	OAH 15-2500-17136-2 PUC: PL-5/CN-06-02 PL-5/PPL-05-2003

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline And In the Matter of the Application of Minnesota Pipe Line Company for a Routing Permit for a Crude Oil Pipeline	**FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION**

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Appearances:

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Valerie M. Smith, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, on behalf of the Department of Commerce (Department), addressing the Certificate of Need.

Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, on behalf of the Department of Commerce, Energy Facility Planning staff, addressing the Routing Permit.

Paula Goodman Maccabee, Attorney at Law, 1961 Selby Avenue, St. Paul, MN 55104, on behalf of Atina and Martin Diffley as Gardens of Eagan, addressing the Routing Permit.

Larry Hartman, Project Manager, Department of Commerce, Energy Facility Permitting, 85 7th Place East, Suite 500, St. Paul, MN 55101-2198, addressing the Routing Permit.

Deborah Pile, Public Advisor, Department of Commerce, 85 7th Place East, Suite 500, St. Paul, MN 55101-2198, addressing the Routing Permit.

Ken Wolf, Public Advisor for the Certificate of Need, Bret Ekness and Robert Cupit, PUC Staff, 121 7th Place East, Suite 350, St. Paul, MN 55101-2147.

STATEMENT OF THE ISSUES

1. Has the Applicant met the criteria set forth in Minn. Stat. § 216B.243 and Minn. Rules Ch. 7853 for a Certificate of Need?

The Administrative Law Judge recommends that the Certificate of Need be granted.

2. Has the Applicant met the criteria for a routing permit set forth in Minn. Stat. § 116I, Minn. Stat. § 216B.243, and Minn. Rules Ch. 4415?

The Administrative Law Judge recommends that the Routing Permit be issued, subject to certain conditions.

3. Did any of the proposed route alternatives in the Staples area (Wadena and Todd Counties) minimize the human and environmental impact associated with the proposed pipeline to a greater extent than the proposed route?

The Administrative Law Judge recommends that the route alternative proposed by MPL on behalf of the city of Staples, Alternative 2, minimizes the human and environmental impact associated with the proposed pipeline, as compared to the proposed route.

4. Did the proposed route alternative proposed by MPL in the Belle Plaine Area minimize the human and environmental impact associated with the proposed pipeline to a greater extent.

The Administrative Law Judge recommends that the route alternative proposed in the Belle Plaine Area minimizes the human and environmental impact associated with the proposed pipeline, as compared to the proposed route.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Minnesota Pipe Line Company (MPL) has applied for a certificate of need (CON) and a routing permit to construct a new 24-inch diameter crude oil pipeline known as the MinnCan Project, originating at MPL's existing interconnection with the Enbridge crude oil pipeline system in Clearbrook, Minnesota, located in Clearwater County, and running to Flint Hills Resources in Rosemount, Minnesota.[1]

Procedural Background

2. The Minnesota Pipe Line Company submitted its CON Application to the Minnesota Public Utilities Commission ("PUC" or "Commission") on January 3, 2006, proposing to construct a roughly 300–mile, 24-inch diameter, crude oil pipeline originating in Clearbrook, Minnesota, and running to Flint Hills Resources Refinery to Rosemount, Minnesota.[2] This proposed pipeline construction is known as the MinnCan Project ("MinnCan" or "Project"). The Commission docketed the matter as MPUC Docket No. PL-5/CN-06-02.

3. The filing was reported in the January 4, 2006, editions of the Star Tribune and Pioneer Press, both of which published maps of the proposed pipeline route in conjunction with their articles. Articles announcing the filing also ran in numerous other papers on January 4 or within the several days following, including: the Rochester Post Bulletin, Grand Forks Herald, Duluth News Tribune, Park Rapids Enterprise, Hutchinson Leader, Glencoe Enterprise, Saint Cloud Times, Dassel–Cokato Enterprise Dispatch, and Eden Valley Watkins Journal Patriot.[3]

4. On January 4, 2006, the Commission issued a Notice Soliciting Comments on Completeness, requesting comments on the substantial completeness of the Company's CON application, with initial comments due January 18, 2006, and replies due January 27, 2006.

5. On January 5, 2006, the Company filed its Pipeline Routing Permit Application ("Route Permit Application"), including the Environmental Assessment Supplement, for the MinnCan Project. The Commission docketed that matter as MPUC Docket No. PL-5/PPL-05-2003.[4]

6. Also on January 5, 2006, the Commission issued a Revised Notice of Commission Meeting, indicating that it would consider varying the deadline in

[1] Ex. 7 at 4.
[2] Ex. 7.
[3] Ex. 100.
[4] Exs. 1 and 2.

Minnesota Rule 7853.0200, subp. 7, to allow more time to consider the completeness of the CON Application.

7. On January 12, 2006, the Commission met and varied the rule deadline to allow additional time to consider the completeness of the CON Application, an action memorialized in the Commission's January 24, 2006 Order Extending Completeness Review Period.

8. On January 18, 2006, the Company filed supplemental information for the CON Application,[5] and the Minnesota Department of Commerce ("DOC" or "Department") submitted comments indicating that, with the supplemental information provided by the Company, the Commission could accept the CON Application as substantially complete.

9. On January 20, 2006, the Commission issued a Notice of Commission Meeting, indicating that for both the CON Application and the Route Permit Application, the Commission would consider the questions of completeness and what further process should be ordered at its February 2, 2006 hearing.

10. On January 24, 2006, Laura and John Reinhardt filed a Petition for Notice to Landowners. On January 26, 2006, the Department filed comments on the completeness of the Route Permit Application.

11. The Commission met on February 2, 2006 to consider the completeness of the CON and Route Permit Applications and associated issues, finding both applications complete. The Commission action again received press coverage in several newspapers, and the Pioneer Press again published a map of the proposed route in its February 5, 2006 edition.[6]

12. On February 16, 2006, the Commission issued the following orders:

- Order Granting Variance and Accepting [CON] Application as Substantially Complete ("CON Completeness Order");
- Notice and Order for [CON] Hearing ("CON Hearing Order");
- Order Accepting Route Permit Application, Authorizing the Naming of Public Advisor, Approving Budget and Granting Variance ("Route Permit Completeness Order"); and
- Notice of Route Permit Hearing ("Route Permit Hearing Order") (collectively, the "February 16 orders").

[5] *See* Ex. 8.
[6] *See* Ex. 100.

13. In its CON Completeness Order, the Commission noted that it "is sensitive to the issue of landowner notice and will direct the Company to work with Department and Commission staff to develop a landowner notification letter, including the date, time, and place of the prehearing conference, if that information is known at the time the letter is issued. To address the issue on a broader basis, the Commission will issue a notice soliciting comments on why the notice requirements applying to high voltage transmission lines (HVTL) should not be incorporated into the rules regarding pipeline facilities."[7]

14. The Company subsequently worked with the staffs of both agencies to develop such a letter and letters were sent to both "centerline" landowners and to other landowners with land within the route.[8]

15. In its CON Hearing Order, the Commission:

- varied the 80–day requirement of Minnesota rule 7853.0200 to ensure the parties and administrative law judge ("ALJ") would have flexibility in setting a hearing schedule;
- required MPL to place and maintain the CON application on a website;
- required MPL to provide notice of the public and evidentiary hearings in newspapers of general circulation at least ten days prior to the start of the hearings and requested that the ALJ schedule public hearings in such a way that members of the public could address both the CON and Routing Permit;
- required any party intending to appear at the hearing to file a notice an appearance within twenty days of the date of the CON Hearing Order;
- required any person wishing to become a formal party to "promptly file petitions to intervene with the [ALJ]";
- requested that the parties "use diligence to advance the schedule as feasible," in light of the statutory time constraints for processing CON Applications; and,
- established the date of March 17, 2006, for the first prehearing conference.[9]

16. In its Route Permit Completeness Order, the Commission varied the 70–day timeline of Minnesota Rule 4415.0075, subp. 3, C, allowing an

[7] CON Completeness Order, at 4.
[8] *See* Ex. 86; and Hearing Transcript, Vol. 12, (T. 12) at 79-80.
[9] T. 12, at 6.

additional 30 days (for a total of 100 days from acceptance of the Route Permit Application – until May 30, 2006) for any person to propose a route alternative.[10]

17. In its Route Permit Hearing Order, the Commission noted the requirement that it issue its final order within a nine month timeframe and requested the ALJ to submit her final report within six months of the February 16, 2006 order.[11] This order further noted that:

> The hearing process established under Minn. Rules Chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all witnesses to testify, and to submit comments to the Administrative Law Judge and Commission.[12]

18. The Route Permit Hearing Order also noted the first prehearing conference date of March 17, 2006.[13]

19. On February 21, 2006, the Department issued a Notice of Application Acceptance and Public Information Meetings ("Notice"). The Notice identified MPL as the applicant and provided, among other information:

- the date of acceptance;
- a brief description of the project;
- the name and contact information for the public advisor;
- locations where materials were available for public review;
- procedures for proposing alternative routes, including the May 30, 2006, deadline for proposing alternative routes;
- notice of the March 17, 2006, prehearing conference; and
- notice, including dates, times and locations, of public information meetings.[14]

20. The Notice was published in the Environmental Quality Board ("EQB") Monitor[15] and in newspapers distributed in each county crossed by the

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[10] Route Permit Completeness Order, at 4.
[11] Route Permit Hearing Order, at 5-6.
[12] *Id*. at 4.
[13] *Id*. at 6.
[14] *See* Exs. 17 and 18.
[15] Ex. 18.

proposed pipeline.[16] The notice was also sent by the Company to landowners including all "centerline landowners," or owners whose land was crossed by the pipeline right-of-way as originally proposed, and all other landowners within the proposed route ("adjacent land owners"). Adjacent land owners were advised that the pipeline right-of-way could be adjusted so that it would cross their property.[17]

21. From March 13 through March 23, 2006, public information meetings were held in thirteen counties along the pipeline route. The meetings received substantial publicity in the communities along the route. The Company, Department, and Commission representatives discussed a number of issues with attendees, including the process by which route alternatives could be proposed, and the May 30, 2006 deadline for such proposals.[18]

22. MPL estimated that 870 persons signed the hearing registers during these meetings, with approximately 310 of those being centerline landowners, approximately 150 adjacent landowners along the route, and over 400 attendees who were not in the Company's landowner database.[19]

23. On March 17, 2006, the first prehearing conference was held. At that conference, the intervention deadlines for this proceeding were set – April 17, 2006, for the Certificate of Need and May 30, 2006, for the Route Permit.[20]

24. On March 22, 2006, the Department posted its Guidance for Route Proposals on its website. It included the May 30, 2006 deadline for submission of alternative routes.

25. On April 17, 2006, MPL filed its direct testimony on the Certificate of Need.[21]

26. Alternative route proposals and some alternative centerline alignments were filed with the Department by the May 30, 2006 dead line. The Gardens of Eagan ("GOE") filed both an alternative alignment proposal and a Petition to Intervene, which was granted. The Organic Consumers Association ("OCA") also filed a timely petition to intervene in the route permit proceeding.

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[16] Ex. 17.
[17] T. 10, at 73; T. 12, at 79; *see also* Ex. 86 MPL's (Communications Activities).
[18] This Finding is based on the Summary of Public Meetings Regarding the MinnCan Project, prepared by MPL. While this document was not entered into the contested case record, the document was served on all parties and is available through the Commission's E-Filing system at https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=2977210 . The contents of the document are only used here as background information, not affecting the Conclusions or Recommendations in this Report.
[19] *Id*.
[20] First Prehearing Order, ¶ 3, March 31, 2006.
[21] Exs. 9-11.

However, OCA subsequently amended its request, seeking non–party participant status instead. OCA was granted participant status on June 21, 2006.

27. On June 16, 2006, the Commission issued its Notice of Commission Meeting indicating that on June 29, 2006, it would consider which of the proposed alternative routes should be approved by the Commission for consideration at public hearings.

28. At its June 29, 2006 meeting, the Commission heard from the Company, the Department, the Minnesota Office of Pipeline Safety ("MNOPS"), the GOE, and Mr. Richard Eischens, of New Prague. Mr. Eischens proposed consideration of MPL's existing pipeline route as an alternative to the Company's proposal. The Commission considered the proposal, but did not accept it. Instead, the Commission clarified that MPL would be required to show that it had considered alternatives and must show that its chosen route met the applicable criteria.[22]

29. On July 19, 2006, the Commission issued its Order Accepting Alternative Route Segments Proposals for Consideration at the Contested Case Hearing, setting forth the following route alternatives to be considered in this proceeding: an alternative in the Staples area submitted by MPL on behalf of the City of Staples; an alternative in the Staples area submitted by the Minnesota Department of Natural Resources ("DNR"); an alternative in the Staples area submitted by Scott and Sheila Becker; and an alternative in the Belle Plain area submitted by MPL.[23]

30. On August 7, 2006, the Company, GOE, and OCA all filed direct testimony in the Route Permit proceeding.[24]

31. Between August 9, 2006, and September 8, 2006, a full-page Notice of Public Meetings and Public Hearings was published in nineteen newspapers serving communities along the route, with each notice listing the date, time, and location of the public hearings, and how a person could participate in the hearings. During the same time period, the Department mailed out approximately 1,200 notices of the hearings to people on its mailing lists, including all elected officials on or along the proposed right-of-way, but not the entire route.[25]

32. On August 14, 2006, the same Notice of Public Meetings and Public Hearings was published in the EQB Monitor.[26]

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[22] Order Accepting Alternative Route Segment Proposals for Consideration at the Contested Case Hearing, July 19, 2006, at 6-7.
[23] *Id*.
[24] Exs. 3-6 and 20-23.
[25] T. 8, at 36; *see also* Ex. 115.
[26] Ex. 16, at 15-28.

33. From August 24, 2006 through September 14, 2006, sixteen public hearings were held in fourteen different communities along the proposed pipeline route. Company witnesses attended each hearing and responded to questions under oath at the hearings. Department and Commission staff also attended each hearing. In addition, the Minnesota Department of Agriculture ("MDA") attended and participated in several hearings. A representative of the DNR attended and participated in the Staples area. A representative of MNOPS attended and participated in the Little Falls hearing.

34. Over 100 people spoke or asked questions at the hearings. Several people participated in multiple hearings. The Minnesota Public Interest Research Group ("MPIRG") appeared through multiple representatives at the hearings in Little Falls, Melrose, Lonsdale, Litchfield, Glencoe, Arlington, Hamburg, and New Prague.

35. MPL estimated that there were a total of approximately 1200 centerline landowners along the project route. At the public hearings, nearly 50 centerline landowners either provided comments or asked questions of the Company or state agencies. About twenty of the public participants live within the route but not on the centerline. The remainder of the participants were public officials, government officials, or other persons with questions or concerns about the impact of the pipeline.

36. GOE attended and participated in the Farmington hearing. OCA did not attend or participate in any of the hearings.

37. On September 14, 2006, MPIRG filed a late Petition to Intervene ("Petition"), including five landowners' names and addresses on its petition, and indicating orally its wish to intervene in both the route permit and CON proceedings.

38. On September 15, 2006, an evidentiary hearing was conducted at the Commission hearing room in Saint Paul. Witnesses for both the Company and Department testified at the hearing. All testimony and cross-examination was completed on that date.

39. On September 20, 2006, the ALJ issued her Post Hearing Scheduling Order establishing the post-hearing filing deadlines and indicating the hearing record would close on October 20, 2006.

40. On September 22, 2006, the public comment period closed. Several hundred public comments were received. The public comments are summarized in the Findings below.

41. On September 28, 2006, MPL submitted the projected centerline as of September 15, 2006 ("September 15 Alignment"), together with a comparative analysis of the initially proposed centerline and revised centerline alignment, current alignment as requested by Commission Staff, and filed a listing of

agricultural lands crossed by the route and indexed by county as requested by the ALJ.[27]

42. On September 29, 2006, the ALJ issued her Order Denying Motion and Granting Participant Status, denying MPIRG's Petition to Intervene. The order also required MPL to provide each of the named landowners who co-signed MPIRG's Petition to Intervene with a copy of the September 15 Alignment in the area where each landowner's property is located.

43. On October 6, 2006, the Department filed its response to the public comments, addressing the environmental review conducted for the project and the issue of route width.

44. On October 13, 2006, MPL filed proposed findings in both the CON and Route Permit proceedings and GOE filed proposed findings in the Route Permit proceeding. On October 18, 2006, the Department filed a letter stating that it had no objection to MPL's proposed findings concerning the CON. MPL filed a correction to its proposed findings on October 23, 2006, and the hearing record closed on that date.

The Applicant

45. MPL seeks the CON to expand its ability to supply Western Canadian crude oil to two refineries in Minnesota, the Flint Hills Resources refinery in Rosemount, and the Marathon Petroleum Company's refinery in St. Paul Park. The proposed underground pipeline will be about 300 miles long and cost approximately $300 million. The new pipeline will consist of a new 24-inch diameter pipe, with a design capacity ranging from 60,000 to 165,000 barrels per day (bpd). If the CON and Routing Permit are approved, MPL projects that construction would begin in 2007 and the pipeline would be placed in service in 2008.[28]

46. The project will also include two new pump stations, one inside the originating station at Clearbrook Minnesota, and a mid-point pump station to be constructed between proposed Mileposts 140 and 146 in Morrison County.[29]

47. The proposed route for the MinnCan project generally follows (parallels) and uses a portion of MPL's existing 65 to 70 foot wide pipeline right-of-way southward from the Clearbrook Station for about 112 of the 119 miles in Clearwater, Hubbard, Wadena, Todd and Morrison Counties. Placement of the pipeline along the parallel section of the route will expand the maintained right-of-way by about 35 feet, about 476 acres of additional maintained right-of-way. Near Cushing, in Morrison County, the proposed pipeline diverts from the existing route and requires a new permanent right-of-way along the proposed

[27] Marked for identification and received into the record as Ex. 117, Tables 1 and 2.
[28] Ex. 7 at 4; Ex. 117.
[29] Ex. 1.

route for another 176 miles, generally west and south of the Twin Cities metropolitan area, in Morrison, Stearns, Meeker, Wright, McLeod, Carver, Sibley, Scott, Rice and Dakota Counties. This will require approximately 1,100 acres of land within the permanent right-of-way.[30]

48. Construction of the proposed project will require up to a 100-foot-wide construction right-of-way at most locations. Where new permanent rights-of way are required, MPL is seeking a 50-foot-wide right-of-way.

49. The proposed pipeline 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.[31] MPL anticipates that the additional pump stations will be spaced approximately 37 miles apart, but actual station location will be based upon hydraulic design modeling and ability to acquire property with required characteristics. MPL could not be more specific about the location of future pump stations.[32]

50. MPL is a common carrier pipeline company, providing transportation service pursuant to a Federal Energy Regulatory Commission (FERC) tariff to any shipper who requests such services.[33]

51. MPL is owned by three companies, Flint Hills Resources, Marathon Pipe Line Company and Trof, Inc. MPL owns a 256-mile pipeline system that carries about 300,000 barrels of crude oil per day to Minnesota's two refineries, Flint Hills Resources in Rosemount and Marathon Petroleum in St. Paul Park. [34] MPL provides the majority of crude oil supply used by the two refineries, about 280,000 bpd capacity, to Flint Hills Resources, and about 70,000 bpd capacity to Marathon Petroleum.[35]

52. MPL currently owns 256 miles of two 16-inch diameter pipelines between Clearbrook and Cottage Grove, Minnesota, and a third loop with eight segments along approximately two-thirds of the length of the line. The system carries about 300,000 bpd of crude oil that comes from Canada to Clearbrook via the Enbridge pipeline, and then to Cottage Grove.[36]

53. The only other source of crude oil to the two Minnesota refineries is the Wood River Pipe Line, owned by Koch Pipe Line Company. Currently, there

[30] Ex. 1, 4415.0125 at 1.
[31] Ex. 7 at 4, 27-28.
[32] Ex. 7 at 28; T. 10 at 111 (McKimmey).
[33] Ex. 7 at 3.
[34] T. 17 at 17 (Van Horn).
[35] Ex. 7 at 3.
[36] Ex. 14 at 2.

are no other pipeline facilities that can transport crude oil to the Minnesota refineries. [37]

54. MPL does not operate its pipelines. Its assets are operated by Koch Pipeline Company, with northern operations headquartered in Rosemount.[38] MPL, Koch Pipeline Company and Flint Hills Resources are all wholly owned subsidiaries of Koch Industries, Inc.[39]

55. The two shippers on the MPL pipelines are Flint Hills Resources and Marathon Petroleum. Each one purchases crude oil in Canada and ships the crude oil along the MPL pipelines to the refineries at the tariff rate.[40]

Criteria for Certificate of Need

56. Minnesota Statutes section 216B.243 governs the granting of a CON for large energy facilities, including electric generating plants, transmission lines and pipelines. The PUC has established rules setting forth the criteria used to determine whether or not a CON should be granted.[41]

57. The Applicant bears the burden of proving the need for a proposed pipeline and demonstrating that the criteria have been met.

58. Minnesota Rules 7853.0130 provide that a certificate of need for a crude oil pipeline shall be granted to the applicant if it is determined that:

- 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;

- 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 consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate; and

- 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.

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[37] T. 17 at 18 (Van Horn).
[38] Ex. 7 at 4.
[39] T. 17 at 17 (Van Horn).
[40] T. 17 at 22 (Van Horn).
[41] Minn. R. Ch. 7853, *generally*, criteria established at Minn. R. 7853.0130.

59. In determining whether an applicant has demonstrated the need for a new pipeline, the Commission examines 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, 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 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.[42]

Forecasted Demand for Crude Oil

60. MPL obtains crude oil from the Enbridge pipeline system. Enbridge has the capacity to move 1.9 million barrels of crude oil per day from western Canada. The Enbridge pipeline runs through Clearbrook, Minnesota. At that point, MPL becomes the common carrier for its shippers and transports the crude oil along the existing route to Cottage Grove, where the crude oil is stored, metered and then shipped to Flint Hills Resources and to Marathon Petroleum in St. Paul Park.[43] The Terasen Express pipeline also ships oil from western Canada south and east to Wood River, Illinois. From that point, the Wood River Pipe Line owned by Koch Pipeline Company runs north and also serves the two Minnesota refineries.

61. As of February 2005, the Enbridge system had about 150,000 barrels per day of unused capacity available for export. The Canadian Association of Petroleum Producers (CAPP) estimates that growth in crude oil production and demand will require an additional increase in capacity of about 150,000 barrels per day, through 2010-2011.[44]

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[42] Minn. R. 7853.0130(A).
[43] Ex. 7 at 3-5, 22-23.
[44] Crude Oil Pipeline Expansion Summary, Canadian Association of Petroleum Producers, February 2005 at 4-5.

62. MPL projects that Enbridge currently has the capacity to transport the additional volume of crude oil to meet MPL's projections for the proposed pipeline. Enbridge has announced planned expansions to meet increased future demand.[45] MPL acknowledged that it does not have an alternative source of crude oil in the event that the Enbridge expansion does not occur,[46] but estimates that capacity on the Enbridge Pipeline will be sufficient to supply MPL's anticipated supply needs through 2023.[47] An expanded supply of crude oil from Enbridge can not be delivered to the Minnesota refineries without the addition of a new pipeline from Clearbrook to those refineries.[48]

63. The Flint Hills Resources and Marathon Petroleum refineries (Minnesota refineries) currently receive all of their crude oil from either the MPL system running from Clearbrook to Cottage Grove, carrying crude oil from Canada, or from the Wood River Pipe Line, owned by Koch Pipe Line and bringing crude oil north from St. Louis.[49]

64. The Minnesota refineries use crude oil to produce refined products such as gasoline, diesel fuel, jet fuel, asphalt, and other petroleum products (collectively, "refined petroleum products").

65. The Minnesota refineries have provided MPL with long-term forecasts of their need for crude oil and have requested that MPL expand the capacity of its system so that more crude oil can be shipped to them from Canada.[50] The two refineries combined are anticipated to increase shipments on the MPL system by 80,000 to 100,000 bpd during the first five calendar years of operation.[51]

66. Flint Hills Resources has stated that the demand for refined petroleum products has grown at about 2 percent per year from 1997 to 2004, and is projected to keep growing. MPL and the Department relied on a press release from Flint Hills Resources to support its position that the demand for refined petroleum products will continue to grow.[52] Flint Hills Resources intends to increase its crude oil processing capacity from approximately 280,000 bpd to 330,000 bpd by 2007.[53] The Department's expert relied on the estimate because it was included in an announcement that the refinery planned to invest $100 million to expand its capacity. The Department's expert concluded that the

[45] Ex. 1 at 25-26
[46] T. 17 at 19-20 (Van Horn).
[47] Ex. 114, IR 33.
[48] Ex. 7 at 8-9.
[49] T. 17 at 17-18 (Van Horn).
[50] T. 17 at 21-22 (Van Horn).
[51] Ex. 7 at 31.
[52] Ex. 13 (MFG-4) (Griffing).
[53] Ex. 114, IR 34.

refinery would not invest that sum if it did not expect to use the facility at profitable levels.[54]

67. The Minnesota refineries supply about 65-70 percent of gasoline consumed in Minnesota. The balance of the gasoline used in Minnesota is refined out-of-state. The Department reviewed the 2006 Annual Energy Outlook (2006 AEO) published by the U. S. Department of Energy's Energy Information Administration (EIA). It includes projected demand for petroleum by regions, including the West North Central Region of which Minnesota is a part. The 2006 AEO states that between 70 and 74 percent of U.S. petroleum use is for transportation, and that demand for each mode of transit "far outpaces increases in fuel efficiency, as transportation demand grows in proportion to increases in population and GDP."[55] The 2006 AEO also projects that the population in the West North Central Region will grow 10.1 percent from 2005 to 2030, and that Minnesota's population growth will exceed 20 percent.[56]

68. MPL estimated the barrels per day that will be transported on its system, beginning in 2006, and for selected years to 2021. The average volume shown in 2006 is 291,000 bpd. In 2008, when the new pipeline is expected to become operational, the projected volume is 360,000 bpd. The volume is projected to increase to 400,000 bpd in 2011 and remain at that level through 2021, the last year for which projections are provided in the application.[57] All sales will occur under FERC approved tariffs, and it is anticipated that Flint Hills Resources and Marathon Petroleum will be the only shippers on the new pipeline.[58]

69. According to the CAPP forecasts, additional crude oil will be produced in western Canada to supply the proposed MPL pipeline at Clearbrook, via the Enbridge Pipeline.[59] Access to the additional Canadian crude oil could be delayed if efforts to expand production do not occur as planned or if there is a major drop in crude oil prices.[60] The Department did not attempt to verify the accuracy of the CAPP estimates.[61] However, the Canadian National Energy Board issued a report in May 2004 evaluating the demand for crude oil from Canada's oil sands, including demand from the Minnesota refineries, and concluded that there was a reasonable expectation of oil sands supply of crude oil to 2015.[62]

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[54] Ex. 13 at 3-4 (Griffing)
[55] Ex. 13 at 5-6, quoting 2006 AEO at 96.
[56] Ex. 13 at 8 (citations omitted).
[57] Ex. 13 (MFG-5) (Griffing).
[58] Ex. 8 at 2.
[59] Ex. 1 at 25; Ex. 13 at 15-19 (Griffing).
[60] Ex. 1 at 26.
[61] T. 17 at 33 (Griffing).
[62] Ex. 114, IR 37, Att. at 30, 38-40.

70. The MinnCan Project will benefit Canadian producers who are developing new supplies because the new pipeline will offer cost-effective transportation to the Minnesota refineries. It will also enable the refineries to expand crude oil processing by supplying a stable, reliable source of crude oil.[63]

71. Much of the central United States, including Minnesota, Iowa, Wisconsin, South Dakota and North Dakota, receives its crude oil from the Gulf Coast. About half of the region's current supply comes from areas outside these states, and the proportion will increase to meet increased demand, absent an increase in capacity within the five states. Foreign crude oil supply disruptions, weather conditions in the Gulf of Mexico, changes in the demand from other regions, and events that effect pipeline transportation can affect the reliability of supply and the volatility of pricing.[64]

72. Loss or significant curtailment of refinery operations may affect Minnesota and the surrounding states. Refineries are susceptible to unplanned outages because the products that are being produced are volatile. The severity of the loss depends on the time of year, the status of alternative refineries to supply the lost inventories, and the ability of the suppliers to work around the loss.[65] Neither MPL nor the Department evaluated whether approval of the CON, coupled with the planned expansion of Minnesota's largest refinery, Flint Hills Resources, would increase Minnesota's dependence on one source of refined petroleum products to an unacceptable level.

73. Many members of the public opposed the certificate of need because they favor decreased reliance on refined petroleum products and more aggressive development of alternative fuels.[66] However, there was no evidence offered into the record of this proceeding that alternatives would be available soon enough in sufficient quantity to replace the anticipated increased demand for refined petroleum products.[67] The development of alternative technologies, including ethanol, is built into the AEO forecast.[68]

74. The Department concluded that the adequacy of Minnesota's future energy supply could be threatened if the CON were denied.[69]

75. The Department based its conclusion on the projected growth in demand for refined petroleum products in the state and the region. This included growth in the demand in gasoline, jet fuel and diesel fuel.[70] Refining capacity has been identified as a major bottleneck in the refined petroleum product supply

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[63] Ex. 7 at 8; Ex. 9 at 6-7 (Van Horn).
[64] Ex. 114, IR 34; Ex. 9 at 6-13.
[65] Ex. 12 at 6.
[66] *See e.g*. Ex. 112.
[67] Ex. 13 at 23-24 (Griffing); T. 13 at 52 (Sen. Steve Dille); T. 17 at 34-35 (Griffing).
[68] T. 17 at 35 (Griffing).
[69] Ex. 13 at 12-13 (Griffing).
[70] Ex. 13 at 9-12 (Griffing).

chain. Expansion of existing facilities, and, in particular Flint Hills Resources, is more likely than construction of a new refinery.[71] The Department did not evaluate whether other refineries outside of Minnesota, including one in Superior, Wisconsin, could meet the increase in demand if the CON were denied.[72] Nonetheless, the Department's witness, Mr. Haase, testified that he believed that all refineries that serve Minnesota are running at full capacity at this time, and that there are no plans for expansion that would increase supply to Minnesota. To the extent that the Minnesota refineries plan to expand, those refineries will need a larger supply of crude oil.[73]

76. Although the Wood River Pipe Line is available to bring some additional crude oil to the Minnesota refineries, that pipeline does not have sufficient capacity to meet the projected demand.[74] That pipeline is susceptible to disruption from events in the Gulf Coast Region, including hurricanes.[75] Increased reliance on MPL's proposed pipeline will subject Minnesota to less risk of disruption from events affecting oil shipped through the Gulf Coast, but greater risk of disruption from events that occur in Canada. Canada has been less prone to disruption.[76]

77. MPL's proposed pipeline will increase the reliability of refined petroleum products in Minnesota and help to insulate the state and region from regional and national supply disruption.[77]

Conservation

78. MPL ships the crude oil contracted by the Minnesota refineries under federal tariff. The refineries establish the demand for the crude oil, based on the demand for the refined petroleum products that they produce. MPL does not have conservation programs directed at reducing the refineries' demand for crude oil or the demand for the refineries' products.[78]

79. Koch Pipe Line Company (KPL) operates the MPL pipelines. KPL has an energy manager who attempts to reduce the use of power throughout the pipeline system. Since energy costs represent 50 to 60 percent of total operating costs for MPL, KPL continually monitors energy use and attempts to operate more efficiently. KPL has a goal of minimizing the amount of energy and overall electric costs to move a barrel of crude oil and KPL has implemented energy

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[71] Ex. 12 at 16.
[72] T. 17 at 32-33 (Griffing).
[73] T. 17 at 42-43 (Haase). Mr. Haase also testified that the shutdown of the BP pipeline in Alaska would not have a direct effect on supply to the Midwest because that pipeline largely serves refineries on the west coast. *Id.* at 44.
[74] Ex. 114, IR 17; T. 17 at 20 (Van Horn).
[75] Ex. 12 at 12-13 (Haase).
[76] Ex. 7 at 7-8, Ex. 12 at 17 (Haase).
[77] Ex. 12 at 17.
[78] T. 17 at 23-24 (McKimmey).

conservation programs designed to do that. Additional projects are under consideration.[79]

80. MPL projects that the new pipeline will significantly lower the overall MPL energy per barrel usage. The additional capacity on the new pipeline will allow MPL to remove volumes from the existing system. MPL estimates that the net result will be to transport 30 percent more volume with less energy than the current system requires.[80]

Promotional Activities

81. MPL has engaged in no promotional activities that would give rise to the need for the new pipeline.[81]

Ability of Current and Planned Facilities Not Requiring Certificates of Need to Meet Future Demand

82. The existing MPL system has operated at capacity for several years, and demand from the shippers occasionally exceeds capacity. In those instances, shippers find alternatives for additional volumes or reduce production.[82]

83. There was no evidence that existing or planned pipelines could supply additional crude oil to Minnesota. MPL stated: "other existing pipeline options for transporting Canadian crude oil into Minnesota are expected to reach capacity in 2007."[83] There is a small amount of unused capacity on the Wood River Pipe Line, but that capacity is insufficient to meet projected demand.[84]

Effect of the Proposed Facility, or a Suitable Modification, in Making Efficient Use of Resources

84. The current MPL system has operated at capacity for several years. The operator, KPL, has a comprehensive energy conservation program to minimize the amount of energy and overall electric costs to move a barrel of product, and continues to seek addition energy efficiency within the system.[85]

85. MPL will install high efficiency pumps and motors on the new pipeline. MPL projects that addition of the new pipeline will significantly increase the overall efficiency of MPL's system because it will transfer volumes from the

[79] Ex. 1 at 13-16.
[80] Ex. 1 at 16.
[81] Ex. 7 at 12;
[82] Ex. 7 at 23.
[83] Ex. 1 at 9.
[84] Ex. 114, IR 17; T. 17 at 20 (Van Horn).
[85] Ex. 7 at 13-16.

existing system to the new pipeline, reducing energy usage on the current system by more than the amount of energy used on the new pipeline.[86]

86. The proposed pipeline will follow the existing MPL right-of-way for most of the first 119 miles. At that point, the proposed pipeline will follow a new right of way (Greenfields route). It would be a more efficient use of land to follow the existing pipeline right-of-way or to replace one of the older 16-inch pipes with a new, larger pipe.[87] However, as described elsewhere, the existing right-of-way must be broadened to either construct a new pipeline or replace an old one.

Alternatives to Granting Certificate of Need

87. Minnesota Rules provide that the Commission shall grant a CON to an applicant if, in addition to the applicant making the other required showings, the Commission determines that:

> 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, 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 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.[88]

88. MPL examined three alternatives to the proposed pipeline: expanding the existing MPL facilities; trucking; and the "no build" alternative that would rely on the Wood River Pipeline or other pipeline expansion projects. MPL evaluated the alternatives in light of the public and environmental impacts, constructability, estimated in-service date, cost, economic life, and system delivery reliability.[89]

89. Two additional alternatives were discussed in the record – the Department examined the alternative of shipment by rail and members of the

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[86] Ex. 10 at 6; Ex. 114, IR 4.
[87] See findings on "Land Requirements," *infra.*
[88] Minn. R. 7853.0130(B).
[89] Ex. 10 at 3 (McKimmey); Ex. 7 at 32-34.

public suggested replacing a portion of the current MPL system with a larger pipe.

90. A proponent must demonstrate by a preponderance of the evidence that there is a more reasonable and prudent alternative to the proposed facility.[90]

Expanding the Existing Pipeline ("Alternative 1")

91. The current MPL system consists of two 16-inch pipelines from Clearbrook to Cottage Grove, with a third pipeline along approximately two-thirds of the system. MPL examined the possible expansion of its current system by installing a third pipeline (a "third loop") along the remaining distance of its existing system.[91]

92. Completing the third loop for the total distance of the line along the existing route would increase capacity by only 40,000 bpd, much less than the anticipated increased demand. Operating costs for the power associated with this alternative would be much higher than the proposed pipeline. Construction along the existing route in Anoka and Washington counties would be hindered by the dense development in certain areas. Homes, businesses, schools and traffic systems have developed along the existing pipeline route and would be disrupted by construction. Rerouting a portion of the new line away from the existing line would not be viable because of the added length and the difficulty managing the quality of the crude oil batches.[92]

93. Alternative 1 could not take advantage of existing pump stations or electrical infrastructure because each existing pump station is operating at maximum pipeline pressure for maximum throughput. New environmental assessments and new permits would be required. Although MPL stated that Alternative 1, like the proposed pipeline, would require new land disturbance and new tree clearing as well as additional permanent right-of-way, it did not directly compare these aspects of Alternative 1 to the proposed pipeline.

94. Many members of the public pointed out that prime agricultural land is being lost to development, and that the loss was not factored into the comparison of the existing route and the proposed route. Not only will the placement of the pipeline through prime agricultural land affect crop production, but it also places additional agricultural land at risk of a future pipeline leak or break.[93] The increase in property placed at risk was not taken into consideration in comparing the expansion of the existing route with the proposed route, but

[90] Minn. R. 7853.0130 B.
[91] Ex. 7 at 32-33.
[92] Ex. 7 at 32-33; Ex. 10 at 4; Ex. 114, IR 10; *see also* Exs. 5A and 5B for maps demonstrating the closeness of residential and commercial development to the current pipelines.
[93] See e.g. letter from Ken Posusta, August 20, 2006; T. 9 at 65 (Kaufenberg).

Alternative 1 would require an expanded right-of-way to assure adequate separation from the existing lines.[94]

95. The Department concluded that Alternative 1 was not more reasonable or prudent than MPL's proposed pipeline.[95]

96. Because of its greater impact on human settlement, inability to meet the projected demand for crude oil, and increased energy costs for operation, Alternative 1 is not more reasonable and prudent than the proposed pipeline. Both Alternative 1 and the proposed pipeline will have a significant impact on agricultural land.

Truck Additional Crude Oil from Clearwater to Minnesota Refiners (Alternative #2)

97. Shipping by truck rather than by pipeline was evaluated as Alternative #2. Trucking creates a much higher public safety and environmental risk than the proposed pipeline. The heavy volume of truck traffic required to carry similar capacity would be difficult to accommodate in the metropolitan area, and it would also be expensive (100,000 bpd would require 28 trucks per hour 24 hours per day, 7 days per week). Trucking would also consume approximately 29,443,600 gallons of fuel per year. There was no evidence to support this option. Thus, this was not a more reasonable or prudent alternative to MPL's proposed pipeline.[96]

Do Not Build (Alternative #3)

98. KPL owns the Wood River Pipe Line which runs from the St. Louis area to the Twin Cities and supplies additional crude oil when MPL cannot meet the demand from the Minnesota refineries. Crude oil shipped on the Wood River Pipe Line is more expensive than the MPL supply, the source is less reliable due to the weather in the Gulf Coast, and it has declining capacity that is insufficient to meet the anticipated need of the Minnesota refineries. There are plans to increase the supply to the St. Louis area but the cost would be higher for the Minnesota refineries. Since the Minnesota refineries would prefer to obtain crude oil at a lower cost, and because they are owners of MPL, MPL does not favor this alternative.

99. MPL also claims that the "no build" alternative would not create the anticipated construction jobs or the associated benefits to local businesses and property taxes. However, MPL did not attempt to measure the decreased disruption of land and people with the "no build" alternative.[97]

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[94] Ex. 114, IR 11.
[95] Ex. 14 at 6-7.
[96] Ex. 7 at 33; Ex. 10 at 4; Ex. 14 at 6-7.
[97] Ex. 7 at 33-34; Ex. 10 at 4-5.

100. Members of the Minnesota Public Interest Research Group (MPIRG) appeared at several hearings, submitted petitions and hundreds of letters opposing the proposed pipeline,[98] and raised many questions about the need for and safety of the pipeline. MPIRG members were also distressed by MPL's inability to prevent the pipeline break in Little Falls or the damage done by the spilled crude oil.[99] MPIRG strongly supports the development of alternative fuels,[100] and many people who attended the public hearings preferred further development of alternative fuels to approval of a crude oil pipeline. However, there was no evidence that alternative fuels would be developed in time to meet Minnesota's energy demands. MPL and the Department accounted for the development of alternative fuels in their evaluation of the need for more crude oil.[101]

101. The Department concluded that Alternative 3 was not a reasonable and prudent alternative to MPL's proposed pipeline.[102]

102. Because Alternative 3 will not assure that the demand for crude oil in the state and region will be met, it is not a more reasonable and prudent alternative to the proposed pipeline.

Rail

103. The Department requested that MPL examine the alternative of rail transportation.[103] Based on the information provided, including the number of railcars required, the lack of loading and unloading facilities at Clearbrook and the Minnesota refineries, and the associated costs, the Department agreed with MPL that rail transportation was not a reasonable and prudent alternative.[104] There was no evidence to the contrary.

Remove and Replace an Existing MPL Pipeline

104. Several members of the public were concerned about the age of the pipelines in the existing MPL system, and, in particular, the age of the 16-inch pipeline installed in the 1950's. Several questioned whether it would be a more reasonable and prudent alternative to replace the aging line with a new, larger line, thus minimizing the need for new land disturbance, and decreasing the likelihood of a leak or break along the aging line.[105]

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[98] Ex. 111; Ex. 112 and public comment.
[99] Ex. 83.
[100] Ex. 88.
[101] *See* "Forecasted Demand for Crude Oil," *supra.*
[102] Ex. 14 at 6-7.
[103] Ex. 114, IR 13; Ex. 14 at 7.
[104] Ex. 14 at 8.
[105] *See e.g.* T. 5 at 13-14 (Varner); T. 11 at 19 (Osborn); T. 11 at 43 (Martin); E-Mail from John Ryan, Sept. 18, 2006**.**

105. Removal of one of MPL's existing pipelines during the replacement would drop its capacity by 120,000 bpd for one to one and one-half years. This would prevent delivery of the required crude oil to the Minnesota refineries, and possibly create a shortage of refined petroleum products. Removing one pipeline while preparing the new pipe for installation would require a larger right-of-way than construction of a new pipeline would require.[106] Replacement of one of the existing pipelines would disrupt the densely developed portions of Anoka and Washington Counties, as described in the discussion of Alternative 1. To remove one line and replace it with another would require a wider construction easement along the existing route than would be required to construct the proposed pipeline.

106. There was no objective evidence that the older pipeline was in fact more likely to fail. A study done by the Transportation Research Board of the National Academies of Sciences and Engineering and affiliates showed no significant difference in the reportable incidents of liquid pipelines installed in the 1950's through the 1980's.[107] Although some members of the public favored the cost and disruption of this option over the cost and disruption of the proposed pipeline, it is likely that landowners along the existing pipeline would not agree.

107. Replacement of an aging line would disrupt densely developed portions along the existing pipeline. Neither the costs, nor the possible temporary sources of alternative supply of refined petroleum products were fully presented. Nonetheless, it is apparent that Minnesota's two refineries would be adversely affected by a decrease in the available crude oil during the replacement.

108. Removal and replacement has not been demonstrated to be a reasonable and prudent alternative to the proposed pipeline.

Selection of Pipe Size

109. The record shows that MPL also considered several different diameters of pipe for the new pipeline in conjunction with varying numbers of pumps along the line, to determine the most cost-effective option that would meet current need and allow for increased throughput on the line as demand increased. Based on its analysis, a 24-inch pipe with two pumps, with the potential to expand to six pumps, was the best alternative to economically meet current and projected demand.[108]

110. No party or person has demonstrated a more reasonable and prudent alternative to the proposed pipeline by a preponderance of the evidence.

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[106] T.11 at 22 (Van Horn).
[107] Ex. 104, "Transmission Pipelines and Land Use," Transportation Research Board of the National Academies, Special Report 281, 2004.
[108] Ex. 114, IR 14.

Consequences to Society of Granting or Denying the Certificate of Need

111. The Commission grants a CON if it determines that 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 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.[109]

Project Benefits

112. The proposed pipeline helps meet the state and regional energy needs with a stable source of crude oil from Canada, decreasing reliance on less stable sources in the Middle East and South America. It helps increase the supply of crude oil to the region so that Minnesota refineries can expand to meet increasing demand for refined petroleum products.[110]

113. Stable, reliable and sufficient supplies of refined petroleum products are important to the state's and region's economic development. Manufacturing, transportation and other businesses require reliable and cost effective energy supplies to operate successfully.[111]

114. The construction cost of the proposed pipeline is estimated to be $300 million, creating an estimated 1,000 construction jobs and secondary benefits to the local economy. The proposed pipeline will also generate an estimated $9 million per year in local property taxes.[112] In Clearwater County, the projected increased local property tax is significant and will benefit local government.[113]

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[109] Minn. R. 7853.0130(C).
[110] Ex. 7 at 4, 8-9; Ex. 9 at 4.
[111] Ex. 7 at 12.
[112] Ex. 7 at 4, 10; Ex. 14 at 10.
[113] T. 1 at 55 (Don Holm, Clearwater County Assessor).

115. The proposed pipeline will increase the overall energy efficiency of the pipeline system by significantly reducing power consumption per barrel.[114]

116. A pipeline will bring crude oil to the Minnesota refineries more safely, effectively and economically, and with less impact on communities and the environment than other transportation methods.[115]

Project Costs

117. In addition to the financial costs, there are external costs to pipeline construction including pollution and damage to natural resources and crop land during construction, potential environmental damage during pipeline operations, and impact on landowner property value.

118. MPL evaluated the environmental impact of several route alternatives. In evaluating new proposed routes, it quantified and compared potential environmental impacts and also compared the environmental impact of following the existing pipeline.[116]

119. The Department's witness, Susan Medhaug, reviewed the Application, MPL's proposed Wetland and Waterbody Construction and Mitigation Procedures, and MPL's Upland Erosion Control, Revegetation, and Maintenance Plan. Based on her review, she concluded that the damage to natural resources from wastewater discharge, air emissions and noise sources during construction would be minimal. In addition, Ms. Medhaug reviewed the list of various government agencies that will have regulatory authority over pipeline construction and concluded that such oversight would ensure that external costs are minimized.[117]

120. Ms. Medhaug reviewed the Agricultural Mitigation Plan and concurred with MPL's assessment that the damage to crop land during construction would be minimal. In addition, the Agricultural Mitigation Plan includes a procedure to process landowners' and tenants' claims for any damage to crop land that occurs during construction.[118]

121. Environmental damage could occur from oil spills during pipeline construction and operation. MPL intends to develop a Stormwater Pollution Prevention Plan describing the necessary steps to take in the event of a spill during construction.[119] No such plan was included in the record. The PUC may wish to require MPL to develop a Stormwater Prevention Plan as a condition of the Routing Permit.

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[114] Ex. 7 at 10, 16; Ex. 114, IR 4 and 10.
[115] Ex. 7 at 11; Ex. 114, IR 12.
[116] Ex. 7 at 36-37.
[117] Ex. 14 at 11; *see also* Ex. 7 at 48-50.
[118] Ex. 14 at 12.
[119] Ex. 7 at 51.

122. The proposed pipeline will be operated by KPL and continuously monitored from KPL's Pipeline Control Center in Wichita, Kansas. KPL has a Pipeline Integrity & Reliability Program that meets the requirements of the United States Department of Transportation High Consequence Areas rule[120] for maintaining and verifying the integrity of the pipeline. KPL has also developed an Integrated Contingency Plan to provide its employees with a comprehensive plan for responding to emergencies, and its employees, governmental response agencies and emergency response contractors participate in drills simulating releases.[121]

123. KPL has a Public Awareness Program that includes periodically mailing pipeline safety brochures to members of the public living within the vicinity of the pipeline, companies engaged in excavation activities, emergency response agencies and local public officials.[122]

124. MPL will install 29 or 30 shut-off valves along the pipeline route, with valves spaced approximately 10 miles apart.[123]

125. At the time of the hearing, MPL had no budgetary restrictions on protection of the physical integrity of its pipelines.[124]

126. Despite MPL's commitment to maintain the integrity of its pipelines, there was a leak in one of the existing pipelines near Little Falls, Minnesota in June, 2006. About 134,000 gallons of crude oil leaked before the pipeline was shut down and empty. Many members of the public were concerned about the leak, the company's inability to prevent it, and the potential harm to the environment from a leak. There was no evidence concerning the amount of spilled oil that was reclaimed, the environmental damage or environmental costs associated with that leak.

127. In its testimony, the Department analyzed KPL's history of reportable oil spills and commented that technological changes and design improvements have, and should continue to, decrease the probability of a spill and increase the potential for recovering spilled oil.[125] This testimony, however, was filed on June 21, 2006, prior to the time the Department received information about the spill near Little Falls. Investigations concerning the leak were not complete at the time of the hearing.

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[120] 49 C.F.R. § 195.452.
[121] Ex. 7 at 18-19.
[122] Ex. 7 at 21; *See also* Ex. 1 at 4415, 0160, page 4.
[123] T. 7 at 40 (Duncan); T. 3 at 31 (McKimmey).
[124] T. 8 at 28 (Van Horn).
[125] Ex. 14 at 13.

128. MPL intends to employ independent third-party environmental inspectors to oversee the construction process and to monitor compliance with the environmental plans listed above and the required environmental permits.[126]

129. Randall E. Duncan, Senior Environmental Scientist, Natural Resources Group, Inc., was responsible for conducting MPL's environmental analysis. His stated goal was, to the extent practical, to develop a proposed pipeline that would have a minimal impact on the environment and on landowners.[127] Further findings concerning the environmental impact of the proposed pipeline are included in the portion of this report addressing the criteria for the routing permit.

130. The Department concluded that the external costs from the pipeline expansion would be outweighed by the external benefits, and that the consequences of granting the CON were more favorable than the consequences of denying it.[128]

131. Some members of the public criticized the evaluation of the environmental costs because there was no assessment of the environmental costs from loss of forests or prime agricultural land.[129] For example, there was no assessment of the effect on the environment of the loss of forest acreage. The Department's witness acknowledged that there was no assessment of the effect of the loss of agricultural land, but only a review of the Agricultural Impact Mitigation Plan.[130]

132. The external costs may have been understated, but it is difficult to quantify the degree of that understatement.

133. The proposed pipeline will benefit society by increasing the supply, efficiency and reliability of the state's energy system. Potential external costs can be minimized by mitigation plans and other conditions incorporated into the Route Permit, and by federal, state and local governmental permits. On the record presented, the consequences of granting the CON are more favorable than the consequences of denying it.

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[126] Ex. 7 at 51.
[127] Ex. 11 at 3.
[128] Ex. 14 at 13.
[129] Letter from Douglas and Kathy Rasch, Sept. 20, 2006; T. 1 at 40 ("In these 20 years we have not derived economic benefit from this forest, knowing its greatest value to us has always been its natural contribution to the health of the ecosystem it is a part of. It is beautiful, it is unique in the Clearwater County community, and its contribution to carbon storage, clean water, and conservation of many species of plants and animals should not be underestimated. Especially in light of our society's awareness of our impact on the climate and the resources we use."); T. 4 at 20-21 (Blann).
[130] T. 17 at 36 (Medhaug).

Compliance with Other Governmental Regulations

134. Minnesota Rule 7853.0130 D provides that the PUC shall grant a CON to an applicant 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."

135. MPL has provided a comprehensive list of agencies that will require permits, and MPL has been working with the agencies to acquire the necessary permits. Many agencies had not acted on the permits at the time of the hearing.[131] MPL has agreed to comply with all relevant regulations and to work in cooperation with all governmental units.[132] There is no evidence in the record to suggest that MPL will fail to comply with relevant policies, rules and regulations of other state and federal agencies and local governments.

Criteria for Route Permit

136. Minnesota Rule 4415.0100 provides the criteria used by the PUC to select a route for designation and issue a pipeline routing permit. The PUC shall consider:

- Human settlement, existence and density of populated areas, existing and planned future land use, and management plans;
- The natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;
- Lands of historical, archaeological, and cultural significance;
- Economics within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;
- Pipeline cost and accessibility;
- Use of existing rights-of-way and right-of-way sharing or paralleling;
- Natural resources and features;
- The extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 4415.0185 for pipeline right-of-way preparation, construction, cleanup, and restoration practices;

[131] Ex. 7 at 7.
[132] Ex. 9 at 5-6.

- Cumulative potential effects of related or anticipated future pipeline construction; and

- The relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minn. Stat. § 299J.05 relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

Process of Route Selection

137. To select a preferred route for the pipeline, MPL took into consideration the criteria established in Minnesota Rules Chapter 4415. In so doing, MPL applied four principles that were consistent with the rules:

- Avoiding as many farmsteads, residents and residential developments as possible;

- Using existing right-of-way where possible;

- Reducing environmental impact by avoiding rare species habitats, lakes, wetlands and biologically significant areas where possible; and

- Reducing pipeline length when possible to reduce the inconveniences to residents, businesses and affected communities.[133]

138. MPL reviewed data from several state and federal sources and databases, consulted with federal, state and local authorities and performed aerial and on-ground surveys to check the information and evaluate issues that would affect route selection.[134]

139. MPL reviewed the possibility of following its existing pipeline route, more fully described in subsequent findings, along with four alternatives, referred to as "greenfield" alternatives MPL selected "Southwest Alternative #1" of the "Little Falls B" route as its preferred route. In selecting the proposed route, MPL attempted to apply the criteria set forth in the applicable rule.

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[133] T. 1 at 23-24 (Swanson), 27-28 (Duncan).

[134] Ex. 5 at 3-4. MPL reviewed U.S. Geological Survey (USGS) topographic maps; USGS land use database; U.S. Department of Agriculture (USDA) Farm Services Agency 2003 and 2005 color aerial photography; National Wetlands Inventory (NWI) maps; Minnesota Department of Natural Resources (DNR) county biological survey maps; MDNR Natural Heritage Information System database; Minnesota Department of Transportation highway maps; USDA state soil geographic (STATSCO and SSURGO) databases; other information obtained through the MDNR website. MPL consulted with the MDNR, Minnesota Department of Agriculture, U.S. Army Corps of Engineers, and local agencies for environmental information not included in publicly available databases.

140. During the initial route studies, MPL determined that the new pipeline should parallel its existing system through Clearbrook, Hubbard, Wadena, Todd, and Morrison or Benton Counties. At that point the pipeline should divert from MPL's existing system and run to the south and west of the Twin Cities metropolitan area, to the KPL interconnect in Rosemount. MPL rejected the option of following the existing pipeline system for the full length of the route because of the residential and commercial development along its existing pipelines in Anoka, Dakota, and Washington Counties. Because of that development, expansion of the pipeline right-of-way would significantly disrupt densely settled areas in these counties, as is apparent from the aerial maps of the existing pipeline route.[135]

141. In its initial route proposal, MPL depicted a centerline along the route. Since filing the Route Permit Application, MPL has made over 100 adjustments to the centerline alignment.[136] On September 28, 2006, MPL filed updated maps showing the September 15 Alignment. The maps include two alternative route segments and agreements reached with some landowners. A copy of the September 15 Alignment was provided to the parties and has been added to the hearing record.[137]

Environmental Assessment

142. MPL filed its Environmental Assessment Supplement with its Route Permit Application on January 5, 2006. It includes an analysis of the socioeconomic impacts, land use, terrain and geology, soil, vegetation, wildlife and fisheries, including endangered and threatened species, groundwater and surface water resources, including waterbodies and wetlands, cultural resources, and federal, state and county recreational areas.[138]

143. Several members of the public were critical of this method of environmental assessment because the analysis was not conducted by an independent entity, but by the company. This method of environmental assessment is permitted for pipeline routing.[139]

144. The Environmental Assessment Supplement includes an Upland Erosion Control, Revegetation and Maintenance Plan. The Plan includes appointment of an Environmental Inspector with specified responsibilities, including, among others, identifying and marking the boundaries of sensitive resource areas, waterbodies, wetlands, or areas with special requirements along the construction work area; verifying that subsoil and topsoil are tested to measure compaction and determine the need for corrective action, regularly inspecting erosion control measures; and assuring compliance with all federal,

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[135] Ex. 5B.
[136] T. 12 at 74-76 (McKimmey).
[137] Ex. 116.
[138] Ex. 2.
[139] *See* Environmental Impact of Preferred Route, *infra*.

state, and local permit conditions, as well as negotiated landowner requirements.[140]

145. The Upland Erosion Control, Revegetation and Maintenance Plan also requires preconstruction planning; protection during installation; restoration, including cleanup and permanent erosion control devices, soil compaction mitigation and revegetation; as well as post-construction monitoring and maintenance.[141] As part of the plan, topsoil and subsoil will be stockpiled separately in agricultural areas so that it may be appropriately replaced.[142]

146. Members of the public raised concerns about construction on steep slopes.[143] MPL is willing to develop site-specific construction plans.[144]

147. The proposed route crosses a substantial amount of agricultural land.[145] As part of the Environmental Assessment Supplement to the Pipeline Routing Permit Application, MPL developed an Agricultural Impact Mitigation Plan (AIMP). The AIMP was developed in consultation with the Minnesota Department of Agriculture (MDA) to identify measures that MPL will implement to avoid, mitigate, or provide compensation for negative agricultural impact from pipeline construction. MPL will continue to consult with MDA during the Routing Permit process and will incorporate the final AIMP into specifications for construction on agricultural land.[146]

148. For this purpose, "agricultural land" is defined as "land that is actively managed for cropland, hayland, or pasture, and land in government set-aside programs."[147]

149. The AIMP addresses several of the concerns raised during the public hearings including pipeline depth, separation and replacement of topsoil, soil compaction, drain tile protection and repair, conservation reserve land, ingress and egress to the right-of-way, weed control, and advance notice of access to property

150. The AIMP states that MPL will develop and put into place a procedure for the processing of anticipated landowners' or tenants' claims for construction–related damages to standardize and minimize landowner and tenant concerns about recovery of damages. Ultimately, if the landowner or tenant and MPL are unable to reach an agreement on the amount of

[140] Ex. 2, Appendix B, at 1-2.
[141] Ex. 2, Appendix B at 3-9.
[142] Ex. 2, Appendix B at Figs. 1 and 2.
[143] *See e.g.* T. 1 at 48 (Thompson).
[144] T. 1 at 49-50 (Duncan).
[145] Ex. 117 (breakdown by county).
[146] Ex. 2, Appendix C.
[147] Ex. 2, Appendix C at 3.

compensation, the landowner or tenant may seek recourse through the state court system.

151. The AIMP states that MPL will indemnify landowners and tenants against all "claims, injuries, suits, damages (including, but not limited to, crop loss, repairs to irrigation systems and tile, real and personal property damages), costs, losses and reasonable expenses resulting from or arising out of the construction of the pipeline, unless caused by the intentional acts or negligence of the Landowners and Tenants."[148]

152. The AIMP does not address damages to agricultural land that occur subsequent to the construction of the pipeline. In particular, it does not cover damage that occurs during maintenance of the pipeline or the right-of-way, or from a leak or break in the pipeline.

153. In the AIMP, MPL agreed to retain and fund an Agricultural Monitor to audit MPL's compliance with the AIMP. The Agricultural Monitor will report directly to MDA. The Monitor will have no direct authority over construction, but will report instances of noncompliance to MPL's Agricultural Inspector and prepare regular compliance reports and submit them to MDA.[149]

154. MPL also agreed to retain an Agricultural Inspector. The Agricultural Inspector will be a full-time member of MPL's environmental inspection team, with authority to stop construction activities that are out of compliance with the AIMP, implement appropriate corrective actions, and train construction personnel on the provisions of the AIMP prior to construction, and on specific topics as needed.[150]

155. After the Environmental Assessment Supplement was filed, MPL and the MDA were asked to add protections to the AIMP to address organic farms. In response, MPL, the MDA , and Atina and Martin Diffley on behalf of GOE, an organic farm, negotiated an Appendix to Agricultural Impact Mitigation Plan for Organic Agricultural Land.[151] That plan was also supported by Dakota County.[152]

156. The Appendix defines organic agricultural lands, adds provisions to increase preservation of organic soils, control erosion, prevent contamination of organic lands with prohibited substances, provide soil restoration more consistent with organic management plans, and provide compensation for crop yield and crop quality losses as well as organic decertification.[153] The Appendix identifies reasonable and prudent mitigation measures that apply specifically to farms that

[148] Ex. 2, Appendix C at 13.
[149] Ex. 2, Appendix C at 13-14.
[150] Ex. 2, Appendix C at 14-15.
[151] Ex. 56; Ex. 79 (Dept. of Agriculture recommendation supporting Appendix to AIMP).
[152] Ex. 69.
[153] Ex. 20 at 12-13; Ex. 21 at 13-15.

are Organic Certified or farms that are in active transition to become Organic Certified. Requiring that the Routing Permit include the Appendix to the AIMP will assure that organic agriculture issues are adequately addressed for farms that are Organic Certified or in the process of becoming certified.

157. Many members of the public expressed concern about the effect of the pipeline on their organic farms.[154] Not all of the organic farmers have sought organic certification because the farmers do not sell what they produce. Requiring MPL to adhere to requirements similar to those in the Appendix would benefit these landowners. Some members of the public requested that the Appendix apply to all agricultural land.[155]

158. The PUC may wish to consider as a condition of the Routing Permit requiring MPL to retain an organic certifier at its expense to assist any landowner to negotiate terms to the right-of-way agreement that will minimize damage during construction and delay or loss of organic certification for any farm that is Organic Certified or in active transition to become so.

159. One member of the public questioned why there is not a central registry for organic farms. He is quite concerned that maintenance conducted along the right-of-way may adversely affect his organic farm. He has attempted to contact the governmental units and utilities that maintain rights-of-way near his property, but he is not sure that he has identified all of the proper entities, or that those entities have a systematic approach to checking for organic land prior to conducting maintenance.[156] MPL's witness, Dr. Richard Skarie, testified that the MDA maintains a list of organic farms, but there was no evidence that a company or government agency must check the list prior to performing maintenance.[157]

160. Each year MPL mails a notice to landowners with MPL contact information. In addition, MPL ordinarily contacts landowners prior to conducting maintenance.[158] If these practices are followed, landowners whose property is crossed by the pipeline will have the opportunity to work with the company to assure that proper maintenance practices are followed. However, MPL's standard form Right of Way Grant does not require MPL to give notice to the landowner or to conform its maintenance practices to the landowners' wishes, nor is there a method to notify nearby landowners or protect them from chemical spraying.[159]

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[154] T. 4 at 21, 24 (Blann); T. 12 at 44 (Peterson); T. 14 at 23-28 (Nowak); T.13 at 44-45 (R. Tupy).
[155] *See e.g*. letter from Cynthia A. and Russell K. Hobbie, received September 5, 2006.
[156] T. 3 at 20-24 (Beck).
[157] T. 3 at 23-24 (Skarie).
[158] T. 3 at 27-28 (McKimmey).
[159] T. 16 at 51-54 (Osborn). Ms. Osborn submitted a copy of MPL's proposed Right of Way Grant into the record during the public comment period. It has been marked for identification and added to the hearing record as Ex. 118.

161. The PUC may wish to consider as a condition of the routing permit requiring MPL to give notice to landowners prior to conducting maintenance.

162. As more landowners and tenants engage in organic farming, the Commission may wish to promote a central registry or other approach that minimizes the risk of damage to organic farms from right-of-way maintenance.

163. The PUC may wish to consider as a condition of the routing permit requiring MPL to notify each landowner annually of the opportunity to register organic farms and the landowner's or tenant's Organic System Plan with MPL and hold MPL responsible for the damage caused by any maintenance practice that is inconsistent with the landowner's or tenant's Organic System Plan on file or the express written approval of the farmer. The PUC may also wish to consider whether additional conditions should be added to the Routing Permit to address the concerns of organic farmers who have not developed an Organic System Plan, as that term is defined in the AIMP Appendix.

164. The Environmental Assessment Supplement includes Wetland and Waterbody Construction and Mitigation Procedures, which MPL discussed with the DNR. These Procedures address preconstruction planning, including stormwater pollution prevention, waterbody and wetland crossings, and hydrostatic testing.[160]

165. As part of the Procedures, MPL will conduct a wetland delineation, indicating by milepost the wetlands that will be affected, the National Wetlands Inventory (NWI) classification for each wetland.[161] MPL estimates that about 513 wetlands will be crossed by the project.[162] No wetlands will be drained or permanently filled to construct the pipeline, but pipeline construction will cause short-term disturbance to the wetland. The Procedures are intended to mitigate the disturbance.[163]

166. The public was concerned about plans for some of the waterbody crossings.[164] MPL agreed to develop site-specific plans as needed.[165] Also, MPL plans to install shut-off valves on either side of a waterbody more than 100 feet wide.[166]

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[160] Ex. 2, Appendix D.
[161] Ex. 2, Appendix D at 9.
[162] Ex. 2 at 93 and Appendix G; miles of wetland crossed is slightly less on the September 15 Alignment. Ex. 117, Table 1.
[163] Ex. 2 at 83.
[164] *See e.g.* T. 1 at 43-52 (Thompson); T. 9 at 47 (Sachs); T. 16 at 24, 34 (Schrum); Exs. 44-47, 105, 107.
[165] T. 1 at 49-50 (Duncan).
[166] T. 7 at 40 (Duncan); T. 3 at 31 (McKimmey).

167. MPL will retain an Environmental Inspector with delineated responsibilities.[167]

168. MPL reviewed existing site data maintained by the Minnesota Historical Society to identify previously recorded cultural resources within the proposed construction right-of-way. Three were identified; none have been verified by field survey or assessed for listing in the National Register of Historic Places. MPL has conferred with the U.S. Army Corps of Engineers and the Minnesota State Historic Preservation Officer to review the project and the model for occurrence of unanticipated or undocumented discoveries along the pipeline route.[168]

169. No state agency has objected to the Environmental Assessment Supplement. The Metropolitan Council submitted a letter to the Department dated May 30, 2006, stating that it took no formal action, but "the Pipeline Routing Permit Application and Environmental Assessment Supplement is (*sic*) complete and accurate with respect to regional concerns and raises no major issues of consistency with Council policies."[169] The Metropolitan Council recommended that the Minnesota Pollution Control Agency's NPDES Construction Permit Program requirements for site sediment control be included in the project construction specifications.[170] The PUC may wish to require MPL to comply with the MPDES Construction Program requirements for site sediment control as a condition of the Routing Permit.

Land Requirements[171]

170. The Pipeline Routing Permit Application set forth the land requirements for the proposed pipeline, including permanent right-of-way length, average width, and estimated acreage, the temporary right-of-way (workspace) length, estimated width and estimated acreage, the estimated range of trench or ditch dimensions, and other related information.

171. Approximately 119 miles of the proposed pipeline, from Clearbrook, Mile Post (MP) 0, to Cushing, MP 119.3, will be constructed generally adjacent to the existing pipelines within MPL's multiple-line right-of-way.

172. Adjacent to MPL's existing pipelines, from MP 0 to 119.3, construction of the proposed pipeline will generally require a 100-foot-wide construction right-of-way to allow for temporary storage of topsoil and spoil and to accommodate the operation of the construction equipment. The "spoil" side (*i.e.*, the topsoil and spoil stockpile area) will typically be 35 feet wide and located mostly within the existing right-of-way. The "working" side (*i.e.*, the equipment

[167] Ex. 2, Appendix D at 1, citing Appendix B at 1-2.
[168] Ex. 2 at 84.
[169] Ex. 67.
[170] *Id.*
[171] Minn. R. 4415.0125; the Application for a Routing Permit, Ex. 1, is organized by rule part.

work area and travel lane) will typically be 65 feet wide and generally located outside the existing maintained pipeline right-of-way. The new pipeline will expand MPL's maintained right-of-way from its current width of about 65-70 feet, to about 100 feet in width, requiring about 476 additional acres.[172]

173. Along the new "Greenfield" route from MP 119.3 to 294.6, construction will require a 100-foot corridor, 40 feet on the spoil side and 60 feet on the working side. After construction, a 50-foot-wide permanent right-of-way will be retained for operation and maintenance of the new pipeline. The total length of pipeline in each county crossed by the proposed pipeline route is set forth in the Environmental Assessment Supplement[173] and updated for the September 15 Alignment.[174] The permanent right-of-way along the entire length of the proposed pipeline will encompass about 1580 acres.[175]

174. The mid-point pump station will require about 1 to 2 acres for construction and operation. Other aboveground facilities (*e.g.*, originating pump station, meter facilities) will either be sited within the maintained and permanent pipeline right-of-way or within the property area of existing facilities (*i.e.*, Clearbrook Station, Flint Hills Resources refinery).[176]

175. The total estimated acreage of temporary workspace for the full length of the pipeline is estimated to be about 1,515 acres. The typical right-of-way schematics for the areas along the existing line and the Greenfield Route are provided on Figures 17 and 18 of the Pipeline Routing Permit Application.[177]

176. Approximately 1,740 separate parcels of land are crossed by the existing pipeline; approximately 1200 separate parcels are crossed by the proposed pipeline, of which approximately 770 are new parcels.[178]

177. In addition, MPL will need temporary workspace near points where the project will cross waterbodies, roads, railroads, sideslopes and other special features. These temporary areas will be outside of the typical right-of-way and will be needed to stage equipment and stockpile spoil material. Other areas off of the right-of-way will be needed to store pipes and material, and to park equipment. MPL estimated that it would require about 430 acres of temporary work spaces outside of the construction right-of-way.[179]

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[172] Ex. 1 at 4415.0125, page 1; Ex. 2 at 3-4.
[173] Ex. 2, at Table 1, page 3.
[174] Ex. 117, Table 1.
[175] Ex. 1 at 4415.0125, page 1.
[176] Ex. 1 at 4415.0125, page 1.
[177] Ex. 1.
[178] Ex. 114, IR 29, IR 30 and IR 31.
[179] Ex. 1 at 4415.0125, page 2; Ex. 2 at 4, and App. A, Typical Extra Workspace Schematics.

178. The existing land use along the proposed route is adequately detailed in the Environmental Assessment Supplement.[180]

Project Expansion[181]

179. MPL stated on the record that it had no plans to run a parallel pipeline along the proposed route in the future. Instead, the capacity of the pipeline could be expanded by adding additional pump stations. The design would accommodate up to eight pump stations with a maximum throughput capacity of approximately 350,000 barrels per day.[182]

180. There were several members of the public who were concerned about this because, once a right-of-way is established for this pipeline; they feared that future regulators would favor the route over other possible routes. Such a preference would, in their opinion, increase their risk of a broader right-of-way and commensurate loss of property value to the landowners.

181. Based on the evidence in the record, it is more likely that MPL would expand capacity by increasing the pumping stations on the proposed pipeline than to expand by broadening the right-of-way and lay another line.

Right-of-Way Preparation Procedures and Construction Activity Sequence[183]

182. The Right-of-Way Preparation Procedures and Construction Activity Sequence are detailed in the Pipeline Routing Permit Application[184] and Environmental Assessment Supplement to the Application.[185]

183. The first step is to survey and stake the centerline and exterior boundaries of the construction right-of-way. Some members of the public complained that MPL had sent surveyors onto their property to begin this process without the landowner's permission.

184. The Environmental Assessment Supplement states that MPL had not identified any instances where the construction right-of-way could not be accessed by an existing public or private road, but the portion of the Supplement that addresses the construction sequence states that during surveying and staking, "equipment involved in pipeline construction will be moved onto the right-of-way using existing roads for access wherever practicable."[186]

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[180] Ex. 2 at 32-35.
[181] Minn. R. 4415.0130.
[182] Ex. 1 at 4415.0130, page 1; T. 14 at 42-43 (Wright).
[183] Minn. R. 4415.0135.
[184] Ex. 1 at 4415.0135, pages 1-4.
[185] Ex. 2 at 3-11 and Figures 2, 3, 4 and Appendices B, C and D.
[186] *Compare* Ex. 2 at 4 ("No private or new access roads have been identified at this time.") *with* Ex. 2 at 7 ("During this period, equipment involved in pipeline construction will be moved onto the right-of-way using existing roads for access wherever practicable.")

185. The PUC may wish to require MPL to move equipment into the right-of-way using existing public or private roads unless a temporary road is negotiated with the landowner and approved by the Environmental Inspector; and by the Agricultural Inspector on agricultural land.

Location of Preferred Route and Description of Environment[187]

186. MPL has included county highway maps in the application showing the location of the proposed route in each of the 13 counties crossed.[188] In addition, MPL provided larger aerial maps,[189] and an updated aerial map showing the September 15 Alignment was added to the record.[190] The environment is more fully described in the Application and in the Environmental Assessment Supplement.[191]

Environmental Impact of Preferred Route[192]

187. Many members of the public were critical about the lack of an independent environmental review of the proposed pipeline. The Department of Commerce Energy Facility Permitting (EFP) Staff reviewed MPL's application for completeness with Minn. Rules 4415.0115 to 4415.0170, and determined that the application and the Environmental Assessment Supplement provided the required information, including information about the environmental impact of the project. The EFP staff concluded that the application was complete and recommended that the PUC accept the application. On February 16, 2006, the PUC accepted the application. Chapter 4415 of the Minnesota Rules was adopted by the Minnesota Environmental Quality Board in 1989 as an alternative form of environmental review for proposed pipelines, consistent with the requirements for alternative review in Minn. Rule 4410.3600.

Socioeconomics

188. During construction, MPL will employ approximately 1,000 local and non-local workers and will benefit local economies. Operation of the pipeline will create four new permanent jobs, located at MPL facilities in Clearbrook, Little Falls and Rosemount. Construction may temporarily disrupt transportation systems along the route. In general, the proposed route avoids population centers and residential areas. Nineteen municipalities are located within approximately 1 mile of the route. The largest are Staples, Belle Plaine and Rosemount. Construction will require removal of approximately 508 acres of timber. MPL will offer the landowners the option of retaining the merchantable timber.

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[187] Minn. R. 4415.0140.
[188] Ex. 1, Figures 2 through 14.
[189] Exs. 5-A and 5-B.
[190] Ex. 116.
[191] Ex. 1 at 4415.0140, pages 1-5 and 4415.0145, pages 1-8; Ex. 2.
[192] Minn. R. 4415.0145.

189. MPL estimates that the MinnCan Project will generate approximately $9 million in annual local tax revenues for the counties, with the amount for each county dependent upon the number of pipeline miles and pipeline-related facilities in the county.[193]

Terrain and Geology

190. A description of the terrain and geology along the proposed route is set forth in the Environmental Assessment Supplement.[194]

Soils

191. A general description of the soil composition, conditions and characteristics is set forth in the Environmental Assessment Supplement.[195] Pipeline construction activities such as clearing, grading, trench excavation, and backfilling, as well as the movement of construction equipment along the right-of-way, may impact the soil. MPL has agreed to minimize or avoid the impact on soils through the mitigation measures in the Upland Erosion Control, Revegetation, and Maintenance Plan, the Agricultural Impact Mitigation Plan and Appendix, and the Wetland and Waterbody Construction and Mitigation Procedures.[196] In addition, MPL has agreed to comply with all federal, state and local permits.

192. Members of the public were critical of the lack of topsoil separation and the problems created by soil compaction during prior pipeline construction. In its mitigation plans, MPL has committed to separate topsoil from the subsoil during construction so that it can be properly replaced. The portion of the route north of about MP 150 has relatively thin topsoil, less than 10 inches thick. On active cropland north of MP 150, the topsoil will be stripped to its full depth to a maximum of 12 inches. South of MP 150 has greater than 10 to 12 inches of topsoil, and much of it is used for agriculture. On active cropland south of MP 150, the topsoil will be stripped to its full depth to a maximum of 18 inches, unless otherwise agreed with the MDA. MPL's mitigation plans also include steps to minimize soil compaction.[197]

Vegetation, Wildlife and Fisheries

193. Approximately 72 percent of the length of the pipeline route crosses predominantly agricultural land. Approximately 16 percent of the length of the pipeline crosses forest land, both upland forests and forested wetland, primarily in the northern counties along the existing pipeline route. Approximately 11

[193] Ex. 2 at 24-31.
[194] Ex. 2 at 40-43.
[195] Ex. 2 at 44-48.
[196] Ex. 2, Appendices B, C and D.
[197] Ex. 2 at 50-51.

percent of the route length crosses wetlands, and approximately 1 percent crosses open land.

194. The existing vegetation, wildlife, fisheries and endangered species, the effect of construction on each of them, and proposed mitigation, are detailed in the Environmental Assessment Supplement.[198]

195. Forested areas that will be cleared during construction generally are limited to the northern portions of the pipeline. On the working side of the right-of-way, an approximately 65-foot wide area will be cleared of trees, and of this, an approximately 35-foot-wide area will be maintained as additional permanently cleared right-of-way. From MP 119.3 to 294.6, the pipeline will be located in a new right-of-way. During construction, a 100-foot-wide working area will be cleared of trees, with a 50-foot-wide area to be maintained as permanently cleared right-of-way. In total, pipeline construction will clear approximately 508 acres of forest land, of which 216 acres will be maintained as permanent right-of-way. The loss of forest land will also have the secondary impacts of forest fragmentation and loss of wildlife habitat. These consequences are detailed in the Environmental Assessment Supplement.[199]

196. The record includes a 2004 report, "Transmission Pipelines and Land Use, A Risk-Informed Approach," prepared by the Transportation Research Board of the National Academies.[200] The report addresses the balancing of environmental issues and appropriate maintenance of the right-of-way.

Groundwater

197. The existing groundwater resources, including domestic water supply wells within 200 feet of the pipeline route, and the impact on groundwater from general construction and operation, are adequately set forth in the Environmental Assessment Supplement.[201] KPL, the operator of MPL's pipelines, has an Integrated Contingency Plan to respond to spills and leaks. However, several members of the public were concerned about the risk and damage to groundwater. Their concerns were heightened by the break in one of MPL's existing pipelines in June 2006, near Little Falls, more fully discussed in "Project Costs," *supra*.

Surface Water

198. The surface water resources, including waterbody and wetland crossings, and applicable construction methods, restoration and revegetation, construction and operation impact and mitigation, are adequately set out in the

[198] Ex. 2 at 53-62; see also Ex. 1 at 4415.0145, pages 4-5.
[199] Ex. 2 at 56-57.
[200] Ex. 104.
[201] Ex. 2 at 63-67.

Environmental Assessment Supplement.[202] MPL's detailed Wetland and Waterbody Construction and Mitigation Procedures is included as Appendix D to the Supplement and is intended to assist MPL employees and contractors to minimize the extent and duration of project-related disturbance on wetland and waterbodies. Site-specific permits may set more stringent conditions.

199. MPL will conduct hydrostatic testing of the new pipe to verify its integrity prior to placing it in service. MPL is evaluating potential sources for appropriating hydrostatic test water and evaluating the possible transfer of water from one test section to another to minimize the total quantity of test water needed. MPL will obtain all applicable water appropriation and discharge permits for hydrostatic testing activities. No chemical additives will be introduced into the water used for testing, and no chemicals will be used to dry the pipeline following the testing.[203]

Cultural Resources

200. MPL has evaluated existing cultural resources, consulted with federal and state agencies, and is relying upon the Corps of Engineers to initiate the required contacts with Indian tribes. MPL will assist the Corps of Engineers with tribal consultations as directed. MPL will conduct a field survey to identify cultural resources along the pipeline route and report any identified cultural resources to the appropriate agency. MPL will also develop and implement an "unanticipated discoveries plan" to follow in the event that an undocumented cultural resource is discovered during construction.[204]

201. Michael R. North was concerned that the pipeline could cross the Red River Ox Cart Trail Network near MP 93 and was uncertain if an adjustment to the alignment would avoid it.[205] It is not clear from the record if MPL was aware of Mr. North's concerns.

Federal, State and County Recreational Areas

202. The pipeline route crosses several designated recreational areas, identified in the Environmental Assessment Supplement, Table 22.[206] Included are two waterfowl production areas under the supervision of the U.S. Fish & Wildlife Service. MPL consulted with the Fish & Wildlife Service about crossing its land, but was refused access. As more fully discussed below, several members of the public were concerned about the Fish & Wildlife Service refusing access and thereby shifting the right-of-way on to land owned by private citizens.

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[202] Ex. 2 at 68-83.
[203] Ex. 2 at 77.
[204] Ex. 2 at 84-85.
[205] Ex. 66.
[206] Ex. 2 at 86-87.

203. The proposed pipeline route also crosses the State's Villard Wildlife Management Area near MP 104. The Staples Alternative, discussed below, bypasses this area.

204. In general, the public favored crossing public land because it has already been taken for a public purpose, and, if MPL's representations about restoration are correct, any disturbance to the land would be temporary. To the extent the government agencies are concerned about the consequences of a spill or leak along the pipeline route, the public shares that concern, and contends that the likely damage to people and property would be less on the undeveloped public land. The public land is generally not developed or used for agriculture, and damage to it would be minimal. MPL has little leverage to compel agreement by either the U.S. Fish & Wildlife Service or the DNR. Eminent domain is not available to take such land. Landowners were unhappy with the position taken by these government agencies.[207]

Right-of-Way Protection and Restoration Measures[208]

205. The U.S. Office of Pipeline Safety has developed a number of safety programs, and its Integrity Management Program requires pipeline operators to comprehensively assess, identify, and address, where necessary, the safety of pipeline segments that are located in areas where the consequences of a pipeline failure could be significant, designating such portions as a "high consequence area."[209] MPL has designated the entire length of the pipeline route as a "high consequence area."[210] However, the Office of Pipeline Safety and MPL cannot directly affect development that occurs outside of the right-of-way so that the undesirable consequences of a break or leak in the pipeline could be minimized.

206. The need to keep rights-of-way cleared to permit inspection and maintenance of the pipelines must be balanced against the need to allow a degree of ecological function and vegetation growth. The extent of change to the environment largely depends on the type of vegetative cover that is traversed by the pipeline. Small changes occur in agricultural fields, and the greatest changes occur when forested areas are cleared to accommodate construction and to maintain the right-of-way. The Commission may wish to require right-of-way restoration that would provide some habitat and natural buffer while allowing for the visual inspection of the right-of-way as a condition of the routing permit.[211]

207. In its Pipeline Routing Permit for a Natural Gas Pipeline in Dakota and Ramsey Counties Issued to Northern States Power Company d/b/a/ Xcel Energy, PUC Docket No. G002/GP-05-1706, the PUC included as a Permit

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[207] *See, e.g.* T. 12 at 17-18, 53-54 (G Ruhland); T. 13 at 22-23 (R. Johnson).
[208] Minn. R. 4415.0150.
[209] Ex. 104 at 26.
[210] *See,* 4415.0160, Operation and Maintenance, *infra*.
[211] Ex. 104 at 45-50.

Condition: "The Permittee shall clear the right-of-way only to the extent necessary to ensure suitable access for construction, safe operation and maintenance. Windbreaks or tree rows will be crossed by using boring or directional drilling techniques that preserve the trees and surround (sic) area, unless otherwise negotiated with the affected landowner."[212] The record is unclear whether MPL would be able to safely construct and maintain its proposed pipeline with such a condition.

208. The restoration measures to be used are set forth in the Upland Erosion Control, Revegetation, and Maintenance Plan, the Agricultural Impact Mitigation Plan and Appendix, and Wetland and Waterbody Construction and Mitigation Procedures.[213] Such measures will substantially mitigate the environmental effects of pipeline construction, operation, and maintenance. MPL has agreed to include these mitigation measures as a condition to the Routing Permit.

Operation and Maintenance[214]

209. The pipeline would be constructed, operated and maintained in compliance with federal law. The Minnesota Office of Pipeline Safety is charged with inspection to ensure compliance with the federal law within the state.

210. KPL operates a pipeline control center in Wichita, Kansas to monitor and control pipeline operations at all times.[215]

211. KPL has developed a Pipeline Integrity and Reliability Program to meet the U.S. Department of Transportation's requirements for Pipeline Integrity Management in High Consequence Areas.[216] The Program includes practices and procedures to continually assess and monitor, test and inspect, and prevent corrosion and excavation damage on KPL's pipelines. KPL employees and contractors are trained and must meet specific qualifications and KPL has developed an Operator Qualification Program, as required by federal law.[217]

212. Although pipeline incidents are rare, they have the potential for significant impact on life, property and the environment.[218] Many members of the

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[212] Ex. 102 at 4; *but see,* Ex. 103 at 4 ("Shelterbelts and trees must be protected by the Permittee to the extent possible in a manner compatible with the safe operation, maintenance, and inspection of the pipeline.")
[213] Ex. 2, Appendices B, C and D.
[214] Minn. R. 4415.0160.
[215] See Ex. 1 at 4415.0160, pages 1-2 details the control center.
[216] Ex. 1 at 4415.0160, pages 2-3, citing 49 C.F.R. § 195.452.
[217] Ex. 1 at 4415.0160 at 4.
[218] 49 C.F.R. § 195.50 defines a reportable incident for hazardous liquids transmission pipelines as an incident in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following: (a) explosion or fire not intentionally set by the operator; (b) release of 5 gallons or more of hazardous liquid or carbon dioxide: (c) death of any person; (d) personal injury requiring hospitalization; or (e) estimated property damage, including cost of

public were concerned about these possible consequences. Neither MPL nor the Department attempted to evaluate and compare the risk of exposing more land and property to the possibility of a pipeline incident by selecting the proposed route rather than following the existing route. Just as transmission pipelines pose a risk to their surroundings, so does human activity in the vicinity of pipelines pose a risk to the pipelines. These risks increase with growth in population, urban areas, and pipeline capacity.[219] MPL took human activity into account in its decision not to follow the existing route for the full length of the pipeline, but planned development along the proposed route is inevitable.

213. The PUC may wish to consider as a condition of the Routing Permit that MPL periodically mail pipeline safety brochures to members of the public living within the vicinity of the pipeline, companies engaged in excavation activities, emergency response agencies and local public officials, with information about pipeline safety and excavation damage prevention information. The notice shall include information about the One Call Excavation Notice System.

214. The PUC may also wish to require as a condition of the Routing Permit that prior to placing the pipeline in operation, MPL report to the PUC or Minnesota Office of Pipeline Safety a description of the training conducted for KPL's employees, for governmental response agencies through which the pipeline will pass, and for emergency response contractors concerning response to releases.

215. Routine right-of-way maintenance and vegetation clearing are conducted as needed along the pipeline right-of-way to facilitate inspection. Aerial inspection is conducted every two to three weeks and employees also walk along the right-of-way to check for encroachment or disturbance.[220]

List of Government Agencies and Permits[221]

216. MPL's Application included a list of all known federal, state and local agencies or authorities and types of permits required for the proposed pipeline and associated facilities.[222]

Evidence of Consideration of Alternative Routes[223]

Staples Area

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cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000. See additional discussion at Ex. 104 at 67 *et seq*.

[219] Ex. 104 at 68.

[220] T. 3 at 30-31 (McKimmey); *See also* 4415.0150, *supra*.

[221] Minn. R. 4415.0165.

[222] Ex. 1 at 4415.0165, pages 2-3.

[223] Minn. R. 4415.0170.

217. At its June 29, 2006, hearing, the PUC accepted three route segment alternatives in the Staples area for consideration in the public and evidentiary hearings – an alternative filed by MPL on behalf of the City of Staples that follows the existing pipeline through Staples ("Staples Alternative"), an alternative filed by the DNR, and an alternative filed by Scott and Sheila Becker.

218. The DNR stated at hearing that the Staples Alternative addressed its concerns regarding the potential impact on the Villard Wildlife Management Area and the Crow Wing River.[224]

219. Scott and Sheila Becker did not provide information at hearing regarding their proposed alternative.

220. MPL conducted a comparative analysis of each alternative. That analysis demonstrated that, compared to the proposed route, the Staples Alternative is shorter, crosses one less perennial waterbody, crosses one additional intermittent waterbody, maintains a greater distance from the Crow Wing River, and avoids the Villard Wildlife Management Area. The Staples Alternative would affect more residences and wetlands.[225] The proposed route came within 300 feet of 6 residences; the Staples Alternative is located within 300 feet of 20 residences.[226]

221. The Staples Alternative follows the existing pipeline system farther than the proposed pipeline. As proposed, the new pipeline left the existing system route near MP98. With the Staples Alternative, the proposed pipeline would follow the existing to approximately MP119.

222. The City of Staples prefers the Staples Alternative because it is more consistent with its future development plans.[227] The Staples Alternative will also address the Beckers' concerns because it does not cross their land.

223. The Lakewood Health System owns a facility along the existing pipeline. Because of problems expanding in that area, it recently completed construction of a new facility on land that would accommodate further expansion. Its new facility is along the initially proposed pipeline route. For that reason, Lakewood Health System supports the Staples Alternative so that the location of the pipeline will not jeopardize its future expansion.[228]

224. Some of the landowners who will be in close proximity to the Staples Alternative voiced objection to that alternative.[229] Others acknowledged their proximity but believed that the Staples Alternative was preferable because

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[224] T. 4 at 32 (Langan).
[225] Ex. 5, Schedule 2.
[226] *Id.*
[227] T. 4 at 14-16 (Nelson); *See also* Ex. 61, Ex. 63, and letter dated Sept. 22, 2006, from Amy L. Court, counsel for the City of Staples.
[228] Ex. 4 at 40-43 (Rice); Ex. 4 at 17-18 (Carlson).
[229] T. 4 at 37-39 (Kloeckl).

landowners along the existing line have already been affected, and following the initially proposed line rather than the Staples Alternative will adversely affect potential development.[230]

225. MPL prefers that the Routing Permit include the Staples Alternative to the originally filed route. MPL's September 15 Alignment depicts the pipeline following the Staples Alternative.[231]

226. The record as a whole supports the selection of the Staples Alternative to the proposed route because it will have less human and environmental impact.

Belle Plaine Area

227. The PUC accepted for review an alternative route segment near Belle Plaine (Belle Plaine Alternative), proposed by MPL, with the support of the City of Belle Plaine and Scott County. The Belle Plaine Alternative would avoid planned developments and urban growth areas around Belle Plaine. It would also avoid an area of biological significance, it would cross three fewer roads, and would cross about the same amount of forest land and wetland as the originally proposed route.[232]

228. MPL's September 15 Alignment depicts the pipeline following the Belle Plaine Alternative.

229. The Belle Plaine Alternative crosses out of the initially proposed route corridor between MP 242 and 243 and re-enters the initially proposed route corridor near MP 248. As depicted on the September 15 Alignment, it appears that the Belle Plaine alignment largely follows property lines.[233]

230. There were no comments at the public hearing objecting to the Belle Plaine Alternative, although it is not clear when landowners within the Alternative route were notified that the pipeline could cross their land. Prior to the close of the public comment period, Jason Giesen submitted his written objection to the Belle Plaine Alternative. In part he objected because MPL submitted the alternative. He does not believe that the PUC had the authority to consider an alternative offered by the Applicant. Also, there is no evidence that the City of Belle Plaine considered or endorsed the Alternative. In its submission MPL stated that the alternative was developed at the request of the City staff. Mr. Giesen also asserts that the claim that the alternative was formulated to avoid planned developments misstates the facts because the proposed route extended beyond the 2020 MUSA line in Belle Plaine Township, across land that

[230] T. 4 at 33-36 (Hetzler); T. 4 at 47-48 (Schneider).
[231] *See also* Ex. 5, Schedule 2, Figure 1 and Table 1, depicting the Staples Route Alternatives.
[232] Ex. 5, Schedule 2 at 2-3; Ex. 24; T. 10 at 45 (G. Berg, Scott County Planning Manager).
[233] *See also* Ex. 5, Schedule 2, Figure 2 and Table 2, depicting the Belle Plaine Alternative.

is cultivated farm land, and was wide enough to allow for adjustment of the right-of-way within the boundaries of the proposed route.[234]

231. Mr. Giesen contends that MPL's additional bases in support of the Belle Plaine Alternative are similarly unfounded, or can be avoided by adjustments within the boundaries of the proposed route. In addition, although he agrees with MPL's assertion that the Belle Plaine Alternative will cross about the same amount of forest land as the proposed route, the reroute bisects a mature, 80-acre forest. In his opinion, it would be irresponsible to extend the right-of-way through this forest if other options exist. Mr. Giesen also points out that the Belle Plaine Alternative crosses a FEMA floodplain. Location of the right-of-way may mitigate some of these concerns.

232. As Mr. Giesen pointed out, the Belle Plaine Alternative was not within the proposed route. Thus, he and his neighbors did not receive any individual notice that the Belle Plaine Alternative was under consideration or would cross their property. This allowed them no opportunity to propose an alternative prior to the May 30 deadline, or to discuss alignment adjustments with MPL.

233. Myra Nagel learned in June, 2006 that the Belle Plaine Alternative would bring the pipeline across her property, within 150 feet of her home. Her land is one-fourth mile from land that Belle Plaine intends to annex, and there is a housing development to the east of her property. She is worried about the risk of the pipeline crossing her property and the decrease in potential to develop the property.[235] It appears that the September 15 Alignment will cross her property.

234. There was no evidence that MPL attempted to notify landowners along the Belle Plaine Alternative route, either prior to filing the Belle Plaine Alternative or prior to the public hearings. Notice of the public hearing in Scott County was published in the Belle Plaine Herald on August 23, 2006. It included a small inset map generally depicting the proposed route and the Alternative.[236]

235. Matthew McConnell, who owns land near milepost 241, objected because he was affected by a realignment, but his property appears to be located within the initially filed route. At the time of the hearing, MPL did not intend to cross his property, and it is unclear if it is crossed by the September 15 Alignment.[237]

236. MPL was not required to give Mr. Giesen written notice of the Belle Plaine Alternative. Although Mr. Giesen raised sound arguments, the record as a whole demonstrates that the Belle Plaine Alternative minimizes the human and environmental impact as compared with the proposed route.

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[234] Letter from Jason Giesen, dated Sept. 21, 2006, Figs. 1 and 2.
[235] Letter, undated, from Myra A. Nagel, received by facsimile transmission on Sept. 13, 2006.
[236] Ex. 115.
[237] T. 15 at 50-53 (McConnell).

Following the Existing Pipeline

237. Many members of the public objected to the proposed "Greenfield" route and advocated that the new pipeline run parallel to the existing MPL pipelines. This alternative route was considered by the PUC and not forwarded to the Administrative Law Judge for consideration. In its initial application, MPL considered this alternative, as more fully discussed above, and it was rejected because of its impact on current residences and commercial development that have been built up since the existing pipelines were installed. The Department also requested additional information about following the existing pipeline route in an Information Request to MPL on May 22, 2006. MPL provided a detailed comparison. The existing route crosses more wetlands, biological diversity areas and forests, and crosses more land within the 2010 and 2020 MUSA boundaries. In addition, 21 miles of the existing pipeline route crosses densely populated areas, compared to zero for the proposed route. If MPL followed the existing system, the new pipeline would come within 100 feet of more than 750 houses and major buildings; the proposed route would come within 100 feet of nine such buildings. Following the existing pipeline would come within 300 feet of 2,200 houses and major buildings; the proposed route would come within 300 feet of 150 such buildings.[238]

238. Several cities along the existing route expressed to the PUC their opposition to building a new pipeline along the existing MPL route because expanding the right-of-way would diminish the setback for existing single family residences and disrupt nearby developed areas. Some cities reiterated their opposition in this proceeding.[239]

239. MPL also explained to the public participants that either constructing a parallel pipeline or removing one of the existing pipelines and replacing it with a larger pipe would require additional right-of-way, up to 65 feet during construction, and up to 35 additional feet in the permanent right-of-way, in order to construct the new pipeline without placing heavy equipment over the existing pipelines and to assure a safe distance of 25 feet between the existing pipelines and the new pipeline.[240]

240. Many members of the public were not satisfied with this response because they did not believe that MPL was adequately considering the risk of subjecting miles of new land to a leak or spill, or the damage to new land from construction and maintenance of a new right-of-way. In addition, although they accepted that many homeowners and business owners would be adversely affected during construction along the existing pipeline route, the public participants pointed out that those property owners had purchased or constructed homes and businesses with the knowledge that a pipeline was present. In

[238] *See* Ex. 5, Schedule 3; Exs. 5A and 5B. This figure may not reflect the additional homes within 300 feet of the Staples Alternative (20 homes).
[239] *See e.g.* Ex. 71 (Oakdale); Ex. 72 (Andover).
[240] T. 2 at 18-20 (Van Horn); T. 11 at 40-41 (McKimmey).

contrast, landowners along the proposed pipeline route had no such information.[241]

241. The PUC determined that the public interest would not be served by accepting the existing route for specific development and examination as an alternative route in this proceeding. The record continues to support that finding.

242. As part of the analysis for the CON, MPL examined a number of Greenfield routes prior to selecting the proposed route. None of the alternatives that MPL considered were supported by any of the participants at the hearing or by written submissions to the record.

243. The record shows that following the existing pipeline route would have greater adverse impact on human settlement, the natural environment and economies than the proposed route. It would also be more expensive to follow the existing route.

244. The record supports MPL's conclusion that the Southwest Alternative #1 variation of the Little Falls B route, with the substitution of the Staples and Belle Plaine Alternatives, minimizes the human and environmental impact associated with the proposed pipeline, as compared to alternative routes.

245. MPL's Application for a Routing Permit and Environmental Assessment Supplement addressed each criteria for selection of a route designation.

Route Alignment Changes

MPL and Gardens of Eagan Stipulation

246. Gardens of Eagan (GOE) is a certified organic farm in Farmington with 72.5 organic cultivated acres and another 47.5 acres devoted to woods, ecological set aside and the farmstead. GOE's crops are wholly organic mixed vegetables, sold primarily to cooperatives in the Minneapolis/St. Paul area.[242]

247. The Administrative Law Judge received more than 3,000 letters and e-mails in this proceeding from cooperatives who purchase GOE produce and their customers, and from organic certifiers, experts in agriculture, and other members of the public requesting that MPL's proposed pipeline avoid the GOE organic farm.

248. The Organic Consumers Association, representing over 850,000 members, submitted testimony that organic consumers seek to maintain a supply

[241] *See e.g.* T. 52-54 (Kaufenberg).
[242] Ex. 20 at 9; Ex. 22 (GOE Ex.4).

of locally-grown organic food and have an interest in preventing the loss of production from GOE's organic farm and other organic farms.[243]

249. Organic farms are governed by the federal Organic Foods Production Act and National Organic Program standards.[244] The physical and biological features of an organic farm are defined as natural resources.[245]

250. Pipeline construction may have a greater impact on organic farms than conventional farms because of the need to establish buffer areas beyond the construction easement to prevent prohibited substances from entering onto organic lands.[246] Digging and trenching for pipeline construction may damage the soil's properties that are essential to keep organic crops healthy and free from disease. Healthy soil structure takes many years to build through incorporation of cover crops, crop rotation, sheet composting, application of finished compost and other crop management practices to build the top horizons of the soil, and especially the few top inches that are rich in organic matter.[247]

251. The proposed pipeline right-of-way would have taken several of GOE's small vegetable fields out of production and destroyed ecological habitat critical to support beneficial insects and control weeds and pests throughout GOE. It would have also disrupted a waterway that prevents runoff from neighboring conventional farms.[248]

252. On May 30, 2006, GOE proposed an alternative route alignment that would avoid its organic farm and cross nearby conventional field crop and conservation reserve land. The PUC accepted that alignment for consideration, identified as Attachment B-5 Diffley Alignment Modification for Dakota County.[249]

253. On September 1, 2006, MPL and GOE entered into a Stipulation resolving GOE's challenge to the proposed pipeline. The Stipulation had two parts: agreement on an appendix to the AIMP, also agreed to by MDA and described above, and an alignment change consistent with GOE's Alignment Modification B-5 that would move the pipeline to an area west and north of the GOE property.[250]

254. MPL and GOE agreed that the pipeline would follow Alignment Modification B-5, with sufficient width to allow MPL to work with landowners on the final routing, placing the pipeline west of Highview Avenue where it runs

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[243] Ex. 23.
[244] 7 C.F.R. § 205 *et seq*.
[245] Ex. 21 at 6-7; 7 C.F.R. § 205.2.
[246] Ex. 20 at 8; Ex. 21 at 8.
[247] Ex. 20 at 5-6; Ex. 21 at 5.
[248] Ex. 20 at 10; Ex. 21 at 9-10.
[249] Ex. 22 (GOE Ex. 1); *see also* MPUC July 19, 2006 Order Accepting Alternative Route Segment Proposals for Consideration at the Contested Case Hearing at 6.
[250] Ex. 56.

south of 250th Street West, and north of 250th Street West where it runs east of Highview Avenue, as depicted in Attachment A to the Stipulation.

255. GOE Alignment Modification B-5 and other alignments within the proposed route between MP 274.5 and 275.5 would cross conventional crop lands and eroded conservation reserve lands not in active production. Alignment Modification B-5 would also reduce developed areas crossed, reduce agricultural lands crossed, and reduce the number of residences located within 300 feet of the pipeline.[251]

256. MPL conducted a comparative analysis analyzing the filed route, the GOE Alignment and alignments following the Wood River and Magellan pipelines in the area of the GOE property. That analysis demonstrated that the GOE Alignment would avoid the GOE property, while having less impact on wetlands and residences than the Wood River or Magellan alternatives.[252]

257. No party or person testified in opposition to the Stipulation at any public hearing. But some landowners and Eureka Township were uncertain whether they would be affected.

258. Julie and Peter Johnson were unable to get information about whether the Stipulation with GOE would move the pipeline to their property, a Century Farm. They have plans to sell some of the property and live on a portion, and are uncertain what effect a pipeline would have on their land.[253] Mike Greco expressed similar concerns. His wife's family owns about 160 acres west of GOE. Like the Johnsons, Mr. Greco was concerned about whether the Stipulation with GOE would move the pipeline on the family property. The property is heavily wooded with 100-year-old oaks, and has a number of wetlands. It is listed as a priority natural area by Dakota County.[254] At the time of the hearing MPL did not intend to cross the property.[255]

259. This record does not reflect whether MPL has successfully negotiated with landowners affected by the Stipulation with GOE.

Current Alignment

260. Pursuant to a request from PUC Staff, MPL filed its September 15 Alignment on September 28, 2006. It reflects the City Alternative near Staples, the Belle Plaine Alternative, the GOE Alignment, and approximately 100 variations to the original centerline developed in consultations with landowners since the Route Permit Application was filed. The alignment changes have been made for a variety of reasons, including following roads, fence lines or property

[251] Ex. 57, IR 12.
[252] Ex. 57, MPL Response to GOE IR 12.
[253] Ex. 92.
[254] T. 9 at 55-57 (Greco).
[255] T. 9 at 57 (McKimmey).

lines, avoiding drain tiles, and, in some instances, placing more of the pipeline on landowners' property.[256]

261. The comparative analysis filed on September 28, 2006, demonstrates that the agreements with landowners have added roughly nine miles to the length of the pipeline with little substantive difference in the environmental impact.

262. Minnesota Rule 4415.0010 defines "route" as "the proposed location of a pipeline between two end points. A route may have a variable width from the minimum required for the pipeline right-of-way up to 1.25 miles in width.

263. In its application, MPL provided maps showing the full width of 1.25 miles for the length of the proposed pipeline. In response to requests from PUC Staff, as part of its September 28, 2006, filing, MPL altered its requested route, as follows:

- From MP 0 to 119, where the proposed route is parallel with MPL's existing pipeline system, a route width of 500 feet on each side of the September 15 Alignment. Based on its review of the environmental and engineering data and the current status of landowner negotiations, MPL concluded that it would have sufficient flexibility with a route width of 500 feet to address individual landowner requests.

- From MP 119 where the route diverges from the existing pipeline system to the end of the route in Dakota County (the "Greenfield" portion of the route), a route width of a distance of 1/3 mile on each side of the September 15 Alignment, with three exceptions, along the Staples Alternative, the Belle Plaine Alternative, and in the area affected by the Stipulation with GOE. With the exception of the route along the two Alternatives, MPL concluded that a route width of 1/3 mile on each side of the centerline would give it sufficient flexibility to negotiate a mutually acceptable alignment on landowners' property or move the right-of-way to the property of a willing adjacent landowner. Further narrowing would unduly limit the flexibility of MPL and the landowners and increase the likelihood of eminent domain proceedings.

- From MP 98 to 105, the Staples Alternative, and MP 242 to 248, the Belle Plaine Alternative, retain a route width of 1.25 miles.

- From approximately MP 274.5 to 275.5, a route width consistent with MPL's Stipulation with GOE.

[256] T. 12 at 74-76 (McKimmey); Ex. 117, comparative analysis and revised Table 1.

264. With the exception of the route width between MP 98 and 105, the Staples Alternative, and MP 242 and 248, the Belle Plaine Alternative, MPL agreed that it would not cross the property of any landowner not crossed on the September 15 Alignment unless that landowner agreed to the placement.

265. MPL requested that the revised route widths be contingent upon the completion of engineering and environmental surveys along the route and the finding of no significant features that would require routing the pipeline outside of this width. Should engineering or environmental surveys indicate an alignment outside the 2/3 mile width is required, the final alignment would be within the original 1.25 mile route. MPL had no indication at the time of the submission that it would be required to move beyond the 2/3 mile, but agreed to promptly notify the PUC and the Department if such a circumstance developed.

Alignment Change Requests From the Public Record

266. MP 30[257]: Jane Christensen, Lake La Salle Lake Association, and Doug Thompson, Clearwater Soil and Water District, were very concerned about the damage construction would cause where the pipeline crossed the Mississippi River and Bear Creek. They requested realignment away from a steep slope and a specific erosion control plan. Ms. Christensen requested that the new pipeline be located to the west of the existing pipelines rather than on the east side.[258] It is not clear from the record whether MPL has reached an agreement concerning pipeline alignment in this area.

267. MP 46: Sharon and Alan Friedman have three of MPL's existing pipelines crossing their property in Hubbard County and have built their house and garage and drilled their well at a safe distance from the existing pipelines. The proposed alignment will be within 50' of their house and less than 25' from the well. The Friedmans requested that MPL run the pipeline further to the west side of their property, but MPL would not agree.[259]

268. MP 71: Gerald Schermeister also has multiple lines on his property and would like the distance between an existing line and the proposed line to be narrowed so that his barn is not taken down. He believes that he has assurance from MPL that the distance between the pipelines will be narrowed at that location.[260]

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[257] "MP" refers to the approximate milepost along the September 15 Alignment near, to the property. In some instances, the MP was stated on the record; in others, the MP was determined from the September 15 Alignment map and the List of Landowners provided by MPL to the Administrative Law Judge, and marked as "Nonpublic Document – Contains Trade Secret Information and Private and Confidential Information on Individuals."
[258] Ex. 37.
[259] Letter from Friedmans, dated Sept. 21, 2006. MPL did not respond on the record but included information in its proposed findings about the difficulty of agreeing to the Friedmans' request.
[260] T. 3 at 29 (Schermeister).

269. MP 93: Michael R. North was concerned that the pipeline could cross the Red River Ox Cart Trail Network and was uncertain if an adjustment to the alignment would avoid it.[261]

270. MP 106: Denny Schneider favors the Staples Alternative, but needs an alignment adjustment to accommodate his buildings, well and sewer.[262] MPL agreed to discuss the proposed alignment with Mr. Schneider.[263]

271. MP 121: Geoffrey Steiner raised concerns about the proximity of the pipeline to the Veteran's National Living Memorial in Cushing. Mr. Steiner has planted trees in memory of persons killed during the Vietnam War and is concerned about the loss of those trees.[264] It is not apparent from the record that the pipeline will cross this property.

272. MP 137: Dr. Robert Schestak and MariLyn Schestak proposed several possible alignments off of their property. [265] The September 15 Alignment is generally consistent with the Schestak's western alternative and does not cross the Schestak property.

273. MP 140: Several landowners near this milepost participated in the proceedings. Bruce and Heather Johnson,[266] Neil and Debbie Johnson, A. J. and Ardith Nelson, and Ryan and Kathryn Strandberg,[267] and Diane Staricka,[268] all of Swanville, were concerned about the alignment crossing their property. It appears that the alignment has been adjusted to avoid some of their property, but it will cross the western boundary of the Nelson property, and may cross the eastern edge of Bruce and Heather Johnson's property. It is not clear from the record if there is any objection to the realignment.

274. MP 178: Bev and Harold Schrum requested that the alignment be moved off their property, beyond the western border of Eden Valley. They were also concerned about MPL's poor communication with the landowners, and the possible pollution of Stag Creek which flows into the Eden Valley water system.[269] The record does not reflect whether any alignment adjustment has been made in response to the Schrums' objections.

275. MP 180 and 181: Landowners near these mileposts objected to MPL's unwillingness to place the pipeline on nearby public land, the Tyrone Flats

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[261] Ex. 66.
[262] T. 4 at 47-48 (Schneider).
[263] T. 4 at 50 (Swanson).
[264] Ex. 52.
[265] Ex. 65.
[266] Ex. 51.
[267] Ex. 59.
[268] Ex. 89; T. 13 at 38-43 (Staricka).
[269] T. 16 at 20-24, 32, 66; Exs. 105 and 107; letter from Schrums, dated Sept. 17, 2006.

Waterfowl Production Area.[270] Land within the Waterfowl Production Area is not farmed. Apparently MPL attempted to place the pipeline on the land owned by the U.S. Fish & Wildlife Service, but was not authorized to do so.[271] MPL did not find that the federal land had any biological significance, endangered species or other characteristics unsuitable for a pipeline.[272]

276. MP 181: Walter and Ruth Johnson shared in the request to move the pipeline to the U.S. Fish & Wildlife Service land, but offered a second proposal to cross their pasture to the eastern border of their field, as depicted on a map submitted into the record.[273] It does not appear that MPL has agreed to the adjustment the Johnsons requested, stating in its proposed findings that it will follow the eastern boundary "for a significant portion of the property line," which was its initial proposal.

277. MP 187: Keith Kamrath owns approximately 147 acres of rolling hills, mature trees and a 25-acre wetland. He purchased the land with the intent of planting trees, and the land is the anchor of his retirement plan. The property contains several beautiful building sites, and Mr. Kamrath is concerned that the pipeline will diminish the value of his property. In addition, Mr. Kamrath has been pressured by the land agent to sign the right-of-way agreement and is concerned that the poor relationship with MPL will deteriorate further after such an agreement is signed.[274] It is unclear whether the September 15 Alignment will cross his property.

278. MP 201-202: Judith Strolberg is very concerned with MPL's plan to diagonally cross three 40-acre farms owned by her family. About one mile of pipeline will cross their property.[275] The September 15 Alignment continues to show diagonal crossings along this portion of the route.

279. MP 212: Steven Nowak requested that the pipeline be re-routed off his property or moved to the eastern boundary. He has 200 acres of land with organic certification since 2000, and he raises food-grade organic soybeans, food-grade and feed-grade organic corn, and feed-grade organic barley, as well as organic cover crops, and is expanding his organic production to meet increased demand. MPL's proposed alignment would diagonally cross 3000 feet of his property. MPL would take additional land during construction near a road crossing and drainage ditch. This will require Mr. Nowak to give up additional land as a buffer to his organic fields. Mr. Nowak has been unable to get

[270] T. 12 at 17-24, 53-54, T. 13 at 28; (G. Ruhland); T. 13 at 22-23 (R. Johnson); T. 13 at 30 (Langmo); T. 13 at 36-37 (D. Ruhland); Letter from Walter H. and Ruth A. Johnson, Sept. 18, 2006.
[271] T. 12 at 19-21, 98-99 (Duncan, responding to question from R. Cupit); T. 13 at 30-32 (Duncan).
[272] T. 12 at 98-99 (Duncan).
[273] Letter from Johnsons dated Sept. 18, 2006, Modification 2.
[274] Letter from Keith Kamrath, by e-mail, Sept. 18, 2006.
[275] T. 12 at 32-33; 37; Letter from Strolberg dated Sept. 18, 2006.

confirmation from the organic certifier that he will be able to retain organic certification for his fields. From the point where the pipeline is expected to enter his property, it is two miles to the nearest road. Thus, he fears that any equipment used for maintenance or repairs will cross his land and affect certification. The proposed diagonal crossing will create additional problems. Over time Mr. Nowak has squared off his fields to manage weed growth without damaging adjacent field crops, but the diagonal route will create triangular-shaped patches of crops and will be more difficult to manage.[276]

280. The AIMP Appendix will address some of Mr. Nowak's concerns, but it may take several years to return Mr. Nowak's property to its present condition. In addition, Mr. Nowak's discussions with the MPL representatives have not convinced him that there is a serious commitment to the AIMP Appendix.[277] MPL is reluctant to realign the pipeline because of the size of Mr. Nowak's property. Mr. Nowak risks losing the opportunity to farm in a way that is environmentally sustainable, that provides a product that is in demand, and that he has worked for years to develop. A shift off of Mr. Nowak's property would affect several new landowners, some of whom may be willing to host the pipeline. MPL has not offered any alternative alignments to minimize the length of the crossing but is willing to work with Mr. Nowak to find a crossing to his eastern boundary.

281. MP 226: Counsel for Gordon Grimm and Dan Moerhing testified in support of an alignment change. At the time of the hearing, these landowners had reached an agreement with MPL, which was subsequently modified, and apparently the September 15 Alignment follows the terms of the agreement.[278]

282. MP 231 and 232: The City of Hamburg requested an alignment farther from the city limits that would have less impact on planned land use, increase use of existing right-of-way and decrease the human and environmental effect.[279] The September 15 Alignment runs farther north and east of Hamburg and more closely follows property lines.

283. MP 232: Craig Glander appeared at the hearing on behalf of his mother, Bernetta Glander. Ms. Glander's property is located along the proposed route, but the initial alignment did not cross her property. The alignment was moved first to her property line, and then through her property because a neighbor objected. But Ms. Glander also objects. In both instances the property owners want to protect the right to build on their property and are concerned that

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[276] T. 14 at 23-30 (Nowak); Ex. 94; letter dated Sept. 20, 2006. *See also* Exs. 20, 21 and 22.
[277] Letter from Nowak dated Sept. 13, 2006, with diagrams.
[278] T. 14 at 15-22 (Albrecht); Ex. 93; Letter from Alan M. Albrecht, counsel for D. Moehring and G. Grimm, dated Sept. 14, 2006, with maps of the agreed-upon alignment.
[279] T. 16 at 36-41 (Gruenhagen); Exs. 64, 106; Letter from counsel for Hamburg, dated Sept. 18, 2006.

the pipeline will limit that right.[280] It appears that the September 15 Alignment may affect Ms. Glander's property, but it is not clear if the alignment will follow the property line or cut through her property. There are some diagonal crossings in the vicinity of MP 232. MPL has agreed that it will negotiate with landowners to minimize diagonal crossings.[281]

284. MP 241: Mary Pat Murphy, Michael Duffy and Patrick Duffy own gravel deposits that will be affected by pipeline construction and want some assurance that their concerns will be addressed.[282] It is not apparent that they are requesting a change to the alignment of the right-of-way.

285. MP 253: Bob Nytes requested that the pipeline be moved to an adjoining Wildlife Management Area.[283] In its proposed Findings of Fact, MPL states that the Department of Natural Resources would not agree to have the pipeline cross a wildlife management area, but no additional evidence was offered.

286. MP 258: On behalf of Scott County, Gary Berg requested an alignment adjustment, further west of Highway 89 and avoiding County State Highway 86 to accommodate future road construction plans.[284] The September 15 Alignment reflects an adjustment 60 to 65 feet west of the centerline of Highway 89 to meet the County's concerns, but also to limit the impact on landowners. The September 15 Alignment will run about ½ mile from Highway 86.

287. There were many objections from landowners in Scott and Dakota Counties. These counties are developing rapidly, and many landowners feared that the investment in their property and its development potential would be significantly diminished by the pipeline. Changes to the alignment will please some landowners,[285] but others could be adversely affected.

288. MP 254: Lucy Hoffman's family has owned and farmed its land for about 130 years. In the 1990's, Ms. Hoffman quit working to care for her elderly mother and was counting on the sale of some of the property to support her retirement. In the spring, she learned that the alignment had moved onto her property. She is concerned about the risk of a pipeline leak, and that the presence of the pipeline will diminish the value of her land.[286]

289. MP 255: Evelyn Bastyr was another landowner who raised these concerns. She owns a 120-acre farm that has been in her family for more than

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[280] T. 16 at 56-58 (C. Glander).
[281] T. 13 at 32-33; T. 16 at 100 (McKimmey)
[282] Ex. 80.
[283] Letter from Nytes, dated Sept. 19, 2006.
[284] T. 10 at 45-46 (Berg).
[285] *See e.g.*, T. 10 at 40-44 (Noyes)(MP 262: realignment will move pipeline off the Noyes property).
[286] Letter from Hoffman, dated Sept. 18, 2006.

100 years. It includes pasture and wetland and provides wildlife habitat, and some of the land has been undisturbed for 150 years. The proposed pipeline will cross 80 acres. Ms. Bastyr plans to divide the property among her four adult children and is distressed by the risks that a pipeline presents.[287] It is not clear if MPL will negotiate an alignment that will minimize the impact on her property.

290. MP 260: Roger Tupy testified at several of the hearings in opposition to the pipeline, and, in particular, to the crossing of his 60-acre organic farm. He was upset with the poor communication from MPL, including the late date that he learned that the proposed pipeline alignment would cross his land. Mr. Tupy is concerned that no amount of money can compensate him for the loss of his land, or assure its safety and the safety of his family.[288]

291. MP 265: Keith Glazer[289] objected to locating the pipeline on his property because of the risk to the stream on his property and the potential decrease in its value.[290]

292. MP 268: Robert Seykora requested that the pipeline be routed away from his property, Cedar Ridge Farms, either to Rice County, about one-half mile south, or to run along the property line rather than running through the middle of the property, in order to minimize the effect on future development. Mr. Seykora attached a map depicting his request. He also requested that the pipe be placed deeper than the proposed depth so that it would interfere less with future development.[291] It is not clear if the September 15 Alignment reflects Mr. Seykora's request.

293. MP 269: Joyce Osborn owns several parcels of land that will be crossed by the pipeline. She is very concerned that there is no one to represent the interests of the landowners. She has no leverage to influence the siting since the City of New Market has indicated that it wants the pipeline to cross nine of her parcels, and in another location, Scott County is attempting to preserve land for a freeway exchange and objects to following the county road right-of-way that she prefers.[292] Like many members of the public, Ms. Osborn could not understand why current rights-of-way and publicly held land would not be used where it is available.

294. MP 270: Thomas Scheffler was disturbed by the way MPL had responded to his questions about land valuation and the Department's unwillingness to provide a complete list of the names and addresses of other

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[287] T. 10 at 80-82 (Bastyr); Letter dated Sept. 20, 2006 from Vicky and Roger Bastyr; Letter, undated, from Bonnie O'Malley.
[288] T. 10 at 118-120; T. 11 at 77-78; T. 13 at 44-45; T. 14 at 43-49 (Tupy).
[289] From the land records, it appears that the correct name may be Keith Glanzer.
[290] T. 10 at 53.
[291] Ex. 62.
[292] T. 10 at 54-57; T.11 at 14-17 (Osborn).

landowners along the route so that he could meet with them to discuss the project.[293]

295. MP 261: Maureen Zeimet owns 70 acres that will be crossed from west to east, including 15 acres of wetland, a tree farm, and farm field. No fertilizer or pesticide has been used on much of the property for the past 15 years. She objects to the pipeline crossing her property.[294]

296. MP 271: Russell and Judy Martin first learned that the alignment could cross their property in late May when an MPL representative came to survey their property. The proposed alignment would run through their front yard, less than 100 feet from their home. On September 15, 2006, an MPL representative brought the Martins a proposed right-of-way agreement to sign.[295] It is apparent from the aerial photo of the Martins' property that a large portion of land near their home will be disrupted to construct the pipeline.[296]

297. MP 271: Sharon and Ray Neubauer, like the Martins, were affected by MPL's decision to move the alignment, and, like the Martins, objected to the notice that they received. They already have two easements across their property, and are uncertain why the alignment can't follow the corridor south of their property along State County Highway 86.[297]

298. MP 274-276: Eureka Township adopted a Resolution, suggesting an alternate route outside its boundary. In the event that the Township could not be avoided, it requested that MPL follow current rights-of-way and property lines. The Chair of the Board, Cory Behrendt, expressed the Township's concern that MPL was siting the pipeline without conferring with the Township about its development plans, that MPL had negotiated a Stipulation with Gardens of Eagan without including the Township in the discussion, and it was concerned that MPL was crossing prime farmland without regard to rights-of-way and property lines. Mr. Behrendt requested that MPL engage in conversation, as other utilities and the Metropolitan Council have done, prior to developing the route.[298] MPL has made some adjustments to more closely follow property lines in this area, reflected on the September 15 Alignment.

299. Ray Kaufenberg suggested that the pipeline avoid the Eureka Township Center.[299] The September 15 Alignment follows property lines north of the Township Center.

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[293] Apparently the Department seeks landowner approval prior to releasing the names and addresses.
[294] Ziemat E-mail dated Sept. 20, 2006.
[295] T. 10 at 70-72 (R. Martin); Exs. 85, 108; Letter from Russ and Judy Martin, dated Sept. 16, 2006; letter from Judy Martin, received Sept. 18, 2006;
[296] Ex. 108.
[297] Ex. 97.
[298] T. 9 at 30-35 (Cory Behrendt, Chair, Eureka Township Board); Ex. 70.
[299] T. 9 at 59 (Kaufenberg).

300. MP 281: Craig Empey, on behalf of his family, has requested that the pipeline be realigned on the south of 230th Street West in Castle Rock Township, Dakota County, and along the eastern boundary of their property. They have owned their land for several generations, and it is close to land that the Farmington School District has purchased to construct an elementary school, in close proximity to the MUSA line. They have plans to develop a high-quality, master-planned residential project on their land. In response to the Empeys' objections, MPL made some modifications to run the pipeline along the eastern boundary of the property.[300]

301. Initially, MPL considered moving the pipeline to the south (and the Empeys had the consent of the landowners on the south side),[301] but in its proposed findings, MPL states that moving the right-of-way south of 230th Street West will result in additional wetland crossings and would be closer to two more residences and the South Branch of the Vermillion River. MPL has not agreed to the Empeys' proposed change of alignment.

302. The Empeys have requested that the Routing Permit restrict the right-of-way to 50 feet in width and approximately 1,300 feet in length immediately adjoining the eastern boundary of the Empey property, as displayed in Ex. 98, D, and a 50-foot easement along the south side of 230th Street West from Biscayne Avenue to the point where the pipeline turns north, following the edge of the road right-of-way. In addition, the Empeys request that the pipeline right-of-way agreement specifically preserve to them the ability to install roads, driveways and electric, gas, sewer, water and other utilities within the right-of-way and over the pipeline, and place the pipeline deep enough so that it will not interfere with or result in additional costs for the construction of roads, driveways and utilities.[302] MPL has not agreed to these terms.

303. MP 281: Gayle Becker objected to the right-of-way moving to the south side of 230th Street and is concerned that she can not get up-to-date information about MPL's plans.[303]

304. MP 286-287: Jared Sachs owns property along the Vermillion River, a Minnesota-designated trout stream. He is concerned that MPL and the DNR may have agreed on the location where the pipeline will cross the river without his participation in the discussion.[304] It is not clear if the proposed crossing will affect Mr. Sachs' property, but MPL intends to directionally drill under the Vermillion River rather than employ an open-cut crossing.[305]

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[300] Ex. 98.
[301] *Id.*
[302] *Id.*
[303] Letter from Becker received Sept. 21, 2006.
[304] T. 9 at 49-50 (Sachs)
[305] T. 9 at 51-52 (McKimmey).

305. MP 291: Arlene Franzmeier operates Agape Acres, a horseback-riding stable for disabled children. She is concerned that the pipeline will disrupt this effort and diminish the value of her property. Her land parallels state land and she would prefer that the pipeline be moved so that her land is not crossed.[306] It is unclear from the September 15 Alignment if her property will be crossed.

306. MP 293: Carol Hickman objects to the pipeline crossing a half mile of her family's property in Rosemount. A metropolitan sewer was being installed on her land at the time of the hearing, there was a natural gas pipeline along the south of her property, and a 75-foot wide NSP easement on the west side. Her property parallels land taken by the United States Government in 1943 for the Gopher Ordnance project, land now owned by the University of Minnesota. If land is needed now for another public purpose, she believes that the land that was previously taken from private landowners should be used first.[307] The University of Minnesota disagrees with the initially proposed alignment in this area, and has requested the opportunity to continue to negotiate with MPL to find an appropriate right-of-way.[308] It is not clear from this record if Ms. Hickman's land will be crossed.

Additional Public Comment

307. Many members of the public objected to the notice that they received concerning the proposed pipeline and did not feel that MPL had provided adequate information in time for them to fully comprehend the significance of MPL's application, the process required by law for its approval, or the role that the public could play.

308. The proposed pipeline was well-publicized at the time the application was filed and at the time that the public information meetings were held in March.[309] Landowners along the proposed route were notified about the project, and informed that the pipeline alignment could change within the route. The certificate of need and routing processes are complex but the public was adequately informed about the proposed project and given contacts to obtain additional information.

309. Many landowners complained that they received no notice that the proposed pipeline right-of-way had changed and would cross their property. Two groups of landowners were especially concerned. First were those who were not affected by the original application, but were affected by a route alternative approved by the PUC on June 29, 2006. These landowners received no written notice. Their first notice came well after the deadlines to submit route

[306] Letter from Franzmeier, dated Sept. 21, 2006, by e-mail.
[307] T. 9 at 45-56.
[308] Letter dated Sept. 22, 2006 from Brian J. Slovut, Associate General Counsel, University of Minnesota.
[309] Ex. 86; Ex. 100.

alternatives or to intervene in the proceedings, and came through contact with a land agent. For example, Jason Giesen was affected by the decision to consider an alternative route near Belle Plaine. There was no requirement that MPL or the Department provide notice to Mr. Giesen that an alternative was being considered that could affect his property, nor did he receive notice in time to propose another route alternative.[310]

310. Some landowners were affected by a shift of the right-of-way alignment within the route. They received notice that the right-of-way could move within the proposed route, but learned long after the deadline to intervene or to suggest an alternative that MPL had shifted the right-of-way to cross their property. In most cases, the landowners learned of the alignment change from an MPL land agent and did not receive any written notice from MPL.[311]

311. Other landowners were uncertain at the time of the hearing whether MPL intended to cross their property or not.[312] As MPL frequently stated, the alignment could change as negotiations with landowners continue. This was unsettling to the landowners.

312. Several members of the public complained that it was difficult to get information about the pipeline project. Jeffery Majeski, representing the Sibley County drainage authority, requested that MPL hold weekly meetings with the county staff about construction plans and timing, and decisions about where to trench and where to bore for pipeline installation.[313] Mr. McKimmey agreed that weekly meetings would be held with the county staff during construction.[314]

313. Adjoining landowners complained that the effect of a pipeline on their property was not considered at all. For example, a landowner had purchased property near Belle Plaine at a price that included a premium because of the beautiful view of the river valley. The proposed pipeline will run within 1000 feet of his property. The cleared right-of-way will adversely affect his view and lower the value of his property. A nearby MPL construction site may further diminish the value.[315] Such effects were not taken into consideration in comparing the expansion of the existing route with the proposed route.

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[310] Letter from Jason T. Giesen, dated Sept. 21, 2006; *See also* T. 10 at 115 (Busse).
[311] T. 12 at 84 (McKinney).
[312] *See e.g*. Letter form Don and Alice Storlie, received by facsimile transmission on Sept. 20, 2006; letter from Gary and Linda McConnell, by e-mail, Sept. 17, 2006 (told by Cory Rasmussen from MPL on 3/29/06, confirmed in April, that their land would not be crossed, but maps and pictures represent otherwise, and no MPL representative has contacted them); Letter from Frederic W. Knaak on behalf of Lois Dandurand (near MP 259 to 261), concerned about rumors that the alignment could shift south and affect her land, Sept. 15, 2006.
[313] T. 15 at 31 (Majeski).
[314] T. 15 at 32 (McKimmey).
[315]Electronic mail submission, Mark Kuske, September 14, 2006.

314. Property owners expressed their concern that the pipeline follow the property lines or run along the edge of farm fields rather than cutting through the fields diagonally.[316]

315. Any pipeline route will likely affect landowners who would prefer not to have the pipeline on their property. It is an unfortunate consequence of our reliance on oil to drive the economy. Many public comments acknowledged this, but strongly objected to the methods by which a private company could take land through eminent domain and then use the land to make a profit for the company. Traditionally, the power of eminent domain has been used by the government to advance a public project when the public as a whole will benefit from the project. Municipal and state highways, water and sewer, parks and recreation are examples of such uses. In contrast, oil, gas, electric and telecommunication public utilities are frequently owned and operated by private companies. If the utility company invests prudently and operates efficiently, it will make a profit for its shareholders. It was apparent that many members of the public understood that the company and its shareholders risked investing capital with the expectation of earning money later, but it offended many of them that neither the landowners nor the public treasury would share in the profits, regardless of the size of those profits. Public dissatisfaction with this result was magnified by the belief of many who testified that MPL was grossly underpaying the landowners for the right-of-way and failing to take into account the possible loss of the land's future development potential.

316. Members of the public found it difficult to accept that publicly owned land would be avoided and more private land taken for this public purpose.[317]

317. As the pipeline approaches the metropolitan area, it crosses land where many other utilities are running. There is no overall plan or apparent coordination of utility corridors. This clearly frustrated many participants in the proceeding.[318]

318. There were many objections to the amount of compensation that MPL was offering landowners to sign a right-of-way agreement. While questions of right-of-way acquisition and compensation are beyond the scope of this docket, Department Staff and Commission Staff, the ALJ and MPL all offered some information about the right-of-way acquisition and eminent domain process to the public at the public hearings. It is apparent that MPL land agents have led many landowners to believe that they had no choice but to accept MPL's payment or their land would be "taken" through eminent domain. From this, landowners incorrectly inferred that they would receive nothing if they did not accept MPL's offer. The landowners did not receive any information that explained to them that they could seek an independent appraisal, and only those

[316] T. 15 at 35 (Anderly).
[317] T. 12 at 17-24; 53-54 (Ruhland); T. 13 at 49 (Sen. Steve Dille).
[318] *See e.g.* T. 9 at 30-34 (Behrendt).

landowners who appeared at some of the public hearings were offered an outline of the eminent domain process. Kenneth Posusta and others requested that, in the future, information about the eminent domain process and how it works should be sent to all landowners along the proposed route.[319]

319. Many members of the public challenged MPL's offer to compensate property owners at a rate for agricultural land in areas where future development was imminent. These individuals asserted that their land was an investment, and that they stood to benefit significantly from future sale to a developer. They were concerned that the presence of a pipeline on their land might prevent development or affect the timing, type of development, and the level of compensation that they would receive.[320]

320. Other members of the public questioned the level of compensation for the loss of trees on their property, and the effect the loss of trees would have on their property value.[321] One landowner could lose up to 80 mature trees.[322] MPL offered to retain a professional tree appraiser, if requested by the property owner, to establish the value of any trees lost.[323]

321. Some members of the public complained that MPL does not adequately compensate for land that is maintained for wildlife and has not taken into account the disturbance that the construction and maintenance of the right-of-way will have for the wildlife, and the loss of the attendant pleasure to the landowners.[324] MPL did not have a response to these comments.

322. Over the course of the public hearings, landowners complained about the one-sided terms of the right-of-way agreements,[325] and MPL revealed that certain provisions could be negotiated. Indemnification for damages caused by operation of the pipeline,[326] tree value, removal or retention of an out-of-service pipe, weed control, and tree protection were among the items that could be raised in negotiations. MPL places the responsibility on the landowners to raise issues for negotiation[327] and it was apparent from the public comments that the land agents may have led the landowners to believe that the terms were not negotiable.

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[319] T. 6 at 20-21 (Blann); T. 6 at 30 (Bliese); T. 14 at 101 (Posusta).
[320] *See e.g*. T. 9 at 60 (Kaufenberg); T. 12 at 50-51, T. 13 at 26 (Ruhland); T. 13 at 21 (Langmo); T. 15 at 46-47 (Slater); Letter from Rodger E. Slater, Sept. 16, 2006; letter from Mr. and Mrs. Gerald Worm, Sept. 17, 2006.
[321] *See e.g*. T. 4 at 24-26 (Sorgert); Letter from Milo Pomije, Sept. 18, 2006..
[322] T. 11 at 33 (Janovsky).
[323] T. 11 at 33 (Wright).
[324] T. 15 at 44-46 (Schuette).
[325] *See e.g*. T. 16 at 51-55 (Osborn). Ex. 118.
[326] T. 12 at 40-41, offering "Tier One Indemnification," covering all losses arising from the pipeline, so long as the landowner is not at fault. (Wright).
[327] T. 16 at 102 (Wright).

323. It is MPL's practice to negotiate a one-time payment but reserve the right to come onto the property later to relocate, remove or relay the pipeline, and to add valves, security fencing, wires, cables, or other equipment as the company deems necessary or convenient. In addition, the agreement gives the company the right to use unspecified additional workspace along the right of way as needed, and to clear trees, shrubs and brush without compensation to the property owner. Although the company agrees to pay for losses resulting from and arising out of the construction of the pipeline, the right-of-way agreement does not address damages that may occur after construction, nor specify the method used to value the damages incurred.

324. MPL representatives repeatedly stated on the record that it was the company's "policy" to restore the property back to the condition prior to the damages occurring, but the right-of-way agreement contains no such language. Instead, it expressly states that there is no authority beyond the terms of the right-of-way agreement.[328]

325. The Department requested the following information: "Please describe the extent to which MPL assumes responsibility to compensate landowners for damages due to an oil spill." MPL replied: "Absent an agreement with the landowner that either expands or limits MPL's liability, MPL's responsibility to compensate landowners for damages due to an oil spill would be consistent with established principles of Minnesota law."[329]

326. Landowners who specifically request it may be able to negotiate an indemnification agreement with MPL that will compensate the landowner in the event of an oil leak or spill on their property.[330] However, it was apparent that this was not a standard provision of the right-of-way agreement.[331]

327. The PUC may consider as a condition of the routing permit requiring MPL to offer all landowners an indemnification agreement similar to the Tier One Indemnification offered to some landowners.

328. Some landowners were very upset about the company's unwillingness to place the pipeline at the edge of their property, or at a greater distance from their house, garage, well, or other improvements.[332] The perceived ability of the company to dictate the line location over the objection of the landowner was the source of many of the concerns expressed about the routing. Landowners feared for the safety of their families and their land in the

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[328] *See e.g.* Ex. 118.
[329] Ex. 114, IR 28; *see* Minn. Stat. § 299J.17 (right to bring a legal action to recover for personal injury, disease, economic loss, or other costs arising out of a release); *see also* Minn. Stat. § 604.02, subd. 1.
[330] T. 12 at 32-42 (Strolberg, with responses from Van Horn and Wright).
[331] T. 16 at 101-102 (Wright); *but see* T. 9 at 53-54 (Sachs: "Okay. And then in our personal agreements there will be a line item on that document that says any spills is (sic) your problem, not mine? Van Horn: That's correct. It's covered in the easement.")
[332] *See, e.g.* MP 46, Sharon and Alan Friedman, *supra*.

event of a pipeline leak or break. MPIRG representatives expressed this concern throughout the public hearings, as did many other members of the public. Although issues of pipeline safety are outside the scope of this proceeding, the public concern was expressed in opposition to both the CON and routing permit and heightened by the oil spill in Little Falls.

329. Landowners along the portion of the proposed route that parallels the existing MPL pipelines also raised concerns. In his letter, Curtis J. Kreklau included an easement stipulation signed by Larry Van Horn, Vice President of MPL, and a witness in this proceeding.[333] Essentially the stipulation clarifies that the new pipeline will be built according to the terms set forth in the Grant of Easement signed by Wilfred and Lorraine Kreklau in 1954.[334] Although the stipulation states that Curtis Kreklau had requested a more definite description of the location of the current pipelines as well as the location of the proposed new pipeline, no legal description was provided. Instead, only an illustration showing the distance of the pipelines from the corner of the property was provided.[335]

330. There were also complaints about the imbalance of power in negotiations with MPL. A letter submitted by landowners near Hamburg and Norwood-Young America outlined their concerns, including the low offers received for their land relative to sales figures on file with the county, MPL's refusal to accept liability for damages to land, crops, home, farm buildings or livestock caused by the operation of the pipeline, and MPL's refusal to negotiate a provision that would require MPL to pay the difference in the appraised value for their land with or without a pipeline at the time that they would choose to sell the land for development.[336]

331. Similarly, landowners complained that the land agents representing MPL intimidated landowners and were unwilling to negotiate any terms of the right-of-way agreement.[337] Many different landowners raised the same concern at the hearing, that the land agents were directed by their supervisors to remain firm and to impress upon the landowners that MPL would have the right to take their land through eminent domain if any agreement was not reached. Since eminent domain is not well understood, and many of the landowners could not afford to retain a lawyer, this was an intimidating practice. MPL's witnesses apologized for offending landowners, but acknowledged that its goal is to obtain signed agreements.[338]

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[333] Letter, undated from Curtis J. Kreklau, with attachments.
[334] *See* T. 4 at 56 ([O]ur policy is to exercise the rights that were granted to us under the 1954 Easement.")(Wright).
[335] *See* Minn. Stat. § 300.045. Letter, September 21, 2006; *see also* T. 54 at 56-57 (Wright).
[336] Letter from Rochelle Eichner, September 18, 2006, with attachments. See also T. 16 at 42-50 (Eichner); T. 16 at 64-66 (Schrupp).
[337] *See e.g.* T. 14 at 33-35 (Nowak); T. 14 at 38-39 (Schestak); Letter from Bob Nytes, Sept. 19, 2006;.
[338] T. 14 at 36-37 (Wright).

332. From the record in this proceeding it is not clear whether MPL must negotiate a new right-of-way agreement with landowners and pay additional compensation for a wider right-of-way where the proposed route follows the existing pipeline system, or whether MPL will exercise rights under its existing right-of-way agreement with those landowners.

333. MPL's shifts to the centerline created tension among neighbors, particularly because of the low rate of compensation, perceived negative impact of the pipeline on their property, their fear that MPL had far greater resources to negotiate than most landowners, and belief that MPL would make millions of dollars of profit at the expense of the landowners.[339]

334. Although MPL stated that surveyors would seek permission before entering private land, some landowners reported that their land had been entered and surveyed without their consent.[340]

335. Tim Gillette, Halling Engineering, represents two townships in Scott County that would be crossed by the pipeline. He requested that MPL regularly update the townships on their plans, even if the township does not issue permits for the work. Like many others, Mr. Gillette spoke of the rapid growth in the county and the effect that the pipeline's location may have on future development. In his view, townships should be brought into the siting decision.[341]

336. The Stearns County Dairy Advisory Committee requested that MPL make special efforts to contact farmers and to accommodate current and planned future use of the property. In addition, they requested that experts on stray voltage be involved in siting the pumping station and review grounding of the electrical line that will follow the pipeline.[342]

337. Dakota County requested that special care be taken when installing the pipeline at river and stream crossings, in particular the segment of the Vermillion River in Empire Township, a state-designated trout stream. It also requested mainline shut-off valves on both sides of the pipeline crossing of the South Branch of the Vermillion River (in Castle Rock Township), the crossing of the main stem of the Vermillion River, and the crossing of an unnamed tributary to the Vermillion River (both in Empire Township).[343] MPL will place shut-off valves at either side of any waterbody greater than 100 feet wide.[344]

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[339] *See e.g.* T. 9 at 82-86 (Ostlie); Letter from Thomas Scheffler dated Sept. 12, 2006; T. 14 at 45 (Tupy).
[340] T. 2 at 15-16 (Schultz); T. 16 at 36 (Schrum); E-mail to L. Van Horn, dated Sept. 20, 2006.
[341] T. 10 at 97-102 (Gillette).
[342] Letter from James Gondringer, Stearns County Dairy Advisory Board, rec'd Sept. 19, 2006.
[343] Ex. 68.
[344] T. 7 at 40 (Duncan); T. 3 at 31 (McKimmey).

338. Dakota County also requested that the pipeline avoid dumps, waste sites and spill sites located between MP 288.5 (at 190th Street), and MP 293 (at 145th Street/CSAH 42). It is not clear that the September 15 Alignment reflects this request.

339. All of the evidence was reviewed and considered. The citations to the record are not intended to indicate that all evidentiary support has been cited.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Public Utilities Commission and Administrative Law Judge have jurisdiction to consider MPL's application for a Certificate of Need and a Routing Permit.[345]

2. The Public Utilities Commission determined that MPL's Application for a CON was substantially complete and accepted the Application for a Routing Permit in February 16, 2006.

3. Public hearings were conducted in 14 locations along the proposed pipeline route. MPL gave proper notice of the public hearings, and the public was given the opportunity to appear at the hearings or to submit public comments. All procedural requirements for the CON and Routing Permit were met.

4. The record of this proceeding demonstrates that MPL has satisfied the criteria set forth in Minn. Stat. § 216B.243 and Minn. Rule 7853.0130.

5. No party or person has demonstrated by a preponderance of the evidence that there is a more reasonable and prudent alternative to the proposed pipeline.[346]

6. The Applicant has conducted an appropriate environmental assessment consistent with Minn. Rules 4415.0115 to 4415.0170 and met the requirements for alternative environmental review in Minn. Rule 4410.3600

7. MPL has demonstrated that its September 15 Alignment, reflecting the Staples Alternative, Belle Plaine Alternative and GOE Stipulation, as well as other alignment changes developed in consultation with landowners, meets the statutory and rule criteria and a corresponding Routing Permit should issue. The approved route should be narrowed as follows:

[345] Minn. Stat. §§ 216B.243 and 14.50.
[346] Minn. R. 7853.0130B.

(a) From MP 0 to 199 where the proposed route is parallel with MPL's existing pipeline system, a route width of 500 feet on each side of the September 15 Alignment;

(b) From MP 119 where the route diverges from the existing pipeline system to the end of the route in Dakota county (the "Greenfield" portion of the route), a route width of a distance of 1/3 mile on each side of the September 15 Alignment;

(c) From approximately MP 274.5 to 275.5, a route width consistent with MPL's Stipulation with GOE.

The following conditions should be placed on the Routing Permit:

8. The Routing Permit should require MPL to comply with its proposed Wetland and Waterbody Construction and Mitigation Procedure, its Upland Erosion Control, Revegetation, and Maintenance Plan and its Agricultural Impact Mitigation Plan and Appendix.

9. The Routing Permit should require a Stormwater Pollution Prevention Plan reviewed and approved by the Minnesota Pollution Control Agency, describing the steps to be taken in the event of a spill from construction–related activities.

10. The Routing Permit should require MPL to develop project construction specifications for site sediment control, as required by the Minnesota Pollution Control Agency NPDES Construction Permit program.

11. The Routing Permit should require MPL to comply with those practices set forth in its Route Permit Application and Environmental Assessment Supplement for right-of-way preparation, construction, cleanup, restoration and maintenance.

12. The Routing Permit should require MPL to attain all required local, state and federal permits and licenses, to comply with the terms of those permits or license, and to comply with all applicable rules and regulations.

13. The Routing Permit should require MPL to confer with each local jurisdiction, including the soil and water conservation districts, prior to finalizing the right-of-way in each township, city and county, and provide regular planning and construction updates to designated representatives for each jurisdiction.

14. The Routing Permit should require MPL to work with the Minnesota Historical Society prior to commencing construction to determine whether an archaeological survey will be necessary for any length of the proposed route. MPL should mark and preserve any archaeological sites that are found during

construction and shall promptly notify the Historical Society and PUC of the discovery. MPL should not excavate at such locations until so authorized by the Historical Society.

15. The Routing Permit should require MPL to obtain all necessary permits authorizing access to public rights-of-way and should obtain approval of landowners for access to private property.

16. The Routing Permit should include the agreement between MPL, Daniel Moehring and Gordon Grimm, as reflected on Exh. B attached to the letter from Alan M. Albrecht, dated September 14, 2006.

17. The Routing Permit should clarify that equipment involved in pipeline construction shall be moved into the right-of-way using existing public or private roads, unless a temporary road is negotiated with the landowner and approved by the Environmental Inspector, and by the Agricultural Inspector on agricultural lands.

18. The Routing Permit should require MPL to retain an Organic Certifier at its expense to assist any landowner to negotiate terms to the right-of-way agreement that will minimize damage during construction and delay or loss of organic certification for any farm that is Organic Certified or in active transition to become Organic Certified.

19. The Routing Permit should require MPL to notify each landowner annually of the opportunity to register organic farms and the landowner or tenant's Organic System Plan with MPL. The Routing Permit should require that MPL will be responsible for the damage caused by any maintenance practice that is inconsistent with the landowner or tenant's Organic System Plan on file or the express written approval of the landowner. The PUC may wish to consider whether additional conditions should be added to the Routing Permit to address the concerns of organic farmers who have not developed an Organic System Plan, as that term is defined in the AIMP Appendix.

20. The Routing Permit should require that MPL contact landowners prior to entering the property or conducting maintenance along the route and avoid maintenance practices, particularly the use of fertilizer or pesticides, inconsistent with the landowner's or tenant's use of the land.

21. The Routing Permit should require MPL to contract with independent third-party environmental inspectors to oversee the construction process and to monitor compliance with the Wetland and Waterbody Construction and Mitigation Procedure Upland Erosion Control, Revegetation and Maintenance Plan, the Agricultural Impact Mitigation Plan and Appendix, and the required environmental permits.

22. The Routing Permit should require MPL to periodically mail pipeline safety brochures to members of the public living within the vicinity of the pipeline,

companies engaged in excavation activities, emergency response agencies and local public officials, with information about pipeline safety and excavation damage prevention information. The notice shall include information about the One Call Excavation Notice System.

23. Prior to placing the pipeline into operation, the Routing Permit should require MPL to report to the Commission or Minnesota Office of Pipeline Safety a description of the training conducted for KPL's employees, for governmental response agencies in each county through which the pipeline will pass, and for emergency response contractors concerning response to releases.

24. The Routing Permit should require MPL to work with landowners to locate the pipeline on their property to minimize the loss of agricultural land, forest, and wetlands, with due regard for proximity to homes and water supplies, following property lines and minimizing diagonal crossings, even if the deviations will increase the cost of the pipeline, so long as the landowner's requested relocation does not adversely affect environmentally sensitive areas.

25. The Routing Permit should require MPL to work with landowners, the DNR, and local wildlife management programs to restore and maintain the right-of-way to provide useful and functional habitat for plants, nesting birds, small animals and migrating animals and to minimize habitat fragmentation in a manner consistent with inspection and safe maintenance of the right-of-way.

26. The Routing Permit should require MPL to negotiate agreements with landowners that will minimize the impact on future development of the property, and to assume any additional costs of development that may be the result of installing roads, driveways and utilities that must cross the right-of-way.

27. The Routing Permit should require MPL to offer all landowners an indemnification provision similar to the Tier One Indemnification offered to some landowners.

28. The Routing Permit should require that MPL comply with Minn. Stat. § 116I.06 concerning depth of cover and notify all landowners along the selected right-of-way of its requirements, along with the name and telephone number of the county inspector.

29. The Routing Permit should require MPL to cooperate with all entities that have existing easements or infrastructure within the route to ensure minimal disturbance to existing or planned developments.

30. The Routing Permit should require MPL to maintain a toll-free telephone number and establish complaint handling procedures and to notify the PUC of those procedures within thirty days from the issuance of the Routing Permit. MPL should notify the PUC of any complaints that are not resolved within 30 days of the complaint.

31. Any Finding of Fact that constitutes a Conclusion shall be treated as a Conclusion.

Based upon these Findings of Fact and Conclusion, and for the reasons stated in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATIONS

1. MPL's Application for a Certificate of Need for a Crude Oil Pipeline known as the MinnCan Project should be GRANTED.

2. Subject to the conditions set forth in the Conclusions, MPL's Application for a Routing Permit for a crude oil pipeline known as the MinnCan Project, including the Staples Alternative, Belle Plaine Alternative, GOE Stipulation, and other conditions, should be GRANTED.

Dated this _17th_ day of November, 2006

_/s/ Beverly Jones Heydinger__
BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Shaddix and Associates – 17 volumes

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Minnesota Public Utilities Commission ("Commission") and the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed according to the schedule which the Commission will announce. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof 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 who request such argument. Such request must accompany the filed exceptions or reply (if any), and an original and 15 copies of each document should be filed with the Commission.

The 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 one is held.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendations and that the recommendations have no legal effect unless expressly adopted by the Commission as its final order.

MEMORANDUM

Certificate of Need

MPL has demonstrated that it meets the criteria for the CON by a preponderance of the evidence. There was little evidence offered in opposition to it. However, neither MPL nor the Department offered direct evidence that the projected increase in demand for crude oil in Minnesota requires a new pipeline. Both relied heavily on plans by Flint Hills Resources to increase production of refined petroleum products and the overall data showing that the demand for such products will continue to rise, even if alternative fuels are developed. The increase in demand is tied to the projected growth in population in the region, and particularly in Minnesota. Thus, the scope of the analysis was that there is an increased demand for refined petroleum products, Flint Hills Resources is planning to expand to meet the demand, and it needs more crude oil to do that.[347] Since the existing pipelines to that facility are at or near capacity, there is a need for a new pipeline to transport the crude oil. And because of the relatively short distance from Clearbrook to the refineries, the proposed pipeline will provide a reliable and economical source of crude oil.

Neither MPL nor the Department fully explored whether a combination of increased capacity on the Wood River Pipe Line and available capacity in the refineries in Superior, Wisconsin, and North Dakota would be adequate to meet the demand for refined petroleum projects. The Department's witness, Dr. Griffing, offered the opinion that the adequacy of the energy supply for Minnesota would be threatened if this application were denied because all sources project growth in the demand for refined petroleum products in Minnesota and in the region.[348] But he admitted that he had not investigated whether the other refineries that serve Minnesota had any excess capacity or whether they could expand their capacity without building a new pipeline. Another Department witness, Mr. Haase, opined that increased capacity generally comes from expansion of existing refineries rather than construction of new ones because of the regulatory hurdles inherent in siting, constructing and operating a new refinery. It was his opinion that all of the existing refineries, including those located in North Dakota and Wisconsin, were operating at capacity and could not meet the projected demand for refined petroleum products.[349]

MPL and the Department emphasized that this project would increase access to Canadian crude oil, which was perceived to be a more stable source than other foreign oil. Also, because the oil travels underground from Canada, the supply would be less likely to be affected by bad weather or storms that affect the Gulf Coast. There was no evidence to the contrary. What was not explored in depth was whether other refineries and pipelines outside of Minnesota that

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[347] Apparently Marathon has no plans to expand. *See* Ex. 7 at 3; Ex. 114, IR 6.
[348] Ex. 13 at 9-10 (Griffing).
[349] T. 17 at 39-41 (Haase).

carry and process Canadian crude oil were adequate to meet the projected increase for Minnesota and this region. The evidence included general statements that the current systems were operating at capacity, but there was little data to back up the statements. Because of the close connection between Flint Hills Resources and MPL, a more careful analysis would have assured that the determination of need could be made with greater confidence. In addition, there was no analysis of whether the proposed pipeline, coupled with expansion of Flint Hills Resources, would create an undue reliance on one source of refined petroleum products.

Much of the public opposition to the pipeline was focused on the environmental damage caused by the nation's reliance on fossil fuels, inadequate efforts to reduce that reliance, and the need to decrease demand for energy. These are legitimate concerns that are being addressed through legislation to promote alternative energy development; however, in the context of the certificate of need, one must look at the evidence of the anticipated demand for crude oil. Denying the certificate of need will not reduce demand, but will only contribute to a shortage of supply to the state and region, and increase the cost to businesses, government, and consumers. More can be done to promote the development of alternatives, but a certificate of need proceeding is not the appropriate forum to mandate alternative energy development.

Neither MPL nor the Department attempted to assess the significance of placing more land and people at risk by following a new route rather than widening the existing MPL right-of-way. In addition, there was no attempt to assess the possible loss of prime agricultural land or family farms. Despite these shortcomings, it is clear that adding or replacing a pipeline along the existing route will have a significantly greater human impact because of the level of current development along that route. Following the existing pipeline for the full length of the route would not be a more reasonable and prudent alternative.

Routing Permit

Notice

As discussed in the findings, there were many complaints about the notice that landowners received about the proposed pipeline. It is clear that MPL complied with all the required notice provisions. However it is also clear that those provisions may not fully convey to the affected persons the information they need at a time when they can take action to protect their interests. The landowners along the alternative routes were particularly disadvantaged. Because they were outside the initially proposed route, they did not receive any notice that they might be affected until after the deadline had passed to intervene or to propose route alternatives. Some thought should be given to a method to assure that these landowners are aware that there are proposals that could affect their property. One option would be to require written notice to those landowners

after the PUC approves the route alternative for consideration, and allow an extension of the deadline for that affected group to intervene.

The applicable statutes appropriately require the identification and evaluation of a route which is broader than will ultimately be required for construction and a permanent right-of-way. For this reason, the maps accompanying the application show the route and also show the proposed centerline, the likely location of the right-of-way. Many landowners reviewed those maps and concluded, or were told by MPL, that although their property was within the route, the pipeline as proposed would not cross their property. For a variety of reasons, including negotiations with centerline landowners, MPL made adjustments to the proposed centerline. In some case, more than one change occurred, and some landowners were uncertain at the time of the public hearings whether they would be affected or not, and there was no easily accessible up-to-date information available to them. There was no requirement to give written notice to the affected landowners of those adjustments, and many landowners learned of the change when an MPL land agent contacted them to survey their property or to present a Right-of-Way Grant for signature. This practice confused and upset the landowners who had not retained counsel or offered alignment changes and were unaware that negotiations with others could lead to placement of the pipeline on their property. By the time that some of them learned of the possibility, the public hearings were underway.

Many speakers at the public hearing regretted that the pipeline siting process pitted neighbor against neighbor, with the advantage to the landowner who received the original notice. Those landowners had notice sufficiently in advance of the intervention deadline and public hearings to meet with MPL, retain counsel if necessary, and attempt to convince MPL to move the centerline. Those affected by subsequent changes to the centerline had no such opportunity.

MPL attempted to address the uncertainty about the proposed right-of-way by agreeing on the record that, outside of the Staples and Belle Plaine Alternatives, it would not make any additional changes to the proposed right-of-way after September 15, 2006, except with the consent of the affected landowner. Although this helped “freeze” the number of adversely affected landowners, it did not address the concerns of those who had been affected by changes in the proposed centerline between the time MPL sent its initial notice and September 15.

Protecting Landowners’ Interests

Many complaints arose because MPL began to negotiate right-of-way agreements before the applications for the CON and Routing Permit were granted. This confused landowners, and some were given the mistaken impression that they had no alternative to signing the right-of-way agreement. It became apparent during the public hearings that some land agents intimidated

the landowners. Also, many of the landowners were unaware that the terms of the right-of-way agreement were negotiable. Several times during the hearing, MPL's representative told members of the public that provisions were negotiable, but no such information was provided by the land agents. It is likely that many landowners signed the agreements without fully understanding what rights they may have, and without obtaining protections or compensation that MPL might have been willing to give them. Although there was a Public Advisor appointed for the proceeding, that person offered information about the routing process, and not about landowners' rights or negotiation options. Had the right-of-way agreements been negotiated after the permitting process, permit conditions could have been included. It would seem both logical and fair to the landowners to require MPL to comply with the permit conditions for all landowners and to notify them of additional protections conferred on them by the Routing Permit.

Location of Right-of-Way

At the public hearings, MPL repeatedly stated that it would work with affected landowners on the precise placement of the pipeline on their property. However, many landowners complained that MPL was not, in fact, willing to work with them, especially to move the pipeline away from their homes, or to avoid diagonal crossings. In its September 28, 2006 submission, MPL offered to reduce its requested route width, and, in addition to its agreement that it would not shift the centerline to an unwilling new landowner, it also stated that its proposed width:

> will provide the necessary flexibility to continue to negotiate a mutually acceptable alignment on landowners' property and, if needed, to move the route, in most cases, to an adjacent landowner that is willing to have the pipeline cross his/her property.

The PUC may wish to add a condition to the Routing Permit that requires MPL to adhere to that commitment.

Concern for Safety

Many objections from the public centered on the potential risk presented by a crude oil pipeline. The concerns were heightened by a break in MPL's pipeline near Little Falls on June 29, 2006. Understandably, landowners were concerned about the damage that such a break could cause on their property, including the health risks to their family, property damage, and the environmental effects. There was dissatisfaction with KPL's safety record as well as MPL's equivocation about accepting legal responsibility for the damage.

Although safety issues, *per se*, are outside the scope of this proceeding,[350] the purpose of the rules adopted to establish the need for and

[350] Minn. R. 4415.0015, subp. 2.

siting of pipelines is to assure that the risks are justified by the need and that the pipeline is sited in a way that will minimize the risk to humans and the environment. The applicable routing permit rules acknowledge that "the presence or location of a pipeline may have a significant impact on humans and the environment."[351] The Minnesota Office of Pipeline Safety oversees the construction and operation and shares MPL's goal of minimizing the risk of a spill. But the operation of a pipeline is not without risk, and landowners were particularly concerned about MPL's failure to include an indemnification provision in its standard right-of-way grant. Instead, MPL repeatedly stated that it was its "policy" to cover any damage. This provided little assurance to the public. The PUC may wish to require MPL to incorporate an indemnification provision in each landowner's right-of-way grant as a condition of the Routing Permit.

Compensation

Landowners were quite dissatisfied with the level of compensation MPL had offered to them, particularly in areas with rich agricultural land, and even more so in those areas that are on the verge of development. Several landowners testified that their land was an investment that would fund their retirement or be divided among their children. These landowners believed that MPL's payment to them should take into account this potential, or, in the alternative, if their land's value was diminished at the time of sale because of the pipeline, MPL should make up the difference. MPL's policy is to make a one-time payment only. Since some land agents represented that the amount of compensation was not negotiable, landowners were angry.

In this instance, as with other provisions of the right-of-way grant, landowners believed that they were at a distinct disadvantage because they did not know their rights, did not have the capacity to research and negotiate with MPL, and were fearful that they would lose their land without compensation. It would be helpful in future proceedings to provide landowners along the route with some basic information about the negotiation process and their rights in eminent domain proceedings should no agreement be reached.

Overall, MPL provided detailed information about its construction and maintenance procedures and incorporated many procedures into its mitigation plans that will address many of the landowners' concerns. Some of MPL's witnesses expressed a genuine willingness to work with landowners so that the installation and maintenance of the pipeline took their concerns into account. It is appropriate to do so because the landowners must accept what is, for many, an unwanted intrusion onto their land in order to benefit the public.

B. J. H.

[351] Minn. R. 4415.0015, subp. 3.