (No. 4) because the proposed pump station is near Fish Trap Lake.[49] Dr. Morey noted that the geology in the area is unusual, which creates a greater concern about a potential spread to aquifers in the area if there is a leak.[50]

53. Some members of the public noted that spills from pipelines are not uncommon.[51] The citizens asked questions about how quickly MPL could respond in the event of a pipeline leak, and expressed concerns about whether remediation efforts would be sufficient to clean up not only soils but also water supplies.[52]

54. Other citizens raised concerns about impacts to the local economy if there is a pipeline leak. For example, Lowell Schellack and Sharon Natzel expressed concern that a leak at or near the proposed LaPorte pumping station (No. 2) could affect Hay Creek, Itasca State Park, and the Headwaters of the Mississippi. They

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[46] New Prague Tr. at 26-29 (February 25, 2015) (Shinigoi). *See also* Park Rapids Tr. at 62 (February 24, 2015) (Hadfield); New Prague Tr. at 39 (February 25, 2015) (Tupy).

[47] *See, e.g.*, Park Rapids Tr. at 25 (February 24, 2015) (Olson); Park Rapids Tr. at 33 (February 24, 2015) (Schellack); Park Rapids Tr. at 56 (February 24, 2015) (Crocker); New Prague Tr. at 42-43 (February 25, 2015) (Tupy); New Prague Tr. at 51 (February 25, 2015) (Pokes); Letter from Eldon and Ken Morey (March 1, 2015) (eDocket No. 20154-109066-01).

[48] Motley Tr. at 59-62 (February 24, 2015) (Mauer).

[49] Motley Tr. at 37-38 (February 24, 2015) (Follis); Motley Tr. at 46-48 (February 24, 2015) (Morey). *See also* Comment by Floren Mowan (March 20, 2015) (SpeakUp Comment) (eDocket No. 20153-108457-01).

[50] Motley Tr. at 46-48 (February 24, 2015) (Morey).

[51] *See, e.g.*, Park Rapids Tr. at 27 (February 24, 2015) (Olson); Park Rapids Tr. at 33 (February 24, 2015) (Schellack); Motley Tr. at 33-34 (February 24, 2015) (Jenkins); Motley Tr. at 46-48 (February 24, 2015) (Morey); Letter from Eldeon and Karen Morey (March 1, 2015) (eDocket No. 20154-109066-01); New Prague Tr. at 41 (February 25, 2015) (Tupy).

[52] *See, e.g.*, Litchfield Public Hearing Transcript (Litchfield Tr.) at 22 (February 25, 2015) (Bengtson); New Prague Tr. at 32 (February 25, 2015) (Schlechter); Comment by Maurice Spangler (March 11, 2015) (SpeakUp Comment) (eDocket No. 20153-108457-01). *See also* Park Rapids Tr. at 56 (February 24, 2015) (Crocker).

stated that the local economies depend on tourism and could be adversely affected by a pipeline leak.[53]

55. Other citizens noted MPL Line 4 could be transporting "tar sands" oil, and cautioned that this type of oil presents a greater pollution and public health risk.[54]

56. Individuals also raised concerns about noise from the new pumping stations.[55] Melissa and Jamie Schlechter, whose home is located adjacent to the proposed St. Patrick pumping station (No. 8), expressed concerns about the impact of noise on the family's rural lifestyle.[56] Jamie Schlecther also expressed concern about their property value going down as a result of the construction of the pump station near their home, and concerns about MPL's construction practices when MPL Line 4 was installed in 2008.[57] In response, William Schroeder, who lives in Norwood Young America, offered to sell some of his land along Line 4 to MPL and proposed that the St. Patrick pump station be moved to his property. He described his property as being "a little bit" southeast of the current proposed St. Patrick site.[58]

57. Others expressed concerns about MPL's compliance with environmental regulations and maintenance practices. For example, Tom Olson claimed that MPL pumped contaminated water into LaSalle Lake after conducting a test on one of its pipelines.[59] In addition, Frank Mitchell stated MPL has failed to maintain the easement for Line 4, which runs through his property, and as a result weeds have taken over his farm field.[60]

58. Finally, citizens questioned whether MPL has the proper easements for its pipelines, and requested that MPL define and monument its pipeline easements.[61]

59. MPL and the DOC-DER responded to questions raised during the public hearings.[62]

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[53] Park Rapids Tr. at 32-33 (February 24, 2015) (Schellack); Comment by Sharon Natzel (March 20, 2015) (SpeakUp Comment) (eDocket No. 20153-108457-01).
[54] Letter from Eldon and Ken Morey (March 1, 2015) (eDocket No. 20154-109066-01); Comment by Florence Mowan (March 20, 2015) (SpeakUp Comment) (eDocket No. 20153-108457-01).
[55] New Prague Tr. at 30 (February 25, 2015) (Schlechter); Litchfield Tr. at 18-19 (February 25, 2015) (Engelmann).
[56] New Prague Tr. at 30 (February 25, 2015) (Schlechter); New Prague Tr. at 36 (February 25, 2015) (Schlechter).
[57] New Prague Tr. at 34, 60-61 (February 25, 2015) (Schlechter).
[58] New Prague Tr. at 47-48 (February 25, 2015) (Schroeder).
[59] Park Rapids Tr. at 23-24 (February 24, 2015) (Olson).
[60] Letter from Frank Mitchell to the PUC (March 2, 2015) (eDocket No. 20154-10966-01).
[61] Comment by Russell Martin (February 20, 2015) (SpeakUp Comment) (eDocket No. 20153-108457-01); Motley Tr. at 50 (February 24, 2015) (Sorgert); Motley Tr. at 36 (February 24, 2015) (Hofer).
[62] *See* Park Rapids Tr. (February 24, 2015); Motley Tr. (February 24, 2015); Litchfield Tr. (February 25, 2015); New Prague Tr. (February 25, 2015).

VI. STATE AGENCY PARTICIPATION

60. Two state agencies, the Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Natural Resources (DNR), also provided comments on the proposed Project and the Comparative Environmental Review.

A. MPCA Comments

61. On March 20, 2015, the MPCA filed a letter addressing three issues: (1) the need for the Project; (2) Clean Water Act Section 401 Water Quality Certification; and (3) construction stormwater.[63]

62. With regard to the need for the Project, the MPCA asserted that the Comparative Environmental Review prepared by the DOC-EERA should address the type of oil that will be flowing through the pipeline with the increased capacity. The MPCA noted that the environmental effects of a release of light crude oil are different than those from a release of heavy crude oil.[64]

63. On the issue of Section 401 Certification, the MPCA noted that Appendix A to the Comparative Environmental Review identifies water bodies near the proposed pumping station locations, and suggested that the Comparative Environmental Review include information on minimizing and mitigating the impacts from the Project to these waters.[65]

64. With regard to construction stormwater, the MPCA noted that the Comparative Environmental Review does not address the potential impacts related to construction stormwater in detail. To address this issue, the MPCA suggested that any CON include a condition that MPL "evaluate the need for coverage under the National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Construction Stormwater Permit; evaluate the types of erosion and sediment control Best Management Practices (BMPs) that may be needed; and evaluate the need for permanent stormwater BMPs at the pumping stations."[66]

65. In response, MPL noted that the issues raised by the MPCA have been addressed in the record.[67]

66. With regard to minimizing and mitigating impacts to waters of the state, MPL stated that none of its proposed pump stations will directly affect major lakes or streams. In addition, MPL testified that pump stations will be located so as to avoid impacts to wetlands.[68]

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[63] Letter from Bill Sierks, Manager, Environment & Energy Section, MPCA to Administrative Law Judge (March 20, 2015) (eDocket No. 20153-108432-01).
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] MPL Initial Brief (Br.) at 7-9.
[68] *Id.* (citing Ex. 2 at 43, 55-56 (Application)).

67. MPL also pointed to information in the record regarding the measures that will be taken to protect nearby water bodies and wetlands, including related detail in its Application.[69] MPL also noted that it has oil spill response and contingency plans, which have been approved by the Pipeline and Hazardous Materials Safety Administration (PHMSA).[70]

68. With regard to the question of construction stormwater, MPL explained that it has already evaluated the question of whether a NPDES/SDS permit is required. MPL identified the need for a NPDES/SDS permit in Table 7853.0230-A of its Application and further discussed potential impacts and mitigation measures associated with stormwater discharges from the proposed Project.[71]

69. In a filing dated April 9, 2015, the DOC-EERA agreed with MPL that the issues raised by the MPCA have already been addressed in MPL's Application and in the Comparative Environmental Review prepared by the DOC-EERA.

B. DNR Comments

70. In its comments, the DNR stated that the Comparative Environmental Review done by the DOC-EERA failed to acknowledge that MPL's proposal to increase the capacity of Line 4 by 185,000 bpd could also increase the environmental impacts in the event of a pipeline leak. The DNR also noted that the Comparative Environmental Review failed to address spill prevention, spill response plans, and Best Management Practices for spill containment, and stated that those topics should have been addressed in the Comparative Environmental Review. The DNR also noted that landscapes with karst geology are particularly vulnerable to groundwater contamination from oil leakages, and believes the issue should have been considered in the Comparative Environmental Review.[72]

71. In addition, the DNR noted that it has particular concerns about the existing condition of the pipeline at the Minnesota River crossing (Sibley and Scott Counties), and inquired as to whether safeguards are in place for an expedient shutoff response in the event of an oil spill.[73]

72. The DNR also expressed concerns about the siting of the proposed Fish Trap pump station (No. 4) located in Morrison County. The DNR noted that the site is surrounded by many sensitive natural resource features including 1200 acres of Fish Trip Lake, Fish Trap Creek, Lake Alexander Woods Scientific and Natural Area, and School Trust Lands managed by the DNR. The DNR recommended that this proposed

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[69] *Id.* at 8 (citing Ex. 2 at 60-65 (Application)).
[70] *Id.* (citing Exs. 103-105 (Otis Surrebuttal)).
[71] *Id.* at 8-9 (citing Ex. 2 at 4, 60-65 (Application)).
[72] Letter from Kate Frantz, Planning Director, Environmental Review Unit, DNR to Administrative Law Judge (March 20, 2015) (eDocket No. 20153-108435-01).
[73] *Id.*

pump station be relocated to a site that has fewer sensitive wetland and surface water natural resource features.[74]

73. Similarly, the DNR expressed concerns regarding the proposed St. Patrick pump station (No. 8) because the site is bounded by 800 acres of Cedar Lake on the north, and an unnamed stream on the south that is a tributary to Sand Creek, which flows north to the Minnesota River. The DNR inquired as to whether safeguards are in place to protect these public waters in the event of a mishap at the pump station.[75]

74. Finally, the DNR expressed concerns about the impact to wildlife by noise produced at the pump stations. The DNR noted that the issue is worthy of consideration, especially in forested systems such as those surrounding the proposed #2 Laporte pump station.[76]

75. In response to the DNR's comments, MPL noted that the DNR's proposal to relocate proposed Fish Trap and St. Patrick pump stations (Nos. 4 and 8) is not sufficiently developed to warrant further consideration. MPL pointed out that the DNR has not identified any specific alternative locations, or demonstrated that other locations would be feasible from a system perspective. In addition, MPL stated that moving these pump stations would create unknown human and environmental impacts and would necessitate new routing for associated transmission lines. Finally, MPL explained that both pump stations #4 and #8 will be located on only a portion of each MPL-owned parcel of land, and the unused land at each site will provide a buffer between the pump station and the surrounding land uses and habitat.[77]

76. The DOC-EERA also responded to the DNR's comments about the Comparative Environmental Review. With regard to the increased volume flowing through the pipeline, the DOC-EERA noted that the line was originally designed, reviewed, and permitted (in PUC Dockets Nos. PL-5/PPL-05-2003 and PL-5/CN-06-2) for the full capacity of 350,000 bpd. Thus, the potential impacts associated with the additional volume proposed in this proceeding have already been evaluated by the Commission.[78]

77. In addition, the DOC-EERA pointed out that MPL addressed the issue of spill prevention and response in its Application, and provided additional information which has already been submitted into the record in this case.[79]

78. With regard to the issue of potential noise impacts, the DOC-EERA noted that the Comparative Environmental Review addresses the issue and discusses compliance with MPCA noise standards.[80]

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[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] MPL Initial Br. at 9-10.
[78] DOC-EERA Comments at 3 (April 9, 2015) (eDocket No. 20154-109135-01).
[79] *Id.* at 4.
[80] *Id.*

79. Finally, with regard to pump station locations, the DOC-EERA stated that it did not review alternatives to the individual pump station locations because the PUC asked the DOC-EERA to review only the alternatives identified in the Application, and the Application did not identify any alternative pump station locations.[81]

VII. CRITERIA FOR GRANTING A CERTIFICATE OF NEED

80. Pursuant to Minn. R. 7853.0030, a CON from the Commission is required prior to construction for any pipeline project that will expand an existing large petroleum pipeline by more than 20 percent of its rated capacity, or 10,000 bpd, whichever is greater.[82]

81. Because the Project would increase the pumping capacity by more than 20 percent (from about 165,000 bpd to about 350,000 bpd), the Project requires a CON under the terms of the Commission's rules before it can be built.[83]

82. The Commission rules specify the criteria the Commission is to apply in determining whether to grant a CON for a petroleum pipeline project. Those rules provide:

> A certificate of need shall be granted to the applicant if it is determined that:
>
> 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, considering:
>
> > (1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;
> >
> > (2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;
> >
> > (3) the effects of the applicant's promotional practices that may have given rise to the increase in the energy demand, particularly promotional practices that have occurred since 1974;
> >
> > (4) the ability of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access, to meet the future demand; and

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[81] *Id.* at 4-5.

[82] Minn. R. 7853.0030(D); *see also* Minn. Stat. §§ 216B.2421, subd 2(4); .243, subds. 1, 2 (2014).

[83] *See* Minn. R. 7853.0300(D). MPL argues that Minn. R. 7853.0300(D) exceeds the scope of Minn. Stat. §§ 216B.2421, .243, and those statutes do not require a CON for such projects. Rather than challenging the rule as exceeding statutory requirements, MPL decided to file for a CON for the Project. *See* MPL Initial Br. at 10-11.

(5) the effect of the proposed facility, or a suitable modification of it, in making efficient use of resources;

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, considering:

(1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

(2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(3) the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

(4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering:

(1) the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;

(2) the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility;

(3) the effects of the proposed facility or a suitable modification of it, in inducing future development; and

(4) socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality; 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.[84]

[84] Minn. R. 7853.0130.

83. As the Applicant, MPL bears the burden of demonstrating the need for the Project,[85] with the specific burden being proof by a preponderance of the evidence.[86]

VIII. APPLICATION OF CERTIFICATE OF NEED CRITERIA

A. The Future Adequacy, Reliability, or Efficiency of Energy Supply

84. The first of the four criteria established by the Commission for the granting of a CON calls for an examination of whether:

> 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.[87]

85. Under this criterion, the Commission considers: (1) an applicant's forecast of demand for the type of energy that would be supplied by the proposed facility; (2) its conservation programs and state and federal conservation programs; (3) its promotional practices; (4) the ability of current or planned facilities to meet the future demand; and (5) the facility's ability to make an efficient use of resources.[88]

1. Accuracy of Forecast for Demand

86. MPL presented both historical crude oil demand data and forecast data in support of its Application.[89] Regarding the historical data, the Company explained that it has no contracts with the Minnesota Refineries.[90] Rather, the Refineries make monthly nominations under the application provisions of MPL's FERC tariff.[91] MPL provided a history of the shipments pursuant to those nominations, which shows an increase in the total volumes shipped on the MPL System from 110 million barrels per year and a per day peak of 395,000 barrels per day in 2009, to nearly 126 million barrels per year with a per day peak of 413,000 barrels per day in 2013.[92]

87. At the request of the DOC-DER, MPL also provided monthly nomination data from October 2009 through September 2014, corroborating this increased level of demand on the MPL System.[93]

88. This increased level of demand has occurred due to the Minnesota Refineries' efforts to improve the efficiencies and utilization of their capacity. As a result

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[85] *See* Minn. Stat. § 216B.243, subd. 3 (2014).
[86] *See* Minn. R. 1400.7300, subp. 5 (2013).
[87] Minn. R. 7853.0130(A).
[88] *Id.*
[89] Ex. 2 at 19-25 (Application).
[90] Ex. 22 at 3 (Ottaway Direct).
[91] *Id*.
[92] *Id.*; Ex. 2 at 19 (Application).
[93] *See* Ex. 26, Attachment A (Schedule 2 to O'Hair Direct - Public); Ex. 27, Attachment A (Schedule 2 to O'Hair Direct – Trade Secret).

of the increased demand by the Refineries, the MPL System is currently operating close to its existing capacity.[94]

89. To forecast its demand, MPL contacted its shippers to request the level of their anticipated demand and reviewed forecasts provided by the Canadian Association of Petroleum Producers (CAPP) and the North Dakota Pipeline Authority (NDPA) regarding the availability of crude oil supply.[95]

90. Based on the information provided by its shippers, MPL forecasts modestly increasing demand for crude oil on the MPL System.[96] Moreover, forecasts provided by CAPP and NDPA indicate no supply constraints that would impact MPL's ability to meet this level of demand.[97]

91. MPL acknowledged that forecasts can be impacted by multiple events and that it does not project significant growth in demand necessitating further projects at this time.[98] However, the best information available indicates a clear need for the MPL System to continue operating at close to its existing capacity.

92. The DOC-DER reviewed the historical and forecast information provided by MPL and testified that the Company's forecasted levels of demand track the historical trend and appear reasonable.[99]

93. The DOC-DER also discussed planned improvements in utilization at the Minnesota Refineries, supporting MPL's forecast of modest growth in refinery demand from current levels.[100]

94. Finally, the DOC-DER compared MPL's forecasts to forecasts available from the Energy Information Administration (EIA)[101] as another means of corroborating the reasonableness of MPL's forecasts. Based on the entirety of this review, the DOC-DER determined that MPL's forecast of demand is reasonable.[102]

95. No party presented evidence contesting MPL's forecasts.

96. Because MPL's System is currently operating at close to its total capacity and its forecasts show modestly increasing demand, MPL will not be able to take segments of the MPL System out-of-service for planned or unplanned maintenance without risking disruption in crude oil supplies to the Minnesota Refineries unless the

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[94] Ex. 25 at 9 (O'Hair Direct).
[95] Ex. 2 at 24 (Application).
[96] *Id.*; Ex. 22 at 4 (Ottaway Direct).
[97] Ex. 22 at 4 (Ottaway Direct).
[98] *Id.* at 4-5.
[99] Ex. 100 at 7-10 (Otis Direct).
[100] *Id.* at 10-11, Schedules LBO-1 and LBO-2 (Otis Direct).
[101] Evidentiary Hearing Transcript Volume (Tr. Vol.) 1 at 52 (Otis).
[102] Ex. 100 at 11 (Otis Direct).

Project is built. In addition, without the Project, the MPL System will not have sufficient sprint capacity to meet the needs of its customers.[103]

97. Based upon the evidence in the record, MPL has demonstrated the accuracy of its forecast for demand for crude oil by the Minnesota Refineries. As a result, MPL has demonstrated that the denial of a CON for the Project would likely have an adverse impact on the future adequacy, reliability, and efficiency of energy supply to the Minnesota Refineries.

2. Effect of Conservation Programs

98. Energy costs form a substantial component of MPL's overall cost structure.[104] For that reason, MPL continually explores ways to improve the energy efficiency of its system, including through energy conservation efforts.[105] Those conservation and efficiency efforts, however, address efficiency of the MPL System, not the underlying demand for crude oil and the products made from refined crude oil.

99. Given the fact that the Project is necessitated by the current MPL System operating at close to capacity, conservation could only eliminate the need for the Project if conservation led to a significant decrease in demand by MPL's shippers.

100. MPL acknowledged it is possible that future advances in efficiency, technology, or renewable fuels may impact future levels of demand for crude oil and the refined products developed from crude oil.[106] However, MPL's shippers considered State and federal conservation efforts and policies when providing their forecasts of demand to MPL.[107]

101. Outside sources forecasting demand for crude oil, such as the EIA forecasts reviewed by the DOC-DER, take into account the effect of conservation programs and increased efficiencies when developing their forecasts.[108]

102. The preponderance of the evidence in the record demonstrates that conservation efforts are already embedded in the forecasts presented during this proceeding and such efforts cannot eliminate the need for the Project.

3. Effect of Promotional Activities

103. The record contains no evidence suggesting that promotional activities have given rise to the need for the Project.[109]

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[103] Ex. 25 at 9 (O'Hair Direct); Ex. 2 at 6-7 (Application).
[104] Ex. 2 at 12-13 (Application); Ex. 24 at 4 (Baker Direct).
[105] *Id*.
[106] Tr. Vol. 1 at 17 (O'Hair).
[107] *Id.* at 22 (Ottaway).
[108] *Id*. at 52 (Otis).
[109] Ex. 2 at 11 (Application).

104. The Project is supported by MPL's shippers and the Minnesota Refineries, who have a need for continued access to a stable and reliable crude oil supply.[110]

4. Ability of Current Facilities to Meet State and Regional Energy Needs

105. The MPL System is the only pipeline system currently supplying crude oil to the Minnesota Refineries.

106. The record demonstrates that the existing MPL System operates at close to its current capacity.[111]

107. Given this fact, any temporary planned or unplanned outage on any part of the MPL System threatens the supply of crude oil to the Minnesota Refineries, in turn threatening the supply of transportation fuels and other refined products to businesses and citizens in Minnesota and the region.[112]

108. As pipelines age, they require more frequent inspections and maintenance to ensure they remain in good working condition.[113] This work necessarily requires temporary outages,[114] and occasionally requires taking pipelines out of service for extended periods of time.[115]

109. According to MPL, the duration of the work varies based on the inspection method and the extent to which any repair work is required.[116] Therefore, MPL cannot predict with certainty the length or frequency of outages that may be expected on MPL Lines 1, 2, and 3 (the Legacy System). However, to provide historical perspective, the DOC-DER examined the history of planned and unplanned outages on the MPL System, and found that over the past five years, planned and unplanned outages on the MPL System have resulted in an average of 216 hours of outages per year on the Legacy System, and 127 hours of outages per year on Line 4. Outages over the past five years have interrupted 2.5 percent of yearly throughput capacity on the Legacy System, and 1.5 percent of capacity on Line 4.[117]

110. The MPL System also experiences unplanned events that cause slowdowns, if not outages.[118] For the 12 months that ended November 2014, the MPL

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[110] Ex. 2 at 11 (Application); Comment by Jason R. Akey, Vice President-Logistics, St. Paul Park Refining Co., L.L.C. (March 20, 2015) (SpeakUp Comment) (eDocket No. 20153-108457-01); Comment by Scott Lindemann, Vice President of Operations, Flint Hills Pine Bend Refinery (March 20, 2015) (SpeakUp Comment) (eDocket No. 20153-108457-01).
[111] *See* Ex. 2 at 2, 19-22 (Application); Ex. 25 at 7 (O'Hair Direct).
[112] Ex. 2 at 2 (Application); Ex. 25 at 7 (O'Hair Direct).
[113] Ex. 25 at 7 (O'Hair Direct); Ex. 100 at 12 (Otis Direct).
[114] Ex. 100 at 12 (Otis Direct).
[115] Ex. 2 at 6 (Application).
[116] Ex. 25 at 7 (O'Hair Direct).
[117] Ex. 100 at 12 (Otis Direct); Ex. 101 at LB0-3, LB0-4 (Otis Direct Attachments).
[118] Ex. 100 at 12 (Otis Direct).

System experienced an average of 13.7 slowdowns per month, lasting an average of 17.2 hours and leading to significant loss of throughput.[119]

111. Delays in planned restarts of a pipeline following an inspection, planned maintenance, or an unplanned event that takes a pipeline segment out of service, can result in a crude oil shortage.[120] Such a crude shortage, in turn, can impact the supply of transportation fuels and other refined products to the State and the region, significantly impacting local economies and people's daily lives.[121]

112. The DOC-DER agreed that outages or delay in restarts on the current MPL System would adversely impact energy supplies and the people of Minnesota.[122]

113. There is no evidence in the record that minor modifications to the current MPL System can provide close to the additional pumping capacity to be provided by the proposed Project.

114. In addition, the record contains no evidence of any other current or planned facility that can meet the need for increased pumping capacity on the MPL System.

5. Effect of the Project in Making an Efficient Use of Resources

115. The Project makes use of available capacity on MPL's newest pipeline – MPL Line 4 – to maintain the overall reliability of the MPL System.[123]

116. MPL Line 4 was originally designed to accommodate the Project.[124]

117. The Project will improve the overall efficiency of the MPL System and of crude oil supply to the Minnesota Refineries by making better use of MPL's existing pipelines and providing a shorter, more direct, and less costly route to the Refineries than the alternatives.[125]

118. One of the goals of the Project is energy optimization of the entire MPL System relative to the Company's throughput.[126] The record demonstrates that barrels shipped on MPL Line 4 use significantly less energy on a per barrel basis than barrels shipped on the Legacy System, due to the larger diameter pipe and more efficient

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[119] Ex. 100 at 12-13, Schedule LBO-3 (Otis Direct).
[120] Ex. 25 at 8 (O'Hair Direct).
[121] Ex. 2 at 7 (Application).
[122] Ex. 100 at 14-15 (Otis Direct).
[123] Ex. 2 at 9 (Application).
[124] *In the Matter of the Application of Minn. Pipe Line Co. for a Certificate of Need for a Crude Oil Pipeline*, PUC Docket No. PL-5/CN-06-02, FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION at 12 (November 17, 2006).
[125] Ex. 2 at 9 (Application).
[126] Ex. 24 at 4 (Baker Direct).

motors on MPL Line 4.[127] Given this, the Project is anticipated to reduce power consumption on a per barrel basis by approximately 37 percent.[128]

119. The record establishes by a preponderance of the evidence that the Project will make efficient use of existing resources. Increasing the capability of MPL Line 4 to its originally designed capacity at this time will provide the flexibility to shift capacity as necessary to maintain reliable crude oil supplies to Minnesota Refineries, without adding unnecessary additional infrastructure such as a new pipeline.

6. Summary of Minn. R. 7853.0130(A) Analysis

120. In summary, the preponderance of the evidence in the record shows that the denial of a CON for the Project would adversely affect the adequacy and reliability of the energy supply to the Minnesota Refineries, the State, and the region.

B. Analysis of Alternatives

121. The second criterion used by the Commission in assessing a CON requires consideration of whether a more reasonable and prudent alternative to the proposed facility has been demonstrated by a preponderance of the evidence in the record.[129]

122. To determine whether such a preferred alternative has been established, the Commission examines: (1) the size, type, and timing of the proposed facility compared to those of reasonable alternatives; (2) the cost of the proposed facility compared to the costs of reasonable alternatives; (3) the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and (4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives.[130]

123. In its Application and testimony, MPL examined the following alternatives: (1) a “no action” alternative; (2) trucking; (3) rail transport; (4) a new pipeline; and (5) the Wood River pipeline.[131]

124. In addition, the DOC-DER explored the possibility of construction of storage tanks as an alternative. The DOC-DER concluded, however, that this option is not viable because, among other reasons, MPL does not own the necessary land on which to construct tanks adjacent to the Minnesota Refineries.[132] As a result, neither the DOC-DER nor MPL considered storage as part of the alternatives analysis.

125. The DNR and some members of the public suggested that the Project be modified to relocate certain proposed pump stations, but no specific alternative

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[127] Ex. 2 at 9 (Application); Ex. 24 at 4-5 (Baker Direct); Tr. Vol. 1 at 29-30 (Baker).
[128] Ex. 2 at 9 (Application); Tr. Vol. at 30 (Baker).
[129] Minn. R. 7853.0130(B).
[130] *Id.*
[131] Ex. 2 at 32-49 (Application).
[132] Ex. 100 at 31 (Otis Direct).

locations were identified that could meet the system needs.[133] As a result, the possibility of moving the Project's pump station locations is not sufficiently developed in the record to be considered as part of the alternatives analysis.

126. As discussed in more detail below, after examining the potential alternatives using the criteria in the rule, both MPL and the DOC-DER agreed a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence in the record.[134]

1. Size, Type, and Timing of Facility

127. The Project will increase the pumping capacity on MPL Line 4 by 185,000 bpd. As such, the Project allows MPL to continue meeting the demands of the Minnesota Refineries in an uninterrupted manner, even when it needs to temporarily take a pipeline out of service for maintenance or repair activities.[135]

128. Moreover, while MPL does not anticipate a significant near-term increase in crude oil demand, it expects that both Minnesota Refineries will continue to become more efficient and improve their utilization rates. These changes will ultimately drive higher peak daily demand requirements. The Project is sized to address these changes in demand and meet MPL reliability needs.[136]

129. By enabling an increase in capability of 185,000 bpd, the Project better enables MPL to meet any sprint capacity needs of its shippers due to outages or slowdowns. As such, the Project is appropriately sized to meet the need.[137]

130. By utilizing the newest pipeline assets on the MPL System, the Project enables continued reliable shipment of crude oil in the safest manner available.[138]

131. Assuming issuance of a CON, MPL anticipates commencing construction with a start date of no later than January 1, 2016, and a full in-service date no later than the fourth quarter of 2017. MPL also has the ability to compress the construction schedule by up to nine months.[139] Therefore, the Project meets the identified need in a timely manner.

132. The truck and rail alternatives have unknown capacity and have unknown timelines for completion.[140] For the trucking alternative, a fleet of over 1,000 trucks would be required and those trucks may not be available. For rail, over 2,000 rail cars

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[133] Comment by DNR (March 20, 2015) (eDocket No. 20153-108435-01); New Prague Tr. at 30, 34 (February 25, 2015) (Schlecter).
[134] Ex. 22 at 5-10 (Ottaway Direct); Ex. 100 at 31-32 (Otis Direct).
[135] Ex. 2 at 32 (Application).
[136] *Id*.
[137] Ex. 25 at 9-10 (O'Hair Direct).
[138] *Id.* at 5-8, 11.
[139] Ex. 2 at 29 (Application).
[140] *See* Ex. 2 at 34-38 (Application); Ex. 22 at 6-7 (Ottaway Direct); Ex. 100 at 20-21 (Otis Direct).

would be required at a time when the area already experiences rail car shortages.[141] Moreover, both truck and rail alternatives require the construction of new loading and unloading facilities, again with an unknown timeframe.[142]

133. A new pipeline alternative would not efficiently utilize existing pipeline assets and would create greater impact on the natural environment than the Project. Moreover, a new pipeline could not likely be constructed on the same timeline as the Project, given the permitting requirements associated with such a facility.[143]

134. The Wood River alternative also fails to meet MPL's size, type, and timing needs more reasonably than the Project. The Wood River Pipeline (WRPL) is a 580 mile pipeline originating in Illinois and terminating in the Twin Cities.[144] The WRPL's capacity is limited to 90,000 barrels per day and the pipeline has been inactive since 2013 due to lack of shipper demand.[145] As such, the WRPL cannot provide increased transport capability comparable to the Project (185,000 barrels per day), nor can it satisfy the system reliability needs or sprint capacity needs met by the Project.[146]

135. In addition, the WRPL would be a more costly method of transport, given the significantly longer distance that the crude oil would have to travel before it reaches the Minnesota Refineries and due to generally inferior pricing of crude oil accessible to WRPL.[147]

136. The preponderance of the evidence demonstrates that the Project better meets the size, type, and timing needs of MPL and its customers than any of the alternatives.

2. Cost

137. MPL estimates the Project will cost approximately $125 million to complete and will require an incremental tariff increase of no more the $0.25/barrel, keeping the total tariff rate between Clearbrook and the Minnesota Refineries below $2.00/barrel.[148] The Project yields this result by making use of existing infrastructure that was designed and constructed to handle the Project's increased pumping capacity, thereby limiting the necessary new investment.[149]

138. Both the truck and rail alternatives would require substantial new infrastructure and infrastructure improvements, including construction of new loading and unloading facilities, and road and rail upgrades.[150] Additionally, the truck and rail

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[141] Ex. 2 at 34-38 (Application).
[142] *Id*.
[143] Ex. 2 at 39 (Application); Ex. 100 at 25 (Otis Direct).
[144] Ex. 22 at 9 (Ottaway Direct); Ex. 100 at 23 (Otis Direct).
[145] Ex. 100 at 23-24 (Otis Direct).
[146] Ex. 22 at 9 (Ottaway Direct); Ex. 100 at 30 (Otis Direct).
[147] Ex. 22 at 9 (Ottaway Direct); Ex. 100 at 30 (Otis Direct).
[148] Ex. 2 at 26 (Application).
[149] *Id.*
[150] *Id.* at 34-38; Ex. 22 at 8-9 (Ottaway Direct); Ex. 200 at 20 (Otis Direct).

alternatives would add new variable costs, including maintenance and labor costs.[151] Given these costs, the record demonstrates that the trucking alternative would cost MPL's shippers between $7.50/barrel and $9.25/barrel, and the rail alternative would cost them approximately $8.00/barrel.[152]

139. The WRPL alternative also would add significant costs to the Minnesota Refineries because of the longer distance traveled by crude oil when it is transported over WRPL, and because of the potentially higher cost of crude oil accessible to that pipeline.[153] MPL estimated that transporting crude oil over WRPL could double or triple the costs to the Minnesota Refineries compared to the Project, and the DOC-DER confirmed that the WRPL alternative would impose significantly higher transportation costs.[154]

140. A new pipeline would add substantial costs to the MPL System when compared to the Project. While the Project will cost an estimated $125 million, a new pipeline is estimated to cost $600 million or more.[155] These additional costs would impact the ultimate costs to the Minnesota Refineries and to consumers of the refined products they produce.

141. The preponderance of the evidence demonstrates that the Project is more cost effective than the alternatives.[156]

3. Impacts on the Natural and Socioeconomic Environments of the Project Compared to Alternatives

142. The Comparative Environmental Review (CER), prepared by DOC-EERA at the direction of the Commission, found that the Project was "clearly superior to any of the alternatives" presented in the CON Application in terms of natural and socioeconomic impacts.[157]

143. The potential environmental impacts of the Project are expected to be restricted generally to the areas within and surrounding the pump station locations themselves, on land owned in fee by MPL.[158] The construction and operation of these stations are the only changes necessary to the existing line.[159] No new pipeline would be installed, and the pump stations would be constructed directly adjacent to the existing line, minimizing the amount of land impacted by the Project.[160]

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[151] *Id.*
[152] Ex. 2 at 35, 38 (Application); Ex. 100 at 20 (Otis Direct).
[153] Ex. 22 at 9 (Ottaway Direct); Ex. 100 at 29-30 (Otis Direct).
[154] Ex. 2 at 41-42 (Application); Ex. 100 at 29-30 (Otis Direct).
[155] Ex. 2 at 26, 39 (Application); Ex. 22 at 8 (Ottaway Direct).
[156] Ex. 25 at 9-10 (O'Hair Direct).
[157] Ex. 200 at 22-23 (Comparative Environmental Review).
[158] Ex. 200 at 5 (Comparative Environmental Review); Ex. 2 at 43, 46-47 (Application).
[159] Ex. 200 at 5 (Comparative Environmental Review); Ex. 2 at 7 (Application).
[160] Ex. 200 at 5 (Comparative Environmental Review).

144. All of the new pump station properties are located in rural areas, and thus the impacts to local residents would be limited.[161]

145. The new pump stations will be located on parcels as large as 74 acres, yet will occupy only a few acres at each site.[162]

146. MPL stated that the proposed pump station sites will not directly impact major lakes, streams, or wetlands of five acres or more and the pump stations will be designed to avoid impacts to wetlands.[163]

147. Members of the public expressed concern that the proposed Project would increase the probability and severity of a crude oil release from MPL Line 4, but did not offer any specific evidence to support their general concerns.[164] According to the DOC-DER witness Laura Otis, however, the available literature indicates only a slight increase of the risk of incident as the amount of product transported increases. In addition, Ms. Otis testified that data from testing conducted before Line 4 entered service indicates that the entire line can safely accommodate the higher operating volumes that would result from implementing the Project.[165] Thus, the evidence in the record does *not* suggest a significant increased risk in either the probability or severity of a leak from Line 4 resulting from the Project.

148. The record also demonstrates that these pump station sites: (a) will not result in direct impacts to trunk highways, railroads, or airports; (b) will not directly impact any national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails, or national waterfowl production areas; (c) will not directly impact State critical areas, State wildlife management areas, State scientific and natural areas, State wild, scenic, and recreational rivers, State parks, State scenic wayside parks, State recreational areas, State forests, State trails, State canoe and boating rivers, State zoo, or designated trout lakes; and (d) will not directly impact any national historic sites and landmarks, national monuments, national register historic districts, registered State historic or archaeological sites, State historical districts, sites listed on the National Register of Historic Places, and any other cultural resources through which the route passes, as indicated by the Minnesota Historical Society.[166] All direct impacts are expected to occur on land owned by MPL.[167]

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[161] *Id.*
[162] Ex. 200 at 5 (Comparative Environmental Review); Ex. 2 at 27-28 (Application); New Prague Tr. at 33-34 (February 25, 2015) (Swanson).
[163] Ex. 2 at 43, 55-56 (Application).
[164] *See, e.g.*, Park Rapids Tr. at 25 (February 24, 2015) (Olson); Park Rapids Tr. at 33 (February 24, 2015) (Schellack); Park Rapids Tr. at 56 (February 24, 2015) (Crocker); New Prague Tr. at 42-43 (February 25, 2015) (Tupy); New Prague Tr. at 51 (February 25, 2015) (Pokes); Letter from Eldon and Ken Morey (March 1, 2015) (eDocket No. 20154-109066-01).
[165] Ex. 100 at 36 (Otis Direct).
[166] Ex. 2 at 57, 58, 59 (Application); Ex. 200 at 8 (Comparative Environmental Review).
[167] Ex. 200 at 7 (Comparative Environmental Review).

149. The CER prepared by DOC-EERA concluded that "[a]ll natural environmental impact…will occur on MPL-owned land." In addition, construction of the Project is likely to have minimal impacts on water or air resources.[168]

150. The Project also is not expected to present significant noise issues given the rural location of the new pump stations. Surveys indicate a noise level of approximately 100 decibels immediately at the pump source and a noise level of approximately 65 dBA, including surrounding ambient sources, at a distance of approximately 100 feet from the pump source. In addition, MPL has calculated that the closest residence to any pump station is approximately 0.1 mile (over 500 feet). At that distance, noise levels should be well within the state standards set by the MPCA. Also, at the public hearings, MPL committed to address any localized noise concerns should they arise.[169]

151. The overall socioeconomic impact of the Project is expected to be positive.[170] The $125 million infrastructure investment in this Project will directly result in increased property tax benefits to the counties where the stations will be located. The Project will also create approximately 40 to 50 new construction jobs, creating work for local workers and providing additional input into the local economy from outside workers. MPL also anticipates adding a minimum of two new permanent positions at the existing station offices. These workers would be employed to observe and operate the system, to assist in emergency preparedness and response drills, and to oversee contractors performing maintenance work on the system.[171]

152. The Project also would provide benefits to the State and regional economies by better ensuring a continued stable, reliable, and efficient source of crude oil supply to the Minnesota Refineries. Given that MPL is the sole pipeline source for crude oil to the Refineries, and that the Refineries in turn are the source for most of the transportation fuel and other refined products used in Minnesota, disruptions of delivery to the Refineries would have a direct negative impact on end users due to fuel shortages and potential cost increases. The Project would alleviate those concerns by providing MPL the flexibility to shift volumes off of its Legacy System in order to perform maintenance, in the event of unplanned outages or slowdowns, and to increase efficiencies, all benefitting the State and the region.[172]

153. Some members of the public expressed concern that a leak at a pump station or along Line 4 could have negative impacts on the socioeconomic environment, but the evidence in the record does not support the conclusion that the Project will materially increase the risk or severity of a leak from Line 4 or the associated pump stations. Moreover, MPL has spill response plans to minimize the impact of any spill.

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[168] Ex. 2 at 46 (Application).
[169] Ex. 2 at 47, 60-61 (Application); Ex. 200 at 8-9 (Comparative Environmental Review); New Prague Tr. at 30-31 (February 25, 2015).
[170] Ex. 200 at 5-7 (Comparative Environmental Review).
[171] Ex. 200 at 7 (Comparative Environmental Review); Ex. 2 at 18 (Application).
[172] Ex. 200 at 7 (Comparative Environmental Review); Ex. 2 at 2-3, 6-7 (Application).

MPL's Minnesota Oil Response Plan has been approved by the Pipeline and Hazardous Materials Safety Administration.[173]

154. In comparison to the Project, the trucking alternative would impose greater potential impacts on the natural environment. Those impacts include impacts associated with the construction of loading and unloading facilities, the increased risk of accident, and substantial air emissions from operation of the trucks. Trucking also reduces the reliability of the supply of crude oil to the Minnesota Refineries and would create significant traffic levels, imposing negative socioeconomic impacts.[174]

155. The rail alternative is also likely to result in more significant environmental impacts than the Project. The rail alternative would require substantial construction of loading and unloading facilities and new rail lines. Moreover, rail transport also increases air emissions compared to the Project.[175] In addition, the rail alternative likely presents a greater risk of an accident than does transporting oil by pipeline.[176] As for socioeconomic impacts, the CER stated that:

> It is beyond the scope of this review to determine the extent of necessary rail build-out or the extensive human, economic and environmental impacts of significantly increasing the rail infrastructure in Minnesota. Considering the existing burden of transporting Bakken crude, the Minnesota Department of Transportation [Mn/DOT] already anticipates the need to spend $244 million to make at-grade safety improvements at rail-highway crossings. Their recent study describes the problems of traffic delays, including emergency responder delays, and collision dangers from inadequate signaling and alerts. In some cases, these problems can only be solved by the high cost 'grade separation' solution of building overpasses/underpasses to separate vehicle and train traffic on site.[177]

156. The alternative of a new pipeline would have more significant environmental impacts than the proposed Project. The new pipeline alternative would involve over 300 miles of new pipeline and new right-of-way acquisition, none of which is required by the Project. Such a major new construction effort would impose far greater impacts to the natural environment than the Project, which would use the existing Line 4.[178]

157. The final alternative, the WRPL alternative, would not be able to provide the additional transport capability provided by the Project. Therefore, the WRPL alternative would either require supplemental truck or rail transport, creating the negative environmental and socioeconomic impacts discussed above, or it would create greater risk of supply disruptions than the Project due to the lack of sufficient capacity.

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[173] *See* Ex. 102 at 9 (Otis Surrebuttal); Exs. 103, 104, 105 (Otis Surrebuttal Attachments).
[174] Ex. 200 at 10-13 (Comparative Environmental Review).
[175] Ex. 200 at 14-17 (Comparative Environmental Review).
[176] Ex. 2 at 37-38 (Application); Ex. 100 at 22 (Otis Direct).
[177] Ex. 200 at 20 (Comparative Environmental Review).
[178] Ex. 2 at 39, 45 (Application); Ex. 200 at 21, 23 (Comparative Environmental Review).

In either event, the WRPL alternative cannot meet the identified need in a manner more compatible with the natural and socioeconomic environments than does the Project.[179]

158. The evidence in the record evidence supports DOC-EERA's conclusion that the Project is "clearly superior to any of the alternatives" in terms of potential impacts on the natural and socioeconomic environments.

4. Reliability

159. The last factor the Commission examines regarding alternatives is "the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives."[180]

160. The record includes evidence which calls into question the reliability of truck transport and rail transport, including evidence of the lack of necessary infrastructure, questionable equipment availability, increased risk of accident, weather, and traffic congestion.[181]

161. In contrast, the Project would utilize the newest pipeline on the MPL System and increase the pumping capacity on that pipeline in order to allow for increased efficiencies and to enable MPL to meet the demands of the Minnesota Refineries, even when some assets are taken out of service for planned or unplanned reasons.[182]

162. Compared to the alternatives, the record demonstrates that the Project will better ensure the safe and reliable delivery of crude oil to the only two Refineries in Minnesota. [183]

5. Summary of Minn. R. 7853.0130(B) Alternatives Analysis

163. In summary, the record demonstrates that none of the alternatives to the Project (truck, rail, a new pipeline or re-activating the Wood River Pipeline) would provide a more reasonable and prudent alternative, after considering the factors in Minn. R. 7853.0130(B) (1)-(4).[184]

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[179] Ex. 2 at 42, 45 (Application); Ex. 200 at 21-23 (Comparative Environmental Review).
[180] Minn. R. 7853.0130(B)(4).
[181] Ex. 2 at 36, 38 (Application); Ex. 200 at 13, 20 (Comparative Environmental Review).
[182] Ex. 2 at 8 (Application).
[183] Ex. 25 at 11 (O'Hair Direct); Ex. 22 at 5-10 (Ottaway Dierct); Ex. 2 at 32-62 (Application); Ex. 200 at 22-23 (Comparative Environmental Review).
[184] Ex. 200 at 22 (Comparative Environmental Review).

C. Consequences of Building the Project Compared to not Building the Project

164. For its third criterion, the Commission examines whether "the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate."[185]

165. In analyzing this question, the Commission considers: (1) the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs; (2) the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility; (3) the effects of the proposed facility, or a suitable modification of it, in inducing future development; and (4) socially beneficial uses of the output of the proposed facility, or a suitable modification of it.[186]

1. Overall State Energy Needs

166. The Project meets Minnesota's and the region's overall energy needs by assuring the continued adequacy, efficiency and reliability of crude oil supply to the Minnesota Refineries. The Project will increase the pumping capacity on the MPL System's newest pipeline, MPL Line 4. The additional capacity on MPL Line 4 will enable MPL to shift volumes to that pipeline from its Legacy System to perform maintenance and inspections, at times of unplanned outages or slowdowns, and to improve the overall efficiency of the MPL System.[187]

167. MPL is currently the only pipeline system supplying crude oil directly to the Minnesota Refineries. These Refineries produce the vast majority of transportation fuels and other refined products on which Minnesotans rely, such as heating fuels and asphalt. The Refineries also help meet regional demand, supplying refined products to surrounding states. However, the MPL System currently operates at close to capacity, meaning any planned or unplanned outages on the MPL System threaten the supply of crude oil to the Refineries.[188]

168. Such shortages in crude oil supply have the potential to impose significant negative impacts on the State and regional economies and on the people of Minnesota.[189]

169. Given the Minnesota Refineries' continued and modestly increasing demand for crude oil, the Project will help ensure Minnesota's energy needs for transportation fuels are met in the future.[190] The DOC-DER agreed, noting that "denial

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[185] Minn. R. 7853.0130(C).
[186] *Id*.
[187] Ex. 2 at 6-7 (Application); Ex. 25 at 7-10 (O'Hair Direct)
[188] Ex. 2 at 6-8 (Application); Ex. 25 at 7-8 (O'Hair Direct).
[189] Ex. 2 at 7-9 (Application); Ex. 200 at 7 (Comparative Environmental Review).
[190] Ex. 25 at 9-10 (O'Hair Direct).

of the [CON] would adversely affect the supply of refined petroleum products available to the people of Minnesota and surrounding states."[191]

170. No party provided any evidence that the Project is not important to meeting State and regional energy needs.

2. Effect on the Natural and Socioeconomic Environments Compared to the Effect of not Building the Project

171. The record establishes an ongoing and modestly increasing demand for crude oil from MPL's shippers, the Minnesota Refineries. The record also establishes that the current MPL System operates at close to capacity. Without the additional pumping capacity made possible by the Project, MPL cannot shift capacity to MPL Line 4 when needed to address planned or unplanned outages. Moreover, the MPL System will lack sprint capacity when needed to address prior shortfalls due to outages or slowdowns.[192]

172. This lack of current capacity has potentially severe consequences for the continued adequacy, reliability, and efficiency of energy supply to the State and region. Both MPL and DOC-DER agree that "no action" is not an option because shortages of crude oil and, in turn, shortages of refined products, can cause significant harm to the State economy, regional markets, and consumers of refined products.[193]

173. The record also demonstrates that if the Project does not move forward oil transportation alternatives will be required to meet the need.[194] As the CER states:

> [S]ince the status quo does nothing to address the stated need, the no action alternative would require MPL to identify other transportation systems to deliver product to the refineries. Any of these other alternatives may result in environmental impacts that are equal to or greater than those of the currently proposed Project. So, the no action alternative would not necessarily reduce or eliminate impacts to the natural environment.[195]

174. More specifically, the record shows that the rail and truck transportation alternatives, which are likely to be pursued if the Project is not built, would result in greater impacts to the natural and socioeconomic environments. As a result, the Project is likely to have fewer negative environmental impacts compared to the effect of not building.[196]

175. Finally, the record shows that if the Project is built, MPL will undertake efforts to ensure its employees and contractors abide by all environmental and permit

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[191] Ex. 100 at 48 (Otis Direct).
[192] Ex. 2 at 6-8, 23-24 (Application); Ex. 25 at 9-10 (O'Hair Direct).
[193] Ex. 2 at 33-34 (Application); Ex. 22 at 5-6 (Ottaway Direct); Ex. 100 at 18-19 (Otis Direct).
[194] Ex. 200 at 10 (Comparative Environmental Review).
[195] *Id*.
[196] Ex. 200 at 10-20, 22-23 (Comparative Environmental Review); *see also*, *supra* at ¶¶ 155-156, 159.

provisions. MPL and KPL, its system operator, use a combination of training, ongoing education, and certification programs to ensure that employees and contractors are able to fully comply with environmental and safety permit provisions. KPL provides its employees with yearly trainings to help ensure its employees know how to handle permit compliance issues that may be encountered while working on the MPL system. KPL contractors must certify that they have undergone training, including training on the contents of KPL technical manuals and guidelines. KPL verifies the certification status and safety record of all contractors it hires through a contractor website database.[197]

176. In addition, KPL stations an inspector at every jobsite who is charged with overseeing the work and ensuring regulatory compliance. KPL also conducts field audits to ascertain whether compliance, performance, and safety standards are being upheld by its employees and contractors.[198]

177. When non-compliance is identified, inspectors or site supervisors have the authority to halt work until acceptable standards can be satisfied. Individual employees are incentivized to meet safety and environmental standards through a system that rewards compliance with additional responsibilities and decision-making rights. In addition, continued employment and compensation for employees are contingent on their ability to meet performance expectations, which include complying with environmental standards.[199]

178. Contractors are subject to similar consequences. If a contractor's performance is not up to KPL or MPL's standards, the contractor will be removed from the job until the contractor can prove that its performance is no longer deficient.[200]

179. Regarding minimizing the probability of spills, KPL has an integrity management program. That program focuses on preventing releases and uses industry benchmarking and partnerships with pipeline inspection companies. In his Rebuttal Testimony, Mr. O'Hair provided a list of several safety and environmental protection awards that KPL has received in recent years.[201]

180. KPL has several practices in place that allow for rapid response to spill events, which include shutting down an entire pipeline if an abnormal event or release is detected. Another practice is the retainer agreements KPL has entered into with oil spill response organizations in the area surrounding its pipelines. KPL also provides training for its employees and local first responders as well as organizing and participating in emergency response trainings. In addition to these resources, KPL maintains an Incident Management Team (IMT) and Incident Command System tasked with

[197] Ex. 102 at 6-7 (Otis Surrebuttal); *see* ISN (Apr. 3, 2015), https://www.isnetworld.com.
[198] Ex. 102 at 7 (Otis Surrebuttal).
[199] *Id.*
[200] *Id.*
[201] Ex. 29 at 6–7 (O'Hair Rebuttal).

managing and coordinating emergency response. The IMT receives regular training for emergency response.[202]

181. In response to a DOC information request, MPL provided copies of its Integrated Contingency Plan and Emergency Response Action Plan, which are required by and submitted to the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, PHMSA has approved the Company's Minnesota Zone Oil Spill Response Plan. The PHMSA letter, while noting one area of improvement, grants approval of the emergency response plans for the five-year period beginning July 9, 2013. The Department has no reason to dispute PHMSA's finding that MPL's response plans are adequate.[203]

182. Mr. O'Hair's testimony, coupled with PHMSA required plans, provide an adequate record of MPL's spill prevention and response plans.[204]

183. In summary, the preponderance of the evidence in the record as a whole demonstrates that the consequences of building the Project are expected to be more favorable than the consequences of denying the Certificate of Need.

3. Induced Future Developments

184. The Project is expected to create a number of positive socioeconomic impacts. Those benefits include: increasing local tax bases by approximately $125 million; creating 40 to 50 construction jobs as well as some permanent jobs; and contributing to the State and regional economies by maintaining an adequate, reliable and efficient source of crude oil to the Minnesota Refineries.[205]

185. The need for new pump stations also drives a parallel need for electric power lines to the six new pump station sites, which generally are in remote locations. The shortest distance that power lines will be constructed from the Project is 3/4 of a mile, and the longest is approximately 18 miles. The new power line will be constructed in accordance with local or State permitting requirements, as appropriate.[206]

186. No other new or expanded utilities or public services are required as a result of the Project and any other induced development impacts are expected to be minimal.[207] For example, water will be needed for hydrostatic testing of the piping at each pump station prior to placing the pump station into service. MPL estimates that a one-time appropriation of water of approximately 50,000 gallons will be needed at each station and has stated that the appropriation will be conducted in accordance with all

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[202] *Id.* at 7–9.
[203] Ex. 103, 104 at LBO-S1, LBO-S2 (Otis Surrebuttal Attachments); Ex. 105 at LBO-S3, LBO-S4 (Otis Surrebuttal Attachments).
[204] Ex. 102 at 9 (Otis Surrebuttal).
[205] Ex. 2 at 7, 9-10 (Application).
[206] Ex. 2 at 67 (Application).
[207] *Id*.

applicable regulations. In addition, it is possible that small quantities of water may be needed for dust suppression purposes within the construction areas.[208]

187. Over the course of construction, daily local vehicular traffic will increase but any increase is not expected to appreciably impact peak-hour traffic. Subsequent to construction, vehicular traffic at new sites resulting from this work is estimated to be approximately four visits per week by pickup truck type service vehicles.[209]

188. No persons will have to relocate as a result of construction of the Project because MPL Line 4 is already in place and the pump stations will be built on land owned by MPL.[210] Some farmland is expected to be lost, but the area lost would be minimal.[211]

189. In summary, the record shows that the effect of the proposed Project on inducing development would be minimal with the exception of the electric utility infrastructure that will be required to connect the new pump stations to the electric grid.[212]

4. Socially Beneficial Uses of the Output of the Facility

190. The Project assures that the Minnesota Refineries will continue to have sufficient and reliable crude oil supplies to meet demand for transportation fuels and other products.[213]

191. These Refineries, which depend on the MPL System, are also responsible for thousands of jobs and are a major source of community investment. In addition, the fuels and additional products that these refineries produce – gasoline, diesel, jet fuel, asphalt and other petroleum-based products – remain essential to the State's economy and modern life.[214]

5. Summary of Minn. R. 7853.0130(C)

192. The record as a whole establishes that the Project can meet State and regional energy needs in a manner compatible with the natural and socioeconomic environments. The record specifically establishes that the Project provides greater socioeconomic benefits and is expected to impose fewer impacts on the natural environment than the crude oil transportation alternatives that are likely to be used if the CON is not granted. Thus, MPL has met the third criterion of Minn. R. 7853.0130 for the granting of a CON.

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[208] *Id*.
[209] *Id*. at 68.
[210] *Id*.
[211] Ex. 2 at 67 (Application); Ex. 100 at 44 (Otis Direct); Ex. 200 at 7 (Comparative Environmental Review).
[212] *See* Ex. 100 at 44 (Otis Direct).
[213] Ex. 2 at 68 (Application).
[214] Ex. 2 at 9-10 (Application); Ex. 100 at 46 (Otis Direct).

D. The Project Will Comply with Relevant Policies, Rules, and Regulations of other State and Federal Agencies and Local Governments

193. The final criterion used by the Commission in determining need states that a CON will be granted if:

> 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.[215]

194. The Application presents a full list of the relevant regulatory authorities with respect to this Project and MPL has committed to pursue all necessary permits for the Project.[216]

195. In addition, KPL, as operator of the MPL System, explained that it strives for excellence in regulatory compliance and emphasizes the need for such compliance throughout its operations.[217] In its Application, MPL stated that it:

> has proven through its relationship with KPL that it is able to successfully build, operate and maintain pipelines and associated facilities in the State of Minnesota and elsewhere with a high degree of safety, reliability, efficiency and integrity. KPL and MPL partner with local, regional and federal governments and agencies to maintain safe and efficient operation and maintenance of their pipelines and associated facilities. The design, construction and operation of the proposed pump stations will comply with all applicable policies, rules and regulations of other state and federal agencies and local governments.[218]

196. The record includes a detailed discussion of safety and integrity management efforts, including copies of the Company's Minnesota Zone Oil Spill Response Plan, Integrated Contingency Plan, and Emergency Response Plan.[219]

197. DOC-DER examined the materials provided by the Company and concluded that:

> [T]he record in this proceeding provides no information that the final design, construction, or operation of the proposed Project will fail to comply with relevant policies, rules, and regulations of other local, state and federal governments.[220]

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[215] Minn. R. 7853.0130(D).
[216] Ex. 2 at 4-5 (Application); Ex. 25 at 13 (O'Hair Direct).
[217] *See* Ex. 2 at 14, 16, and 63 (Application).
[218] Ex. 2 at 69 (Application).
[219] Exs. 103-105 (Otis Surrebuttal Attachments).
[220] Ex. 100 at 48 (Otis Direct).

198. Provided that MPL obtains the necessary permits from other government agencies as it has committed to do, the Project is expected to comply with all relevant policies, rules, and regulations of other government agencies.

199. To ensure compliance with applicable requirements of other government agencies, it is reasonable to condition the issuance of any CON upon MPL's receipt of the permits listed in Table 7853.0230-A of its Application.

E. Summary of CON Criteria Analysis

200. The CON Rules provide as follows:

> A certificate of need shall be granted to the applicant if it is determined that:
>
> > 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, . . .
> >
> > 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, . . .
> >
> > C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, . . . 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.[221]

201. MPL has demonstrated that the Project meets each of these criteria. The DOC-DER, the only other party to this proceeding, agrees. As Ms. Otis testified:

> I concluded in my Direct Testimony that MPL had generally satisfied the criteria for a [CON] under Minnesota Rules part 7853.0130(A), (B), and (D). . . . I reserved my final conclusion as to whether or not the Applicant had satisfied Minnesota Rules parts 7853.0130(B)(3) and 7853.0130(C) (whether the consequences to society of granting the [CON] are more favorable than the consequences of denial). After reviewing DOC-EERA's Environmental Analysis, I accept its conclusion that the proposed Project would have the least effect on the natural and socioeconomic environments compared to the alternatives in the record. Thus, I conclude

[221] Minn. R. 7853.0130 (emphasis added).

> that the proposed Project satisfies Minnesota Rules part 7853.0130(C). I therefore recommend that the Commission approve MPL's request for a [CON] in this matter.[222]

202. In summary, based on the evidence in the record, the Administrative Law Judge concludes that each of the criteria in Minn. R. 7853.0130 has been demonstrated by a preponderance of the evidence.

203. Given the uncontroverted evidence that MPL has satisfied each of the criteria under the CON rule, the Administrative Law Judge finds the Commission should grant a CON for the Project.

IX. DOC PROPOSED CONDITIONS

204. While the DOC-DER agrees that the Project, as proposed, satisfies the criteria for a CON, the DOC-DER recommends that the Commission include a condition in the CON requiring MPL to implement a "neutral footprint" action plan.[223]

205. Specifically, Ms. Otis recommended in her Surrebuttal Testimony that the Commission:

> condition its approval on requiring MPL to conserve an acre for every acre of natural habitat [affected], plant a tree for every tree that must be removed to build new facilities, and generate a kWh of renewable energy for every kWh of energy consumed by the [P]roject by purchasing green power or participating in other programs to offset the energy it consumes at the Project's pump stations.[224]

206. The DOC-DER supported its proposed condition on the grounds that the condition could minimize or offset the effects of the proposed Project on the natural environment. The DOC-DER also asserted that use of renewable electricity at the new pumping stations would provide additional benefits to Minnesota and surrounding states.[225]

207. Ms. Otis subsequently refined her recommendation to state that her recommended "renewable kWh" requirement would apply only to any incremental electric usage on the entirety of the MPL System when comparing total usage pre-Project and post-Project.[226]

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[222] Ex. 102 at 10 (Otis Surrebuttal).
[223] Ex. 102 at 10-11 (Otis Surrebuttal).
[224] *Id.* at 11.
[225] Ex. 100 at 38-39, 45-46, 49-50 (Otis Direct); Ex. 102 at 5-6, 11 (Otis Surrebuttal).
[226] Tr. Vol. 1 at 46-47, 49-50 (Otis).

208. Ms. Otis further modified her recommendation to state that rather than directly generating or purchasing renewable electricity, MPL could satisfy this recommended condition by purchasing renewable energy credits (RECs).[227]

209. The DOC-DER also noted that its recommendation "is consistent with the Commission's recent order for a similar project" – the Enbridge Line 67 upgrade project, MPUC Docket No. PL-9/CN-13-153 (Line 67 Docket).[228]

210. In the Line 67 Docket, Enbridge offered to implement a "neutral footprint" for its project. Enbridge stated that it "intends to conserve an acre for every acre of natural habitat affected, plant a tree for every tree removed to build new facilities, and generate a kilowatt-hour (kWh) of electricity from renewable sources for every kWh its new operations consume." Enbridge indicated that its "neutral footprint" concept was a voluntary effort the company was pursuing as a goal for new projects. [229]

211. Enbridge's Line 67 is a 999-mile pipeline that runs from Alberta, Canada, through North Dakota and Minnesota, to Superior, Wisconsin.[230] Line 67 is a part of and connected with Enbridge's Mainline System, a system of pipelines extending throughout the United States and Canada, forming the largest pipeline system in the world.[231]

212. The Line 67 upgrade project proposed to increase the capacity on Line 67 by 230,000 bpd to meet increased shipper demands and "to relieve the bottleneck of pipeline capacity that shippers are currently experiencing on the Enbridge system."[232] That increased demand came from a large geographic region, stretching as far as Texas and the Gulf Coast.[233]

213. The Line 67 project did not have the advantage of a CER prepared by the DOC-EERA.[234]

214. During the course of the Line 67 proceeding, Enbridge stated that it has voluntarily adopted a "neutral footprint" goal for its new projects.[235]

215. Given Enbridge's declared goals and intentions, the Commission accepted Enbridge's proposal to implement a "neutral footprint" program as a means of mitigating the environmental consequences of Enbridge's proposed project. The Commission accepted Enbridge's voluntary proposal even though it found that all of the alternatives

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[227] *Id*. at 41.
[228] *See id.*; Ex. 102 at 5 (Otis Surrebuttal).
[229] *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project Phase* 2, PUC Docket No. PL-9/CN-13-153, ORDER GRANTING CERTIFICATE OF NEED at 6 (November 7, 2014) (Line 67 ORDER)**.**
[230] *Id.*
[231] *Id.* at 5.
[232] *Id.* at 5-6.
[233] *Id.* at 7.
[234] Tr. Vol. 1 at 44 (Otis) (a review was done when Line 67 was originally constructed but no environmental report was prepared for the Line 67 Docket).
[235] LINE 67 ORDER at 6.

examined in the record involved more significant environmental and socioeconomic consequences than Enbridge's project.[236] Because the Commission's decision was based on Enbridge's voluntary offer to implement a "neutral footprint," the Administrative Law Judge does not view the Line 67 Docket as establishing a binding precedent in this case on the question of whether a "neutral footprint" condition should be adopted for the MPL Project.

216. In contrast to Enbridge's Line 67 project, the current Project is designed to bolster the reliability and efficiency of the MPL System. The MPL System lies entirely within the state of Minnesota and provides the sole source of pipeline supply to Minnesota's two Refineries. MPL is not pursuing the Project in order to ship significantly higher volumes. Rather, the record demonstrates steady to modestly increasing demand from MPL's two shippers.[237]

217. Because of its reliability and efficiency focus, the Project is expected to reduce MPL's total electric energy use.[238] As the record demonstrates, when MPL moves barrels from its Legacy System to MPL Line 4, it sees a reduction in electric use on a per barrel basis due to the larger diameter pipe on and more efficient motors on MPL Line 4.[239] In fact, MPL anticipates a 37 percent reduction in energy use on a per barrel basis when it transfers volumes from the Legacy System to MPL Line 4.[240] Combining this fact with the fact that MPL does not forecast a significant increase in total throughput on the MPL System, means that the Project is expected to result in a reduction in energy use on the MPL System from its current state.[241]

218. Because this Project meets the criteria for a CON without a neutral footprint condition and is expected to result in a net reduction of energy used by the MPL System, the Administrative Law Judge concludes that it is not necessary to condition the CON on a "neutral footprint" as suggested by the DOC-DER.[242]

CONCLUSIONS OF LAW

1. The Commission and the Administrative Law Judge have the jurisdiction to consider Minnesota Power's Application for a Certificate of Need pursuant to Minn. R. 7829.1000, 7853.0130 (2013); Minn. Stat. § 14.50 (2014).

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[236] *Id.* at 29.
[237] Ex. 2 at 6, 8, 24 (Application).
[238] Tr. Vol. 1 at 30, 35 (Baker).
[239] *Id.* at 29-30.
[240] *Id.* at 30.
[241] *Id.*
[242] The parties disagree whether the Commission has the authority to include a "neutral footprint" condition in a CON where, as here, the project otherwise meets the CON criteria. *Compare* MPL Initial Brief at 46-47 *with* Reply Brief of the Minnesota Department of Commerce at 2-3; *see also*, MPL Letter Brief at 1-2 (April 24, 2015). Because the Administrative Law Judge is not recommending that the Commission include a "neutral footprint" condition as part of the CON for the Project, the Administrative Law Judge concludes it is not necessary to determine whether the Commission has the authority to impose such a condition where the proposed project otherwise meets the CON criteria.

2. The Commission and the Applicant have complied with applicable procedural requirements.

3. Minn. R. 7853.0130 sets forth the criteria used by the Commission to determine the need for pipeline projects.

4. The Rule states the Commission shall grant a CON if the record demonstrates, by a preponderance of the evidence, that:

> 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, considering:
>
> > (1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;
> >
> > (2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;
> >
> > (3) the effects of the applicant's promotional practices that may have given rise to the increase in the energy demand, particularly promotional practices that have occurred since 1974;
> >
> > (4) the ability of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access, to meet the future demand; and
> >
> > (5) the effect of the proposed facility, or a suitable modification of it, in making efficient use of resources;
>
> 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, considering:
>
> > (1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;
> >
> > (2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;
> >
> > (3) the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

(4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering:

(1) the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;

(2) the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility;

(3) the effects of the proposed facility or a suitable modification of it, in inducing future development; and

(4) socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality; 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.

5. The record demonstrates the reasonableness of MPL's forecasts of demand for crude oil.

6. Conservation efforts have been considered in those forecasts and conservation cannot replace the need for the Project.

7. No promotional activities have given rise to the need for the Project.

8. There are no current or planned facilities not requiring a CON that can meet the reliability and sprint capacity needs met by the Project.

9. The Project makes efficient use of resources by using the existing MPL Line 4.

10. The Project will enhance the future adequacy, reliability, and efficiency of energy supply to Minnesota and the region.

11. No party demonstrated a more reasonable or prudent alternative than the Project, considering: the Project size, type and timing; cost; human and environmental impacts; and reliability.

12. The record demonstrates that with regard to the potential human and environmental impacts, the Project is superior to alternatives examined in the record.

13. The record demonstrates that the consequences to society of granting the CON are expected to be more favorable than the consequences of denying the CON.

14. The record demonstrates that the Project can be constructed and operated in compliance with all applicable federal, state, and local rules and regulations.

15. Application of each of the factors listed in Minn. R. 7853.0130 supports the granting of the requested CON.

16. The record does not support adding the DOC-DER's proposed "neutral footprint" condition to the CON.

RECOMMENDATION

The Minnesota Public Utilities Commission should:

1. **GRANT** the requested Certificate of Need; and

2. **CONDITION** the Certificate of Need upon MPL's receipt of each of the required permits listed in Table 7853.0230-A of its Application.

Dated: May 26, 2015

s/Jeanne M. Cochran
JEANNE M. COCHRAN
Administrative Law Judge

NOTICE

Notice is hereby given that exceptions to this Report, if any, by any party adversely affected must be filed under the time frames established in the Commission's rules of practice and procedure, Minn. R. 7829.2700, .3100 (2013), unless otherwise directed by the Commission. Exceptions should be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted pursuant to Minn. R. 7829.2700, subp. 3. The Commission will make the final determination of the matter after the expiration of the period for filing exceptions, or after oral argument, if an oral argument is held.

The Commission may, at its own discretion, accept, modify, or reject the Administrative Law Judge's recommendations. The recommendations of the Administrative Law Judge have no legal effect unless expressly adopted by the Commission as its final order.