

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

In the Matter of the Application of
Magellan Pipeline Company, L.P. for a
Route Permit for the Pipestone Reroute
Project in Pipestone County, Minnesota

**ORDER GRANTING BRAVE HEART
SOCIETY'S PETITION TO INTERVENE**

This matter came before Administrative Law Judge Joseph C. Meyer on April 24, 2024, upon a petition to intervene (Petition) filed by the Brave Heart Society (Brave Heart).¹ Magellan Pipeline Company, L.P. (Magellan) filed a response to the Petition on May 1, 2024 (Response). The Response indicated that Magellan did not object to the Petition, subject to a series of conditions. On May 13, 2024, there was a prehearing conference held in this matter.

Richard Dornfeld, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (DOC or Department).

Christina K. Brusven and Patrick D.J. Mahlberg, Fredrikson and Byron, P.A., and Ross A. Crutchfield, Magellan Midstream Partners, L.P., appeared on behalf of Magellan.

Faith Spotted Eagle appeared on behalf of Brave Heart.

Trevor Culbertson appeared on behalf of Commission staff.

Based upon the submissions of the parties and the record in this matter, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

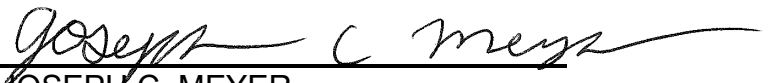
1. Brave Heart's Petition to intervene is **GRANTED**.
2. The timing of Brave Heart's intervention does not change the procedural schedule in this proceeding, including the May 8, 2024, public comment deadline.

¹ Brave Heart offered a copy of the Petition on April 23, 2024, at a public hearing. Brave Heart served the Petition on the parties on April 24, 2024, via the Commission's eDockets system.

3. If Brave Heart elects to submit briefing, it must submit an initial brief outlining its case based on evidence in the record. Any reply briefing must be confined to issues raised by other parties in their initial briefing.

4. Brave Heart shall file a notice of appearance in this matter by **May 28, 2024**.

Dated: May 20, 2024


JOSEPH C. MEYER
Administrative Law Judge

MEMORANDUM

This proceeding is about Magellan's request for a route permit for a reroute of a pipeline that transports refined petroleum products.² The project is "in an area of importance to indigenous peoples," including the Pipestone National Monument and natural resources which are important to tribal communities.³ The intervention deadline in this proceeding was February 1, 2024.⁴ The Petition was filed on April 24, 2024, more than two months after the intervention deadline.

Brave Heart is a "revived Traditional Governance System of Grandmothers and their families who existed before contact with the U.S. Government."⁵ It is a part of the historical leadership and culture of the Ihanktonwan Tribe and describes its mission as to "enhance and preserve the Dakota Lakota Nakota culture for coming generations, thereby creating strong, competent, worldly families with a strong foundation of values, morals, and worldview."⁶ Brave Heart seeks to participate in this process to protect tribal, cultural, and historical resources.⁷

Magellan was the only party to respond to the Petition. Magellan indicated that it did not object to Brave Heart's intervention, subject to five conditions: (1) the existing procedural schedule will be maintained; (2) Brave Heart will adhere to the public comment deadline of May 8, 2024; (3) if Brave Heart submits briefing, it must submit an initial brief outlining its initial case based on evidence in the record, and any reply briefing would be confined to issues raised by other parties in initial briefing; (4) Brave Heart's written submissions will be given probative value equivalent to other public comments; and

² Ex. MAG-1 at ES-1.

³ Ex. MAG-9 at 2-4 (Pebsworth Direct).

⁴ Second Prehearing Order at ¶ 2.

⁵ Petition at 1.

⁶ Petition at 1.

⁷ Petition at 5.

(5) Brave Heart must file a notice of appearance. Magellan agreed to two modifications to its conditions suggested by the Administrative Law Judge that will be discussed below. Brave Heart indicated that it would accept Magellan's conditions as modified during the prehearing conference. At the prehearing conference, the Department indicated that it did not object to Brave Heart's petition.

Under Minn. R. 1405.0900, subp. 1 (2023), a person desiring to intervene must show how their legal rights, duties or privileges may be determined or affected by the proceedings, how those rights duties, rights, and privileges are not otherwise represented, and must set forth the grounds and purposes for which intervention is sought and must indicate petitioner's statutory or legal right to intervene, if one should exist. The Petition explains the importance of the cultural and historic resources potentially impacted by the project to Brave Heart and asserts a series of treaty rights.⁸ The importance of these interests and rights, as well as the absence of any other intervenors specifically representing tribal or indigenous peoples' interests, justify intervention, especially in light of the absence of any objection to the intervention. Further, as no party objects to the intervention, the intervention deadline will not serve as a basis to deny intervention.

The conditions requested by Magellan are, in summary, an attempt to ensure that the late intervention does not delay the procedural schedule, that all parties is subject to the processes of the proceeding, and that Magellan has fair opportunity to respond to any arguments and evidence offered by Brave Heart. Magellan's position is reasonable at this late date in the process.

Three of Magellan's conditions should be adopted in their entirety: Brave Heart should adhere to the public comment deadline; assert any issues it seeks to argue in its initial brief (confined to facts and evidence in the record) and limit its reply brief to replies to other parties' briefs; and be required to file a notice of appearance.

During the prehearing conference, Magellan agreed that its request that the procedural schedule be maintained could be adjusted to instead clarify that the late intervention by Brave Heart would not serve as a basis to delay the procedural schedule. While the Administrative Law Judge agrees that a parties' late intervention should not be used as a reason to extend the procedural schedule, it is also important to not prohibit requests for extensions by any party for other valid reasons.

One of Magellan's conditions spoke to the weight to be provided to Brave Heart's evidence. Different pieces of evidence may have different probative value based on a variety of factors, including the depth and quality of analysis contained within them. Given that the rules for this proceeding are written to enable substantial participation by non-parties,⁹ the probative value of evidence should not hinge on whether or not the commenter has formally intervened as a party. As with any other party or non-party

⁸ Petition at 2–5.

⁹ See Minn. R. 1405.0800 (2023).

participant, the weight of Brave Heart's evidence will be determined by its own merit, and not by the procedural status as an intervening party of the evidence's proponent.¹⁰

For the foregoing reasons, the Petition is **GRANTED**.

J. C. M.

¹⁰ For avoidance of doubt, this clarification does not alter the criteria the Administrative Law Judge will use for evaluating evidence submitted by any party or non-party participant.