

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

In the Matter of the Application of the City of Hutchinson (Hutchinson Utilities Commission) for a Certificate of Need to Construct a Large Natural Gas Pipeline

**FINDINGS OF FACT, CONCLUSIONS,
AND RECOMMENDATION**

This matter was heard by Administrative Law Judge Ken Nickolai on July 22 and 23, 2002, in the Small Hearing Room of the Minnesota Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, Saint Paul, Minnesota. Public hearings were held on May 15, 2002, in Hutchinson, Minnesota, and on May 16, 2002, in Sleepy Eye, Minnesota.

Bruce E. Hanson, Oppenheimer, Wolff & Donnelly LLP, appeared on behalf of the applicant City of Hutchinson (Hutchinson Utilities Commission). Eric F. Swanson, Winthrop & Weinstine, P.A. and James R. Talcott, Senior Counsel, appeared on behalf of Northern Natural Gas Company. Cathy Ostrazeski and Brenda A. Bjorklund appeared on behalf of Reliant Energy Minnegasco (participating at the second pre-hearing conference and by written submission); Rebecca Comstock, Dorsey & Whitney LLP, appeared on behalf of Sibley-Renville Future Agricultural Interests Recognized, Inc. (Representation later withdrawn). Julia E. Anderson, Assistant Attorney General, and Linda S. Jensen, Assistant Attorney General, appeared on behalf of the Department of Commerce. Robert Harding appeared on behalf of the staff of the Public Utilities Commission.

NOTICE IS HEREBY GIVEN that pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission and the Office of Administrative Hearings, exceptions, if any, by any party adversely affected must be filed within fifteen (15) days of the mailing date hereof with the Executive Secretary, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, Saint Paul, MN 55101-2154. Exceptions must be specific, stated separately, and numbered. Proposed Findings of Fact, Conclusions and Order should be included, and copies shall be served upon all parties.. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation. Such request must accompany the filed exceptions, and an original and fifteen (15) copies of each document should be filed with the Commission.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and held.

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

STATEMENT OF ISSUE

Should the Minnesota Public Utilities Commission issue a Certificate of Need to the City of Hutchinson (Hutchinson Utilities Commission) for its proposed natural gas pipeline?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT^[1]

Procedural History

1. On December 13, 2001, the City of Hutchinson (Hutchinson Utilities Commission) submitted its certificate of need application. The MN Department of Commerce requested additional time to review the application for completeness. On December 24, 2001, the Commission issued its ORDER EXTENDING PERIOD TO DETERMINE ADEQUACY OF FILING.

2. On January 14, 2002, in response to comments submitted by the MN Department of Commerce (DOC), Hutchinson submitted a revised application, a letter from New Ulm Public Utilities dated December 31, 2001, and a copy of a letter from Hutchinson Utilities Commission to Northern Natural Gas Company (Northern), requesting an economic feasibility study.

3. On January 30, 2002, the Commission issued its ORDER ACCEPTING FILING AS SUBSTANTIALLY COMPLETE UPON RECEIPT OF CERTAIN INFORMATION, AND NOTICE AND ORDER FOR HEARING, and referring the matter to the Office of Administrative Hearings for a contested case proceeding.

4. On March 4, 2002, Northern's February 22, 2002 proposal, and Hutchinson's analysis comparing the economics of the Northern February 22 proposal to the proposed pipeline were filed, satisfying the Commission's condition for concluding the application was substantially complete.

5. A prehearing conference was held on March 4, 2002, in the Small Hearing Room of the Commission. A second prehearing conference was held, by telephone on May 7, 2002, at the request of the Department of Commerce. Northern, Reliant Energy Minnegasco and the Sibley-Renville Future Agricultural Interests Recognized, Inc. intervened in the proceeding as parties. On March 14, 2002, and May 15th, the Administrative Law Judge issued Prehearing Orders establishing schedules, granting all intervention petitions and allowing the caption of the proceeding to be amended to reflect the status of the applicant as a municipality.

The Applicant

6. The City of Hutchinson is located 55 miles west of Minneapolis, and has a population of approximately 13,050 individuals.^[2] Between 1990 and 2000, the number of households in the City increased by approximately 18.95% and will continue to grow through at least 2020.^[3]

The growth is due to the close proximity of the area to Minneapolis/Saint Paul, and the City's role as a manufacturing and retail center.^[4]

7. Hutchinson Utilities Commission ("HUC") was established in 1936 by the City of Hutchinson as a municipal public utilities commission under Minn. Stat. § 412.321 et seq. In 1960 HUC added natural gas service to its operations. Since 1960, Hutchinson Utilities Commission's natural gas has been obtained through the Willmar branch line of Northern Natural Gas Company.^[5] The natural gas is used by HUC to generate electricity and for heating. HUC has nine electric generating units and sells electricity at wholesale to other electricity providers.^[6] HUC's commercial/industrial customers also use natural gas in their production processes.^[7] HUC currently uses 3.2 Bcf (billion cubic feet) of natural gas per year. Approximately 73% is used to generate electricity and 27% is consumed by HUC's industrial, commercial and residential customers.^[8] HUC's largest commercial/industrial customers are 3M and Hutchinson Technology Inc.^[9]

The Project

8. The proposed 89-mile pipeline will connect facilities located in the City of Hutchinson with the Northern Border Pipeline Company pipeline near Trimont, Minnesota. Approximately 34 miles of the pipeline from Trimont to south of New Ulm will consist of 16-inch outside diameter pipe, and the remaining 55 miles of the pipeline from south of New Ulm to Hutchinson will consist of 12-inch outside diameter pipe. The pipeline will be buried underground within easements to be secured in the following Minnesota counties: Martin, Watonwan, Brown, Nicollet, Sibley and McLeod.^[10]

9. The proposed natural gas pipeline will have a capacity of 60,000 million cubic feet (MCF) per day through the initial 34 miles of 16-inch outside diameter pipe from Trimont to south of New Ulm, and 40,000 MCF per day through the remaining 55 miles of 12-inch outside diameter pipe to the City of Hutchinson.^[11] The pipeline design will allow it to handle a higher capacity at maximum flow rates.^[12] The pipeline will deliver gas to the City of Hutchinson at 800 pounds per square inch gauge (psig), an increase from the current delivery pressure of 450 psig as provided by Northern.^[13]

10. The total cost of the pipeline will be at least \$25.5 million^[14] but may be as high as \$39 million.^[15] The economic life of the pipeline will be at least 25 years,^[16] while its anticipated physical life will be in excess of 40 years.^[17] The Federal Energy Regulatory Commission policies require that regulated companies use a 40-year standard for the estimated useful life of a pipeline.^[18]

11. HUC does not have any agreements in place with its primary gas supply agent, BP Amoco, or any supplier of natural gas for natural gas to be transported over the Northern Border pipeline to supply natural gas to this proposed pipeline.^[19] HUC, however, currently uses BP Amoco to purchase natural gas supplies which BP Amoco then nominates to Northern for delivery. In addition to this transportation capacity on the Northern pipeline, BP Amoco also holds delivery capacity on the Northern Border pipeline which will connect to the proposed pipeline.^[20] There was no evidence to indicate that the Northern Border pipeline capacity is currently constrained.^[21]

12. Construction of the proposed pipeline will permit HUC to obtain natural gas supplies off the Northern Border Pipeline rather than the Northern Natural pipeline system. If Northern maintains the pipeline open to Hutchinson, HUC could then have a source of natural

gas supply from both pipeline systems.^[22] Northern has not agreed to continue to serve HUC in a backup status and no costs for such an arrangement were made a part of this record.^[23]

Demand for Natural Gas

13. The current winter contracted capacity available to Hutchinson Utilities Commission from Northern Natural Gas Company (“Northern”) is 17,253 dekatherms (DTH) per day, with a contracted for minimum delivery pressure of 450 psig. Hutchinson Utilities Commission’s peak winter load within the last five years, 1996–2001, was 16,695 DTH per day. Thus, at peak, the existing system was operating at 97% of contracted for capacity.^[24]

14. The capacity available to Hutchinson Utilities Commission, by contract, during the summer months is 14,380 DTH per day with a minimum delivery pressure of 450 psig. Hutchinson Utilities Commission’s peak summer load in 1996 – 2001, was 18,291 DTH per day. Then, the system was operating at 127% of contracted capacity.^[25]

15. To operate on days when HUC’s demand for natural gas exceeds capacity, HUC buys capacity if it is available from other utilities or another entity. If no capacity is available for sale, HUC pays penalties.^[26]

16. HUC has had to ask commercial/industrial customers to reduce their load on peak days during the past five years. They have also had to ask 3M to reduce its firm commitment on peak days within the last five years.^[27]

17. Northern Natural Gas Company’s Market Area – Zone EF, which includes Hutchinson, is capacity constrained and is fully subscribed.^[28] The Willmar branch line of Northern’s pipeline is fully subscribed to the limit of its FERC capacity.^[29] In addition to HUC, other Northern customers on the Willmar branch line have also asked for additional capacity.^[30]

18. Within the past five winter heating seasons, 1996 – 2001, Northern has “limited” nomination levels in the market area 156 days, or an average of 31 days per winter heating season.^[31] This occurs on SOL days (System Overrun Limitation) declared by Northern.^[32] On those days, HUC may still raise its nomination to its full contract level, if allowed by Northern.^[33]

19. Beginning in 1996, Hutchinson Utilities Commission sought proposals from Northern Natural Gas Company to obtain additional delivery pressure and transport capacity, but Hutchinson and Northern did not reach agreement.^[34]

20. HUC’s demand for natural gas will continue to increase. By the year 2016, a reasonable estimate of HUC’s daily natural gas requirements is between 30,968 MMBtu^[35] and 34,672 MMBtu.^[36] This estimate is based on the assumption that HUC will add natural gas fired electric generating capacity in 2011 and 2016.^[37]

22. HUC owns and operates a General Electric LM6000 Gas Turbine Generator set. The LM6000 gas turbine achieves its highest efficiency, and lowest heat rate, when the gas turbine is operating at full output. The General Electric recommended gas pressure is 695 psig at the inlet to the fuel valve. Any decrease from this gas pressure results in decreased output and a higher heat rate (Btu/kilowatt-hr). The unit efficiency decreases as the heat rate rises causing more gas to be consumed to generate electricity.^[38] HUC has operated this Gas

Turbine Generator since 1995 using the lower gas pressure provided off the Northern pipeline.^[39]

23. HUC does promote energy conservation through customer rebate offers when they purchase energy efficient appliances.^[40] In addition, HUC identified certain energy conservation and efficiency programs that they plan to implement within the next five years.^[41] HUC has programs for insulating customer buildings and replacing doors and windows, to improve conservation of natural gas used for space heating. For 2002-2003, HUC designated \$42,000 for natural gas conservation programs.^[42] HUC does not have promotional programs to increase the use of natural gas by its customers.^[43] Nor does it sell or service appliances.^[44]

24. The proposed pipeline will have capacity to transport more natural gas than is forecasted to be needed by HUC on a stand alone basis.^[45] HUC has contacted other Northern customers on the Willmar branch to discuss their interest in using the proposed pipeline, if it is approved and constructed.^[46]

25. The City of New Ulm (New Ulm Public Utilities) has signed a non-binding Letter of Intent stating that it expects to contract with Hutchinson Utilities Commission for natural gas transportation services utilizing the proposed pipeline.^[47] The City of New Ulm (New Ulm Public Utilities) uses natural gas for electrical generation and heating, and its commercial/industrial customers use natural gas in the production process.^[48] New Ulm Public Utilities also maintains a district energy system in which back pressure steam off of its steam turbine is used in heating the downtown area, and higher pressure steam is offered for sale to its industrial customers.^[49] The City of Fairfax and Heartland Corn Products similarly have provided non-binding Letters of Intent to purchase transmission capacity from HUC.^[50]

26. However, these agreements are non-binding and Northern will compete to retain its current customers.^[51]

Alternatives to the Pipeline Proposal

27. HUC began seeking additional capacity and higher pressure from Northern in September of 1996.^[52] As recently as April 24, 2001, Northern rejected the request for additional capacity on the grounds it was uneconomical for Northern to develop the project for Hutchinson.^[53]

28. In 2002, Northern made two proposals to HUC for additional supplies. The February 22, 2002 offer^[54] and the April 24, 2002 offer.^[55] The February 22, 2002 offer was in response to HUC's request that Northern provide an Economic Feasibility Study for the proposed pipeline's 40,000 Dth/day at 800 psig. Northern responded with a proposal requiring HUC to make an initial down payment, and annual capacity reservation payments for each year of the contract. It also required HUC to make annual pay Northern's maximum demand and commodity surcharges approved by FERC, in effect today or placed into effect in the future.^[56] Northern Natural Gas Company did not provide details as to how the additional capacity and pressure would be made available.^[57]

29. Using a 20-year time frame, on a present value basis, the HUC-proposed natural gas pipeline is substantially less expensive than the February 22, 2002 proposal.^[58] HUC rejected the February 22, 2002 proposal as being too costly.^[59] The February 22, 2002 offer is by its terms no longer open.^[60] However, both offers were unilaterally extended by Northern until completion of this certificate of need process.^[61]

30. Northern Natural Gas Company provided Hutchinson Utilities Commission with an "Alternative Service Offer" on April 24, 2002. In this offer Northern Natural Gas Company offered Hutchinson a total capacity level of 20,000 Dth/day during the winter months (Nov-Mar) and 25,000 Dth/day during the summer months (April-October) at a pressure profile of 600 psig. The April 24, 2002 offer by Northern Natural Gas Company extends the currently contracted firm market area entitlement for eight years and allows an increase beginning November 1, 2003 for an initial term of eight years. Northern also offers to end the initial term any year between 2007 and 2011.

31. Northern Natural Gas did not provide details to Hutchinson Utilities Commission as to how the additional capacity and minimum pressure would be made available.^[62]

32. Using a present value analysis assuming a 4.92% discount rate and a 20 year time horizon, the April 2002 proposal is a less costly alternative to HUC's proposed pipeline for each of the 20 years, assuming construction costs are \$31 million or more.^[63] But over a 40-year time frame, and using the highest cost estimate of \$39 million for construction of the proposed pipeline, the HUC proposed natural gas pipeline is less expensive.^[64] These numbers provide a rough present value analysis but do not include all likely costs.^[65]

33. No evidence was presented as to the cost of additional facilities needed by Northern to meet the requirements of either proposal.

34. Neither proposal provided assurance of additional supplies past 2011, when HUC anticipates placing an additional gas fired generator on line.^[66]

35. There was no evidence as to the relative costs of possible alternatives such as building a new power plant near Trimont, MN and constructing an electric transmission line to Hutchinson.^[67]

36. Construction of the proposed pipeline will require disturbance of agricultural lands during construction.^[68] Likely disruption includes potential erosion, river and stream crossings, and disruption of any forested areas along the route.^[69] HUC is discussing with the staffs of the Minnesota Environmental Quality Board, and the Minnesota Department of Agriculture, alternative routes for the proposed natural gas pipeline, and necessary mitigation measures when crossing agricultural land. Those discussions, and the consideration of other environmental issues, are occurring in the context of the EQB pipeline routing proceeding.^[70] No substantial evidence was presented as to possible construction impacts from expansion of Northern's facilities to provide the service as described in its April offer or of any other possible alternative.^[71]

37. The reliability of the proposed natural gas pipeline is likely to be at least as good as the expected reliability of the existing 40-year old Northern Natural Gas Company Willmar branch line.^[72]

38. The proposed natural gas pipeline will add to the supply of energy in south-central Minnesota and will make natural gas supplies available for additional development and growth in the Hutchinson area and in communities along the route of the pipeline. The proposed pipeline will also increase energy alternatives for nearby communities, thus supporting competition and efficiency in the market.^[73]

39. Construction of the proposed natural gas pipeline will benefit those other customers of the Willmar branch line, such as Rahr Malting Company and MG Waldbaum (Michael Foods), by freeing up capacity, now used by Hutchinson, that could be used by other current Northern customers. It will also introduce a competitive alternative to Northern's Willmar branch line for at least some customers.^[74]

40. The construction of the natural gas pipeline will result in the capability to transport an additional 22,700 DTH per day of natural gas to Hutchinson. Increasing the volumes of natural gas available to Hutchinson Utilities Commission and New Ulm Public Utilities will allow continued economic growth in the cities of Hutchinson, and New Ulm. It would allow for generation of electricity during the winter and during emergency situations without a loss of efficiency or incurring economic penalties imposed by the current provider. Other customers on Northern's Willmar branch line will have access to additional capacity to allow for growth.^[75]

41. Construction of the proposed pipeline may allow additional communities access to natural gas in order to better serve their economic growth.^[76] The City of Fairfax, a community along the route of the pipeline, has executed a non-binding Letter of Intent dated July 12, 2002, expressing its interest in purchasing 52,000 MMBtu annually from the proposed natural gas pipeline for its own use. Heartland Corn Products, an ethanol plant, has executed a non-binding Letter of Intent with the City of Fairfax to purchase an additional 1,200,000 to 2,400,000 MMBtu annually from the City to be transported on the proposed natural gas pipeline.^[77]

42. The proposed natural gas pipeline will result in an additional supply of natural gas for heating, and to produce electricity, and to be used in production processes. It will permit Heartland Corn Products the opportunity to increase its production of ethanol.^[78] Other benefits include increased investment of \$26 million in the economy, an increase in employment and a short term increase in the sales and income tax base.^[79]

43. The City of Hutchinson intends to comply with the relevant policies, rules, and regulations of the various state agencies, federal agencies and local governments that have jurisdiction over the proposed project.^[80]

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Any of the Findings that more properly should be designated as Conclusions are adopted as such. Similarly, any of the Conclusions that more properly should be designated as Findings are adopted as such.

2. The Administrative Law Judge and the Public Utilities Commission duly have jurisdiction over this matter pursuant to Minn. Stat. § 14.50 et. seq., § 216B.243, and § 216B.2421.

3. The City of Hutchinson (Hutchinson Utilities Commission) and the Commission have fulfilled all relevant substantive and procedural statutory and regulatory requirements in this proceeding.

4. The long-range energy demand forecasts in the record are sufficiently reliable and show a need for additional pipeline capacity to HUC. There is an immediate and long range need for additional natural gas pipeline capacity to the City of Hutchinson, after accounting for existing facilities and planned facilities.

5. Existing and planned energy conservation programs have been considered in the estimate of current and future demand for natural gas. Considering both current and planned conservation measures, there is a current and future need for the proposed additional pipeline capacity.

6. No activities promoting the use of natural gas by HUC have resulted in this need for additional pipeline capacity.

7. Construction of the proposed pipeline will have the ability to increase the reliability of energy supply in Minnesota and the region.

8. None of the alternatives examined are as reasonable or prudent as the proposed pipeline. None of the alternatives will provide social and economic benefits as great as the proposed project. Construction of the pipeline is consistent with overall state energy needs.

9. There is no evidence that the design, construction, or operation of the proposed facility will fail to comply with applicable policies, rules and regulations of other state, federal, and local governments.

10. Failure to complete the proposed pipeline would adversely affect the future adequacy, reliability, efficiency, and cost-effectiveness of the natural gas supplied to the City of Hutchinson (Hutchinson Utilities Commission) and to the people of Minnesota.

11. The requirements for a certificate of need set forth in Minn. Stat. § 216B.243 and Minn. Rules, part 7851 have been met.

Based on the foregoing Findings of Fact and Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

That the application of City of Hutchinson (Hutchinson Utilities Commission) for a certificate of need for a new large energy facility be granted.

Dated this 9th day of October, 2002

s/Kenneth A. Nickolai
KENNETH A. NICKOLAI
Chief Administrative Law Judge

MEMORANDUM

The purpose of this proceeding is to determine if there is evidence of need sufficient to warrant HUC constructing an 89 mile pipeline connecting with the Northern Border Pipeline near Trimont, MN and extending north to the City of Hutchinson. Minnesota Stat. § 216B.243 places this responsibility on the Commission.

The Commission rules, at part 7851.0120, say that “A certificate of need shall be granted to the applicant” if the Commission addresses four issues in the affirmative. To assist the Commission when considering the application of its rule to this case, this memorandum will examine each issue separately.

Future adequacy, reliability, or efficiency of energy supply

The first issue is 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...” This portion of the rule then lists five factors to be considered.^[81]

The ALJ is persuaded that denying this certificate of need would have adverse effects on the future adequacy, reliability and efficiency of the energy supply to affected persons. The record established that there is an immediate need for additional capacity on peak days. Department witness Minder and Northern witness Loos agreed that the existing Northern pipeline is currently capacity constrained and there is a need for additional capacity.^[82] HUC has the need to maintain natural gas service to its customers while generating electricity using its gas fired generating capacity. Other Northern customers on the Willmar branch line are also, at times, capacity constrained by the limits of the current Northern system. At a minimum, construction of the pipeline will free capacity for the remaining Northern customers on the Willmar branch line.

There is also sufficient evidence that HUC’s demand for natural gas in the future will continue to grow. The City and surrounding area are growing and there is an industrial and commercial base of natural gas customers.^[83] The record contains extensive testimony about the appropriate method of forecasting demand but each of the forecasts concluded the demand would exceed 30,000 MMBtu by the year 2016, assuming HUC will be adding gas fired electrical generating capacity during that time. Northern witness Loos forecasted that maximum summer load to be 31,900^[84], while disagreeing that HUC should build a pipeline large enough to meet that load.^[85] Hutchinson witness Schedin forecast the daily total demand in 2016 to be 34,672 MMBtu.^[86] Department of Commerce witness Shah concluded the upper end of the range of estimated demand for the year 2016 to be 30,968 dth/day^[87]. While the parties have disagreed over the proper methodology and the precise estimates, the record establishes that demand for natural gas is increasing and that it is almost certain to exceed 30,000 MMBtu by the year 2016. Since the current level of demand is, at times, capacity constrained on the existing Northern pipeline, additional pipeline capacity is necessary.

Other sub-factors to be considered under this heading are conservation efforts, promotional practices, the ability of current and planned facilities to meet the future demand and the effect on the proposed facility in making efficient use of resources. As set out in the findings and conclusions, past and present conservation efforts were considered when examining the growth of demand. Similarly, the Department of Commerce witness Minder examined the

practices of Hutchinson and concluded that there had been no promotional efforts to increase demand. Existing facilities are now capacity constrained, so they cannot meet the expected growth in demand. Finally, the proposed facility will allow HUC to more efficiently use its natural gas for its turbine generator through increasing the gas pressure to the higher level recommended by the manufacturer.

A More Reasonable and Prudent Alternative

The second item in the rule is whether “a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of evidence on the record by parties or persons other than the applicant...” The rule then lists a number of factors to consider.^[88]

Northern argues the law places the burden on HUC to demonstrate that there is no more reasonable and prudent alternative, and that HUC has failed to meet that burden. To support its position, Northern argues the Commission Order in MPUC Docket No. G-008/CNJ-95-514, September 12, 1996, Order Granting Certificate of Need, (Minnegasco) placed the burden squarely on the applicant. It further argues that to the extent that the language of Minn. Rules 7851.0120 (B) seeks to shift that burden, it violates state law.

The ALJ is not persuaded by Northern’s arguments. The rule clearly places the burden “by a preponderance of the evidence” on parties *other than the applicant* to demonstrate there is a more reasonable and prudent alternative. The Commission Order in Minnegasco is consistent with that conclusion.

The record contains an analysis of the relative costs of the two financial proposals made by Northern to HUC.^[89] The February 22, 2002 offer was rejected by Hutchinson as being too costly and not extending beyond the time when additional generating capacity is expected to be added.^[90] While a Northern witness testified that this offer would have environmental benefits, since no construction would be necessary, details of facility needs to meet anticipated demands in the timeframe beyond 2011 were not provided. The ALJ is thus persuaded that the February 22, 2002 offer is not a more reasonable and prudent alternative to the proposed pipeline because of its cost and failure to address the longer term needs identified by the forecast of demand for natural gas.

The April 24, 2002 offer is more cost effective in a 20 year time frame, if the cost of construction exceeds HUC’s estimate and is in excess of \$31 million.^[91] However, Northern’s proposal does meet the increased demand forecast beginning in 2011.^[92] When examined over the 40-year expected physical life of the proposed pipeline, the April 24, 2002 offer is more expensive, even when the cost of the HUC pipeline is assumed to be as high as \$39 million.^[93] Because the proposal fails to address the likely need for increased capacity beginning in 2011, the ALJ is persuaded that this is not a more reasonable or prudent alternative.

Other sub-items to be examined under this portion of the rule include; the appropriateness of the size, type and time of the proposed facility, the effects on the natural and socioeconomic environments and the expected reliability compared to reasonable alternatives. The forecast of demand indicates a substantial growth in natural gas demand through 2016. While the size of the proposed pipeline may be larger than needed to serve the needs of the City of Hutchinson, there is evidence that HUC is seeking to have other entities use the capacity. In addition, there is no evidence that a small pipeline would cost substantially less. A smaller pipeline would not provide the potential benefits to the adjacent communities of

additional service or potential competition to Northern. There will be adverse environmental consequences from the project during the construction. The evidence is that HUC is seeking to mitigate those affects with appropriate government bodies. Northern states that at least the February offer would not have such environmental consequences. The ALJ is persuaded that additional pipeline construction will be needed at some point^[94] and that the environmental affects of this project, when properly mitigated, will be no greater than any other future construction alternative.

Consequences to society of granting the certificate of need.

The third rule factor to be considered by the Commission is “the consequences to society of granting the certificate are more favorable than the consequences of denying the certificate...” The rule then lists four sub-factors to examine.^[95] The ALJ is persuaded that the consequences of granting the certificate are more favorable than a denial. The proposed project will increase the supply of natural gas in an area of the state that has a constrained supply. That will allow a more reliable supply of energy to that portion of the state encouraging economic development and permit more electric generation, reducing the need for Hutchinson to purchase electricity from others at peak times. Other benefits include increased investment of \$26 million in the economy, an increase in employment and a short term increase in the sales and income tax base.^[96] While construction will have short term adverse environmental impacts, long term environmental benefits arise from the more efficient use of HUC’s generating capacity.

Compliance with other government regulations

The rules also require the Commission to consider a fourth factor that “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.”

There is ample evidence in the record to support the conclusion that HUC intends to comply with applicable policies, rules and regulations of the federal, state, and local government. Department of Commerce witness Gross reviewed the list of permits to be obtained and concluded there is no evidence that the proposed facility would fail to comply with applicable requirements.^[97]

For these reasons, the ALJ respectfully recommends the Commission conclude that the requirements of the rule are satisfied and that the Certificate of Need be granted.

K.A.N.

^[1] References to the record are provided for the convenience of the Commission and their Staff. Reference to one place in the record to support a finding does not mean that is the only support for that finding in the record.

^[2] Transcript Vol. 4, p. 18

^[3] Transcript Vol. 5A, p. 14

^[4] Ex. 1, p. 2

^[5] Ex. 1, p. 3

^[6] Transcript Vol. 4, p. 27 and p. 38

- [7] Ex. 1, p. 3, Transcript Vol. 4, p. 26
- [8] Ex. 15 at Sec. 7851.0250 (A)(1)
- [9] Ex.1, p. 3
- [10] Ex. 15, Section 7851.0230, p. 2
- [11] Ex. 15, Section 7851.0230, p. 2
- [12] See, Exhibit 50.
- [13] Ex. 15, Section 7851.0290, p. 6, Ex.14, p. 6
- [14] Ex. 45; Transcript Vol. 4, p. 104, p. 113, p. 114
- [15] Ex. 72
- [16] Ex. 15, Section 7851.0310, p.2
- [17] Transcript Vol. 5A, p. 67
- [18] Transcript Vol. 5B, p. 63
- [19] Transcript Vol. 4, p. 84
- [20] Transcript Vol. 4, p. 90
- [21] Transcript Vol. 5B, p. 21.
- [22] Transcript Vol. 4, p. 86
- [23] Transcript Vol. 4, p. 55
- [24] Ex. 15, Section 7851.0240, p. 1
- [25] Ex. 15, Section 7851.0240, p. 1
- [26] Transcript Vol. 4, pp. 85-86
- [27] Transcript Vol 4, p. 88
- [28] Transcript Vol. 4, pp. 205-6
- [29] Transcript Vol. 4, pp. 205-206
- [30] Transcript Vol. 4, page 206
- [31] Ex. 15, Section 7851.0240, p. 2
- [32] Transcript Vol. 4, p. 41
- [33] Transcript Vol. 4, p. 55
- [34] Exhibit 4
- [35] This is at the higher end of witness Shah's range. Transcript Vol. 5B, pp. 30-31
- [36] Ex. 74, table 1. Northern witness Loos estimated demand at 32,300 DTH in 2016. Ex. 76, p. 14
- [37] Ex. 15, Section 7851.0270, p. 21
- [38] Exhibit 14, pp. 2-3, Ex. 3
- [39] Transcript Vol. 4. p.54, 68-69
- [40] Transcript Vol. 4, p. 87
- [41] Ex. 15, Section 7851.0260, p. 4
- [42] Transcript Vol. 5B, pp. 5-7.
- [43] Transcript Vol. 5B, pp. 8-9, Ex. 15, Section 7851.0250, p. 3
- [44] Transcript Vol. 4, p. 87
- [45] Ex. 76, p. 6 and pp. 9-10
- [46] The ALJ makes no findings or conclusions with respect to the status of the proposed pipeline as one subject to "Open Access". The record contains the legal position of the Department and of Reliant Energy/Minnesgasco on this point, but the only testimony on the issue was in respect to whether municipal bond financing could be used if the pipeline is not restricted to municipal users. At the close of the hearing, the Department and HUC requested that this issue be addressed to the Commission after a ruling on the Certificate of Need. Vol. 5B, pp. 75-77.
- [47] Ex. No. 42
- [48] Transcript Vol. 4, p. 92, July 22, 2002
- [49] Transcript Vol. 4, page 93, July 22, 2002
- [50] Ex. 40.
- [51] Ex. 76, p. 10.
- [52] Ex. 4
- [53] Ex. 4, April 24, 2001, letter p. 2.
- [54] Ex.69, Schedule WJF-1
- [55] Ex. 69, Schedule WJF-2
- [56] Ex. 15, Revised Section 7851.0290, pp. 4-11
- [57] Ex. 14, p. 4

[58] Ex. 80, p. 6, Attachment 2

[59] Transcript Vol. 4, p. 66

[60] Transcript Vol. 4, p. 66

[61] Ex. 12.

[62] Ex. 14, p. 4

[63] Transcript Vol. 5B, pp. 60-61. Ex. 51.

[64] Ex. 51

[65] Transcript Vol. 5B, pp. 40, 42, 47, 55

[66] Ex. 15, section 7851.0270, p. 21

[67] Transcript Vol. 5A, pp. 79-81

[68] Ex. 80, pp 16-18. Ex. 15, Sec 7851.0340, p.2, p. 19

[69] Letter Glenn Novotny, June 4, 2002

[70] Transcript Vol. 4, pp. 104, 105

[71] Northern witness, Fowler, testified that Northern's February 22, 2002 offer would have environmental benefits since it would not require any significant construction of new facilities. Ex. 69, p.8.

[72] Letter from U.S. Energy Services, June 5, 2002

[73] Ex. 80, p. 13, Letter from U.S. Energy Services, June 5, 2002.

[74] Letter, U.S. Energy Services, Inc., dated June 5, 2002. However, the extent to which non-municipal customers will be able to use transmission capacity on the proposed line is unclear on the record because of the to be resolved dispute over whether the proposed line will be subject to Open Access requirements.

[75] State Senator Steve Dill letter dated May 24, 2002

[76] Letter, Minnesota Municipal Utilities Association, June 6, 2002; Letter, City of Brownton, May 15, 2002.

[77] Ex. 40

[78] Letter, Heartland Corn Products, April 29, 2002

[79] Ex. 80, p. 13.

[80] Exhibit 80, page 19

[81] The factors are: (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 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.

[82] Transcript Vol. 5B, pp. 11-12 (Minder); Transcript Vol. 5A, p. 63 (Loos)

[83] State demographer Gillaspay testified that growth in the City of Hutchinson has been most noticeable in manufacturing, construction, and the professional services sector. Ex. 73, p. 3.

[84] Northern witness Fowler testified that the total capacity needed would be 25,000 DTH/day, however, that projection was only through the year 2011. Ex. 69, p. 8; Ex. 76, p. 14

[85] Transcript Vol. 5A, pp. 78-79

[86] Ex. 75, table 1

[87] Transcript Vol. 5B, p. 30

[88] The factors are: (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 compared to the costs of reasonable alternatives and the cost of energy that would be supplied by 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.

[89] Northern witnesses discussed other possible alternatives such as foregoing off-system electric sales to reduce the need for natural gas fired electric generation, construction of a remote electric generating plant in Trimont, MN and a transmission line to Hutchinson, acquiring dual fuel electric generating capacity or a peak shaving plant. See, Ex. 76, pp. 17-18. While these alternatives were placed on the record, no evidence detailing their possible implementation or comparable costs and benefits was made. There is then not sufficient evidence in the record to give them serious consideration.

[\[90\]](#) Ex. 15, Section 7851.0290, pp. 3-12, Section 7851.0270, p.32

[\[91\]](#) Transcript Vol. 5B, pp. 60-61, Ex. 51

[\[92\]](#) Ex. 69, p.8. and WJF-2 attached

[\[93\]](#) Ex. 51, Transcript, Vol. 5B, p 41

[\[94\]](#) Looking at the April offer, Northern agrees there will be a capacity deficiency under that proposal by the year 2011 and that new facilities will be added at that time. Transcript, Vol. 5A, pp.73-74.

[\[95\]](#) The factors are: (1) the relationship of the proposed facility, or suitable modification of it, to overall state energy needs; (2) the effects of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effects of not building the facility; (3) the effects of the proposed facility, or a suitable modification of it, in inducing future development; and (4) the 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.

[\[96\]](#) Ex. 80, p. 13

[\[97\]](#) Ex. 80, p. 19