

August 19, 2014

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. PL-5/CN-14-320

Dear Dr. Haar:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Application of MPL Pipe Line Company, LLC (MPL) for a Certificate of Need for the Minnesota Pipe Line Reliability Project.

The application was submitted on July 25, 2014 by:

Mr. Jake Reint
Minnesota Pipe Line Company, LLC
P.O. Box 3696
St. Paul, Minnesota 55101

Mr. Eric F. Swanson
Winthrop & Weinstine, P.A.
225 South 6th Street, Suite 3500
Minneapolis, Minnesota 55402

The Department recommends that the **Minnesota Public Utilities Commission (Commission) declare the Application complete upon submission by Minnesota Pipe Line of additional data and refer the *Petition* to the Office of Administrative Hearings for a contested case proceeding.**

The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ LAURA B. LAUFMANN
Rates Analyst
651-539-1828

LBO/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET No. PL-5/CN-14-320

I. BACKGROUND

A. NOTICE PLAN

On April 18, 2014 Minnesota Pipe Line Company, LLC (MPL or the Applicant) submitted a *Certificate of Need Notice Plan: In the Matter of the Application for a Certificate of Need for the Minnesota Pipe Line Reliability Project* (Notice Petition). The Notice Petition provided a plan to notify potentially affected members of the public as required by Minnesota Rules part 7829.2560.

On May 6, 2014, the Minnesota Department of Commerce, Division of Energy Resources (Department) filed comments regarding the Notice Petition. The Department recommended that the Minnesota Public Utilities Commission (Commission) approve the Applicant's Notice Petition, subject to the Applicant's provision of additional information, clarifications, and/or corrections to the Notice Plan. On May 27, 2014, MPL filed reply comments including additional and clarifying information. On June 6, 2014, the Department filed a letter indicating that the reply comments filed by MPL satisfied the concerns noted in the Department's original comments and recommended that the Commission approve the Notice Plan. On June 26, 2014, the Commission issued an Order approving the Notice Petition as modified in the Applicant's May 27, 2014 reply comments.

B. CERTIFICATE OF NEED PETITION

On July 25, 2014, MPL submitted an *Application for a Certificate of Need for the Minnesota Pipe Line Reliability Project* (Petition). The Petition requested that the Commission approve a certificate of need (CN) for a reliability project that would increase the throughput capacity of the 305 mile long MPL Line 4 (constructed in 2008 and the newest pipeline in MPL's system) from its current capacity of approximately 165,000 barrels per day (bpd) of crude oil to its original design capacity of 350,000 bpd through upgrades at two existing pumping

stations and construction of 6 new pumping stations (Project). The existing stations are located in Clearbrook and Albany, Minnesota (Clearwater and Stearns counties, respectively) while the newly constructed stations would be located in rural areas of Hubbard, Wadena, Morrison, Meeker, McLeod, and Scott counties in Minnesota. No new pipeline will be installed and no new right-of-way will be acquired as a result of this project and the new pump stations would be located on parcels already owned by MPL.

In response to MPL's filing, on July 31, 2014, the Commission filed its *Notice of Comment Period on Completeness of Certificate of Need Permit Application* (Notice). The Notice stated that initial comments on completeness are due August 12, 2014 and reply comments are due on August 29, 2014. Below are the comments of the Department regarding the completeness of the Petition pertaining to Minnesota Rules 7853.0220 through 7853.0260, and 7853.0510 through 7853.0640.

II. DEPARTMENT'S ANALYSIS

A. BACKGROUND

MPL proposes to increase the capacity of its 305-mile long, 24-inch diameter Line 4 through construction of six new pump stations and upgrades at two existing pump stations that currently serve Line 4 in order to improve reliability of crude oil supply to Minnesota's two refineries located in the Twin Cities. As noted above, the proposed project will not require acquisition of new right-of-way or any pipeline construction—all work would be limited to pump stations. The project would increase annual average capacity on the line from 165,000 bpd to 350,000 bpd while the maximum operating pressure is not expected to change from its current 1,470 psig.¹ The new pump stations would be located in rural areas of Hubbard, Wadena, Morrison, Meeker, McLeod, and Scott Counties in Minnesota while existing stations are located in Clearwater and Stearns Counties in Minnesota.

MPL describes the project as a reliability project. This is because the Company expects the project to provide excess capacity that will be utilized when MPL must remove one of its other lines from service for testing, maintenance, or other reasons. MPL believes that construction of this project will prevent disruption of the supply of crude oil supplies to Minnesota refineries.

The pertinent Minnesota Statutes requiring a certificate of need for this project are Minn. Stat. §216B.2421, subd 2, part 4, and §216B.243, subd. 2. The related Minnesota Rule pertaining to this project is Minnesota Rule 7853.0030. These Statutes and Rule state the following:

¹ Rather than increasing the maximum operating pressure, the project would allow Line 4 to operate at a more consistent pressure for its entire length. See Petition, page 7.

Minnesota Statute § 216B.2421, Subd. 2, Large energy facility

“Large energy facility” means:

...

(4) any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of coal, crude petroleum or petroleum fuels or oil, or their derivatives

Minnesota Statute § 216B.243, Subd. 2, Certificate required

No large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission pursuant to sections 216C.05 to 216C.30 and this section and consistent with the criteria for assessment of need.

Minnesota Rule 7853.0030, Scope of Rules

Each petroleum supplier applying for a certificate of need for one of the following types of large energy facilities shall provide all information required by this chapter:

...

D. any project that, within a period of two years, would expand an existing large petroleum pipeline in excess of either 20 percent of its rated capacity or 10,000 barrels per day, whichever is greater.

B. LARGE ENERGY FACILITY

The proposed reliability project involves MPL Line 4, which is considered a large energy facility because it is a petroleum pipeline that is greater than six inches in diameter and has more than 50 miles of length in Minnesota. Since the project involves more than doubling the capacity of a large petroleum pipeline (an increase of 185,000 bpd), a certificate of need is required. The relevant filing requirements that pertain to MPL’s proposed reliability project are described in Minnesota Rules part 7853.

C. COMPLETENESS REVIEW

The Department reviewed the Petition for completeness under Minnesota Rules. The Department concludes that the Applicant met the completeness requirements with the exceptions noted below. Specifically, Minnesota Rules 7853.0230, subp. 1.D., 7853.0510, and 7853.0540 require the Applicant to provide additional information as discussed below.

Further, the Applicant's information provided in response to Minnesota Rules 7853.0620, Subp. 4 should be clarified.

The Department discusses each of these rules separately below.

1. Required Additional Information

Minnesota Rule 7853.0230, subp. 1.D.

This rule specifies the general information that an applicant for a certificate of need for any large petroleum facility must provide. Subpart 1.D. requires several pieces of information, including the location of the facility, its use, its cost, design capacity, and its planned in-service date. The Company has complied with this requirement with one exception; there is no planned in-service date provided. The Company must submit this information for the Petition to be considered complete.

Minnesota Rule 7853.0510

This rule requires the provision of historical energy data and information regarding facilities on a pipeline system. In particular, subpart 1, part C requires information regarding the dates and durations of the contracts with the 25 largest suppliers or shippers to the pipeline over the past five calendar years. The Applicant states that the source of the crude oil transported on the system is Enbridge's system in Clearbrook, MN but that no contracts can be provided because Enbridge's tariff does not provide for contracts but instead requires shippers to nominate supply on a monthly basis. As these monthly shipper nominations are used instead of the contracts used for other pipeline systems, the Company should supply the required information as derived from monthly shipper nomination forms for the most recent five years.

Minnesota Rule 7853.0540

This rule requires the Applicant to provide information regarding alternatives to the proposed Project. In this section, the Applicant discusses an alternate, non-system pipeline option (the Wood River Pipeline) along with a new pipeline alternative and the use of rail transport and truck transport to bring the crude volumes associated with the proposed Project to market. The Department concludes that additional information regarding stateregulatory authority related to the operation of the Wood River Pipeline alternative discussed in this section of the petition, is necessary. Therefore, the Department recommends that MPL provide additional discussion highlighting what, if any, regulatory authority is available at the state level for the Wood River Pipeline alternative discussed in Section 7853.0540 the Applicant's Petition.

2. *Areas of Clarification*

Minnesota Rule 7853.0620, subp. 4

This subpart requires the Applicant to provide a description of the maximum noise levels (decibels) expected along the route as well as the expected maximum increase over ambient noise levels. The Company provided this information in its Petition.

On May 28, 2014, the Commission received an anonymous public comment concerning noise levels on their property,² which is near an existing MPL station. This citizen alleges that the Applicant's parent company has admitted to be operating outside of 'state statute limits.' The Applicant should clarify whether the noise emitted by its pump stations will be within currently allowed limits set the by relevant state, county, or local governments.

Other Areas of Clarification

Beyond the rule sections in the Applicant's Petition, the Department believes clarification regarding the classification of this project as a reliability project is necessary. Specifically, MPL should provide information regarding how often and how long outages on other pipelines in the system are experienced. Additionally, MPL should elaborate on the following statement:

The actual annual volume reaching the two Minnesota refineries on the MPL system is not expected to increase *significantly* as a result of the project. [emphasis added]³

D. *PROCESS REVIEW*

The Commission's November 14, 2013 Notice also requested comments regarding whether there are any contested issues of fact in the matter. Generally, the Commission can choose one of two methods established in Minnesota Rules 7829.2500, subp. 9 for processing applications for a CN. First, the Petition may be referred to the Office of Administrative Hearings for a contested case proceeding to resolve factual disputes. Second, the Commission may evaluate CN requests using the Commission's standard comment process; referred to in Minnesota Rules as an "informal or expedited proceeding." Minnesota Rules 7829.1200 provides three examples for when the Commission's comment process may be used:

² See Public Comment filed by the PUC on May 28, 2014

³ Petition, page 8

- A. There are no material facts in dispute;
- B. The parties and the Commission have agreed to informal or expedited proceedings; or
- C. Informal or expedited proceedings are authorized or required by statute.

At this juncture, the Department has not identified any disputes as to material facts. However, the Department notes that several members of the public raised various issues in other CNs involving capacity upgrades for other pipelines in Minnesota.⁴ In addition, the Company's characterization of this project as a reliability project that will not substantially increase total throughput on MPL's system is a claim that must be thoroughly investigated. Finally, the alternative of returning the Wood River Pipeline to service is an option that merits thorough investigation. As such, the Department believes a contested case proceeding is necessary to ensure a full record and adequate participation by the public.

Therefore, the Department recommends that the Commission refer the Petition to the Office of Administrative Hearings for a contested case proceeding.

III. DEPARTMENT RECOMMENDATIONS

The Department recommends that the Commission find that MPL's application is complete pending the submittal of the following:

- information regarding the expected in-service date of the project;
- historical nomination data for the MPL system;
- more detailed discussion of the state's regulatory authority available to the state for the Wood River Pipeline alternative discussed in response to Minnesota Rules 7853.0540;
- clarification as to the noise emitted by MPL's pump stations, including a discussion of whether current and expected noise levels are within levels currently allowed by state and local laws, rules, or ordinance; and
- further information regarding MPL's basis for labeling this project as a reliability project.

The Department recommends that the Commission refer the Petition to the Office of Administrative Hearings for a contested case proceeding.

/ja

⁴ Docket Nos. PL9/CN-12-590 and PL9/CN-13-473.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. PL5/CN-14-320

Dated this 19th day of August 2014

/s/Sharon Ferguson

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