

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: July 30, 2015 Agenda Item # * 5

Company: Minnesota Pipe Line Company, LLC

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

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

Issue(s): Should the Commission grant a certificate of need to Minnesota Pipe Line Company, LLC (MPL) for the Minnesota Pipe Line Reliability Project?

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Relevant Documents

Certificate of Need Application (10 parts) July 25, 2014
Department of Commerce EERA Comparative Environmental Report February 6, 2015
Minnesota Department of Natural Resources Comments March 20, 2015
Minnesota Chamber of Commerce Letter March 20, 2015
Minnesota Pollution Control Agency Comments March 20, 2015
Minnesota Pipe Line Company Initial Brief (3 parts) April 9, 2015
Department of Commerce DER Initial Brief (2 parts) April 9, 2015
Department of Commerce EERA Comments April 9, 2015
Minnesota Pipe Line Company Reply Brief (2 parts) April 23, 2015
Department of Commerce DER Reply Brief (3 parts) April 23, 2015
Minnesota Pipe Line Company Reply Letter to the DOC DER..... April 24, 2015
DOC DER Reply Letter to Administrative Law Judge April 29, 2015
Administrative Law Judge Report..... May 26, 2015
Minnesota Pipe Line Company Exceptions June 10, 2015
Department of Commerce DER Exceptions June 10, 2015

Attachment A –Summary of Exceptions to ALJ Report

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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I. Statement of the Issue

Should the Commission grant a certificate of need to Minnesota Pipe Line Company, LLC (MPL) for the Minnesota Pipe Line Reliability Project (Project)?

II. Laws and Rules

The existing pipeline is a large energy facility as defined by Minn. Stat. § 216B.2421, subd. 2(4), because it is a pipeline greater than six inches in diameter with more than 50 miles of its length in Minnesota to be used to transport crude petroleum. The project is further defined as a large petroleum pipeline under Minn. R. 7853.0010, subp. 14.

Minnesota Rule 7853.0030 (D) states that a certificate of need is required for any project that would expand an existing large petroleum pipeline in excess of either 20 percent of its rated capacity or 10,000 barrels per day. The Project would increase the annual average capacity of Line 4 by approximately 185,000 barrels per day (or 112 percent), therefore, a certificate of need is required.

Minnesota Rules Chapter 7853 outlines the review process and consideration of a certificate of need application for a petroleum facility. Minn. R. 7853.0010 to 7853.0270 and 7853.0800 apply to certificate of need applications for all large petroleum facilities. Minn. R. 7853.0500 to 7853.0640 specifically address large petroleum pipeline facilities.

Minnesota Rule 7853.0120 states that the Commission shall consider only those alternatives proposed before close of the public hearing and for which there exists substantial evidence on the record with respect to each of the criteria listed in part 7853.0130.

The specific criteria to be considered in granting a certificate of need are set out in Minn. R. 7853.0130 as follows:

- A. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states;
- B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant;

- C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate; and
- D. it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

The first three criteria (A, B, and C) have several distinct sub-factors (listed in the rule) that must also be considered when making a determination.

Finally, Minnesota Rule 7853.0130 states that a certificate of need shall be granted to the applicant if the Commission has determined that the applicant meets the identified criteria.

III. Procedural Background

On July 25, 2014, MPL filed an application for a Certificate of Need for the Minnesota Pipe Line Reliability Project.

On October 17, 2014, the Commission issued its Notice and Order for Hearing. In the Order the Commission found that the application as amended on August 29, 2014, was substantially complete and referred the matter to the Office of Administrative Hearings (OAH) for contested case proceedings.

On February 6, 2015, the Department of Commerce Energy Environmental Review and Analysis (DOC-EERA) filed a Comparative Environmental Analysis (CEA) of the Project and Alternatives.

On February 24 and 25, 2015, Administrative Law Judge (ALJ), Jeanne M. Cochran presided over public hearings that were conducted in the cities of Park Rapids, Motley, Litchfield, and New Prague. A public comment period was open until March 20, 2015.

On April 9, 2015 MPL and the Department of Commerce Division of Energy Resources (DOC-DER) filed initial post hearing briefs. MPL also filed proposed findings.

On April 23, 2015 MPL and the DOC-DER filed reply briefs. The DOC-DER also filed proposed findings.

On May 26, 2015, Judge Cochran issued her Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation (ALJ Report).

On June 10, 2015, MPL and DOC-DER filed exceptions to the ALJ Report.

IV. Parties Positions

Minnesota Pipeline Company, LLC

Minnesota Pipeline Company, LLC (MPL) requested a certificate of need to increase the capacity of its existing 305-mile long, 24-inch diameter Line 4 pipeline through construction of six new pump stations and upgrades at two existing pump stations in order to improve reliability of crude oil supply to Minnesota's two refineries located in St. Paul Park and Rosemount. The project would increase annual average capacity on the line from 165,000 barrels per day (bpd) to 350,000 bpd while the maximum operating pressure is not expected to change from its 1,470 pounds per square inch (psig). The proposed project would not require acquisition of new right-of-way or any pipeline construction - all work would be limited to pump stations. The new pump stations would be located in Hubbard, Wadena, Morrison, Meeker, McLeod, and Scott counties. The existing pump stations are located in Clearwater and Stearns counties.¹

The Commission originally granted a certificate of need and route permit for the 165,000 bpd Line 4 in 2007.² It was originally known as the MinnCan Pipeline Project.

MPL describes the project as a reliability project. 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. There are no expected out-of-state recipients for the oil transported on MPL's system, which includes Line 4.

According to MPL, its existing pipeline system supplies the two refineries in Minnesota and operates at close to its capacity of 465,000 bpd. As such, any temporary planned or unplanned outage on any part of the MPL System threatens the supply of crude oil to the Minnesota Refineries, in turn threatening the supply of transportation fuels and other refined products to businesses and citizens of Minnesota and the region.

¹ Several of these pump stations would require additional high-voltage transmission lines (HVTL) to supply the additional electrical energy necessary to power the expanded pump stations. Those HVTLs are proceeding in separate Commission dockets by the electric utilities who would be building the transmission lines (Ex. See Commission Docket CN-14-583, TL-15-204, among others).

² In the Matter of the Application of Minnesota Pipeline Company for a Certificate of Need for a Large Petroleum Pipeline, Docket No. PL-5/CN-06-2 and In the Matter of the Application to the Minnesota Public Utilities Commission for a Pipeline Routing Permit for a Crude Oil Pipeline and Associated Aboveground Facilities, Docket No. PL-5/PPL-05-2003 (also referred to as the MinnCan Project).

At each pump station, MPL anticipates that three-4,000 horsepower centrifugal pumps will be required to achieve approximately 350,000 bpd pumping capacity with a maximum operating pressure of 1,470 psig. Final design, yet to be completed, will dictate the actual pump characteristic and pumping capacity; however, maximum pumping capacity is expected to be approximately 350,000 bpd with a total of 12,000 horsepower per station.

Pump motors will be controlled with a variable frequency drive (“VFD”) to increase efficiencies (up to 97 percent). Pump station output pressure will be controlled by VFD rather than mechanically for further efficiencies. At full load, the energy requirement of a pump station will be 51 British thermal unit/barrel-mile based on 12,000 horsepower, 350,000 barrels per day transported and stations at approximate 38-mile intervals.

The expected electric power requirement of each new and upgraded pump station at peak demand would be 9,005 kilowatts (kW) at a flow rate of 612,500 gallons per hour.

The estimated construction start date is January 1, 2016, with a full in-service date of fourth quarter of 2017.

Department of Commerce Division of Energy Resources

Through its analysis of the record, the Department concluded that MPL has met its burden of demonstrating that the proposed Project is needed under Minn. Stat. § 216B.243 (2014) and Minnesota Rules part 7853.0130 (2013). The Department, however, recommended that the CN be conditioned with a requirement for MPL to implement an environmentally neutral footprint policy regarding conservation of natural resources and incremental energy used by the Project. MPL would meet this condition through either purchasing green power or participating in other programs to offset any increased energy use.

V. Report of the Administrative Law Judge

On May 26, 2015, Judge Cochran issued her Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation. The Report included 218 findings of fact and 16 conclusions of law, and two recommendations. Judge Cochran recommended that the Commission: 1) grant the Certificate of Need to MPL, and 2) condition its approval upon MPL’s receipt of each of the required permits listed in Table 7853.0230-A of its Application.

The ALJ summarized her recommendation as follows:

“...MPL has demonstrated the need for the proposed increase in pumping capacity on MPL Line 4, and no party or person has demonstrated there is a more reasonable and prudent alternative.”

Specifically, with respect to each of the criteria of Minn. R. 7853.0130, the ALJ concluded that the hearing record demonstrated:

- The denial of a CON for the Project would adversely affect the adequacy and reliability of the energy supply to the Minnesota Refineries, the State, and the region (Findings 84, 85, and 120) – Minn. R. 7853.0130(A).
- The reasonableness of MPL’s forecasts of demand for crude oil (Findings 86-97) – Minn. R. 7853.0130(A)(1).
- Conservation efforts have been considered in those forecasts and conservation cannot replace the need for the Project (Findings 98-102) - Minn. R. 7853.0130(A)(2).
- No promotional activities have given rise to the need for the Project (Findings 103 and 104) - Minn. R. 7853.0130(A)(3).
- There are no current or planned facilities not requiring a CON that can meet the reliability and sprint capacity needs met by the Project (Findings 105-114) - Minn. R. 7853.0130(A)(4).
- The Project makes efficient use of resources by using the existing MPL Line 4 (Findings 115-119) - Minn. R. 7853.0130(A)(5).
- The Project will enhance the future adequacy, reliability, and efficiency of energy supply to Minnesota and the region (Finding 120) – Minn. R. 7853.0130(A).
- No party demonstrated a more reasonable or prudent alternative than the Project, considering: the Project size, type and timing; cost; human and environmental impacts; and reliability (Findings 121-141; 159-163) – Minn. R. 7853.0130(B), 7853.0130(B)(1), 7853.0130(B)(2), and 7853.0130(B)(4).
- The record demonstrates that with regard to the potential human and environmental impacts, the Project is superior to alternatives examined in the record (Findings 142-158) – Minn. R. 7853.0130(B)(3).

- The record demonstrates that the consequences to society of granting the CON are expected to be more favorable than the consequences of denying the CON (Findings 164-192) – Minn. R. 7853.0130(C), Minn. R. 7853.0130(C)(1), Minn. R. 7853.0130(C)(2), Minn. R. 7853.0130(C)(3), and Minn. R. 7853.0130(C)(4).
- The record demonstrates that the Project can be constructed and operated in compliance with all applicable federal, state, and local rules and regulations (Findings 193-199) – Minn. R. 7853.0130(D).

The ALJ concluded that the Department’s proposal to condition the certificate of need on an environmentally neutral footprint policy for the incremental energy used by the project is unnecessary and unsupported by the record (Findings 204-218; Conclusion 16). The ALJ found that the project meets the criteria for a CON without the neutral footprint condition because the project results in a net reduction per barrel of the energy used by the MPL system.

VI. Exceptions

Under Minn. R. 7829.2700, exceptions to the ALJ Report must be filed within 15 days of the filing of the report for cases subject to statutory deadlines.

On June 10, 2015, MPL and the Department of Commerce Division of Energy Resources (DOC-DER) filed timely exceptions to the ALJ Report.

A. Minnesota Pipe Line Company

MPL indicated that it supported the ALJ Report in its entirety. MPL noted one typographical error in Finding 1 which incorrectly identified to Northern Tier Energy as “New Tier Energy.”

B. Department of Commerce Division of Energy Resources

DOC-DER indicated that it supports the ALJ Report with respect to whether the MPL has satisfied its burden of proof under the certificate of need criteria for crude oil pipelines.

Neutral Footprint Condition

The DOC-DER took exception to the ALJ’s conclusion that the record does not support conditioning the certificate of need on MPL applying a neutral-footprint policy to the proposed

project. DOC-DER continued to recommend this condition, as they had throughout the proceeding, and suggested modifications to Findings 215, 216, 217, and 218.³

In its initial brief, DOC-DER recommended “...that to the extent energy use [at pump stations or elsewhere] on the MPL System increases, the Commission should condition its approval on requiring MPL to generate a kWh of renewable energy for every incremental kWh of energy consumed by the project by purchasing green power or participating in other programs to offset the energy it consumes at the Project’s pump stations... one way for MPL to accomplish this condition would be to purchase RECs, which would be tracked by MRETS, and to retire the RECs through MRETS.”⁴

DOC-DER argued that the Commission has the authority to place conditions on a certificate of need under the requisite rules and statutes. DOC-DER maintained that, although the proposed project would create system efficiencies in the short term, it is possible that future system and shipper activity could increase current projected project energy use. DOC-DER asserted that such a condition would mitigate environmental costs of the project and benefit the natural and socioeconomic environments in this case.

VII. Staff Discussion

Staff has examined the full record in this case and agrees with the findings, conclusions, and recommendations reached by the ALJ. The Report documents that the procedural requirements were followed and presented findings of fact for each of the decision criteria that must be met for a certificate of need to be issued.

Neutral Footprint Policy

In this case DOC-DER has recommended that the CN be conditioned by applying a neutral-footprint policy to the proposed project through a requirement that the applicant generate or purchase renewable energy or participate in another program to offset the incremental energy it consumes at the Project’s pump stations. The Department asserted that the condition was appropriate to minimize the projects effects on the natural environment and to provide additional benefits to Minnesota and surrounding states.

³ ALJ Cochran explored the issue of conditioning a certificate of need during the contested case hearing process requesting that the parties address the neutral footprint condition proposed by the DOC-DER. MPL’s initial brief, DOC-DER’s reply brief and the April 24, 2015 MPL letter explored this issue. MPL argued that imposing a condition that is not necessary to bring the project into compliance with the Rule criteria [since without the condition all parties agree the project is in compliance] is not permitted by statute or rule.

⁴ Department of Commerce, Initial Brief (April 9, 2015), Document ID 20154-109133-02.

Staff agrees with DOC-DER that the Commission has the authority to impose certain reasonable conditions when issuing a certificate need if it finds that it is in the public interest to do so.

VIII. Commission Decision Alternatives

A. Administrative Law Judge report

1. Adopt the ALJ's Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation for the Minnesota Pipe Line Reliability Project.
2. Adopt the ALJ's Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation for the Minnesota Pipe Line Reliability Project, as modified by:
 - a. MPL's correction to Finding 1 to indicate "Northern Tier Energy" instead of "New Tier Energy."
 - b. DOC-DER's modifications to Findings 215, 216, 217, and 218 concerning a certificate of need condition related to an energy neutral-footprint policy for the project.
3. Do not adopt the ALJ's Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation.
4. Take some other action deemed appropriate.

B. Certificate of Need

1. Grant a certificate of need to Minnesota Pipe Line Company, LLC for the Minnesota Pipe Line Reliability Project to increase pumping capacity on the Line 4 crude oil pipeline.
2. Grant a certificate of need to Minnesota Pipe Line Company, LLC for the Minnesota Pipe Line Reliability Project to increase pumping capacity on the Line 4 crude oil pipeline, and require MPL to generate a kWh of renewable energy for every incremental kWh of energy consumed by the project by purchasing green power or participating in other programs to offset the energy it consumes at the Project's pump stations.
3. Deny a certificate of need to Minnesota Pipe Line Company, LLC for the Minnesota Pipe Line Reliability Project to increase pumping capacity on the Line 4 crude oil pipeline.
4. Take some other action deemed appropriate.

Staff recommends: A2a and B1.

Attachment A: Staff Recommended Changes to ALJ Report in Docket# 14-320 (7/30/15):

The language used below for editing purposes is from the Exceptions filings of the Department of Commerce DER and MPL made on June 10, 2015. There are occasional non-substantive numbering irregularities, like footnotes in various documents that may require correction by the Order writer.

Findings of Fact, Conclusions of Law Modification Table

Finding of Fact (FoF), Conclusion of Law, or Permit Section Number	Entity Requesting Change and Filing Date	Proposed Language	Incorporated by Staff	Staff's Reason for Including or Rejecting
FoF #1	MPL 6/10/15	<p>Findings of Fact:</p> <p>1. MPL owns a pipeline system (MPL System) located wholly in the state of Minnesota. The MPL System transports crude oil from Clearbrook, Minnesota, to two refineries in Minnesota. Those refineries are: (1) the Pine Bend Refinery in Rosemount, Minnesota, which is owned by Flint Hills Resources; and (2) the St. Paul Park Refinery in St. Paul Park, Minnesota, which is owned by New Northern Tier Energy LLC (a/k/a St. Paul Park Refining Co. LLC) (together Minnesota Refineries or Refineries).</p>	Yes, as modified by MPL	Staff agrees with this clarification, as the correct name of the St. Paul Park Refinery is Northern Tier Energy, LLC.
FoF #215	DER 6/10/15	215. Given Enbridge's declared goals and intentions, the Commission accepted Enbridge's proposal to implement a "neutral footprint" program as a means of mitigating the environmental consequences of Enbridge's proposed project. The Commission accepted Enbridge's voluntary proposal even though it found that all of the alternatives	No	Staff agrees with the Department DER that the Commission has the authority to condition the CON with modifications to the project if it believes the changes are in the public interest. However, staff also agrees

		<p>examined in the record involved more significant environmental and socioeconomic consequences than Enbridge’s project.[footnote omitted] Because the Commission’s decision was based on Enbridge’s voluntary offer to implement a “neutral footprint,” the Administrative Law Judge does not view the Line 67 Docket as establishing a binding precedent in this case on the question of whether a “neutral footprint” condition should be adopted for the MPL Project. In order to ensure that Enbridge complied with its “neutral footprint” policy as to the proposed project, the Commission ordered that Enbridge in the Line 67 Docket make a compliance filing within ninety days of the proposed project becoming operational.</p>		<p>with the ALJ that the Commission’s adoption of the proposed “neutral footprint” program in the Enbridge Line 67 matter does not establish a binding precedent for conditioning the certificate of need in this case. The Commission will need to whether the neutral footprint program is in the public interest.</p>
FoF #216	DER 6/10/15	<p>216. <u>Like Enbridge’s Line 67 project, the proposed Project will increase the throughput capacity of MPL’s Line 4, and therefore, of the entire MPL System. In contrast to Enbridge’s Line 67 project, the current Project is primarily designed to bolster the reliability and efficiency of the MPL System. The MPL System lies entirely within the state of Minnesota and provides the sole source of pipeline supply to Minnesota’s two Refineries. MPL is not pursuing the Project in order to ship significantly higher volumes. Rather, the record demonstrates steady to modestly increasing demand from MPL’s two shippers.</u></p>	Yes	<p>Staff agrees the language proposed by Department DER is accurate.</p>
FoF #217	DER 6/10/15	<p>217. Because of its reliability and efficiency focus, the Project is expected to reduce MPL’s total electric energy use.[footnote omitted] As the record demonstrates, when MPL moves barrels from its Legacy System to MPL Line 4, it sees a reduction in electric use on a per barrel basis due to the larger diameter pipe on and more</p>	No	<p>Staff notes the language in each of these paragraphs is technically accurate. While it may be appropriate to add the language of the Department’s proposed exception, staff does not believe it is necessary or appropriate to delete the language of the</p>

		<p>efficient motors on MPL Line 4.[footnote omitted] In fact, MPL anticipates a 37 percent reduction in energy use on a per barrel basis when it transfers volumes from the Legacy System to MPL Line 4.[footnote omitted] Combining this fact with the fact that MPL does not forecast a significant increase in total throughput on the MPL System, means that the Project is expected to result in a reduction in energy use on the MPL System from its current state.[footnote omitted]</p> <p>217. <u>If MPL completes the proposed Project, the MPL System may increase its electricity use, as well as increase the amount of crude oil that MPL ships from Clearbrook to the Twin Cities. While MPL states that transferring crude oil transport from older lines on the MPL System to Line 4 will make the system more efficient as a whole—at least in the short term—whether the MPL System actually reduces its total energy use will depend on both efficiency of the system and shipper activity. It is possible that total energy use will decrease from current levels, but because the proposed Project will increase crude oil throughput capability on the MPL System by 185,000 bpd, a scenario where shipper activity causes the MPL System to use more energy than it does today is not unlikely.</u></p>		ALJ’s finding.
FoF # 218	DER 6/10/15	<p>218. Because While this Project satisfies meets the criteria for a CON without a neutral footprint condition and is expected to result in a net reduction of energy used by the MPL System, <u>at least in the short term and on a per barrel basis, the Administrative Law Judge concludes that it is not necessary to condition the CON on a “neutral footprint,” as suggested by DOC-DER, in order to mitigate environmental costs because the record demonstrates that conservation efforts would not negate need for the</u></p>	No position.	A decision on this exception is related to the decision made regarding Finding 215. Staff agrees that the language proposed is accurate, but does not believe it is necessary. Total energy consumption on the system could increase but it would be an as yet undetermined point in the future.

		<u>proposed Project and total energy consumption on the MPL System could increase after the proposed Project is implemented.</u> [footnote omitted]		
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