



April 24, 2015

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VIA E-FILING

The Honorable Jeanne M. Cochran
Office of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164-0620

RE: 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 Minnesota
MPUC Docket No. PL-5/CN-14-320
OAH Docket No. 68-2500-31889

Dear Judge Cochran:

Prior to the Parties filing their Initial Briefs in this matter, the Administrative Law Judge requested that the Parties address the issue of the Commission's authority to impose the Department of Commerce – Division of Energy Resources' ("DOC-DER") "neutral footprint" condition on Minnesota Pipe Line Company, LLC ("MPL"). MPL addressed the issue in its Initial Brief. DOC-DER did not, but set forth its position for the first time in its Reply Brief. In the course of doing so, DOC-DER mischaracterizes MPL's position. MPL files this brief response to clarify its position and to provide its reply to the DOC-DER.

DOC-DER implies in its Reply Brief that MPL disputes the Commission's authority to ever condition a Certificate of Need or to approve modifications to a project. MPL has said no such thing. As MPL stated in its Initial Brief: "[N]othing in Minnesota law provides authority for the Commission to require additional actions by an applicant once that applicant has already established that its project passes muster under the Commission's criteria for granting a CON." (Emphasis added.) MPL agrees that the Commission can approve a "suitable modification" to a project or condition a Certificate of Need as necessary to bring a proposed project into compliance with the Certificate of Need criteria set forth in Minnesota Rules. The issue is whether, when the record demonstrates and all parties agree that the criteria have been met, the Commission can nonetheless add requirements that go beyond the scope of the project.

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MPL and DOC-DER (the only two parties in the proceeding) agree that MPL has met the criteria necessary for a Certificate of Need. The DOC-DER Initial Brief nonetheless argues that the Commission can approve “suitable modifications” to a project and should do so in this case by requiring MPL to implement a “neutral footprint” policy. However, the rules make clear that any such “suitable modifications” can be approved in order to bring that project into compliance with the Rule criteria. The rules provide no authority for the Commission to impose new requirements on an applicant when the criteria have already been met. Additionally, the “neutral footprint” policy recommended by DOC-DER does not “modify” the size, type or timing of the Project or any other aspect of the Project itself. Rather, it would add a new condition to the duly established rule criteria for the granting of a Certificate of Need. As MPL has discussed, such new requirements exceed the current rule requirements and, if intended to be applied to future projects, require either new legislation or amended Certificate of Need Rules.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

/s/ Eric F. Swanson

Eric F. Swanson

Cc: Service List

10295308v2

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101-2147

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 Minnesota

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AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Mary G. Holly, of the City of Lake Elmo, County of Washington, the State of Minnesota, being first duly sworn, deposes and says that on the 24th day of April, 2015, she served the attached **Correspondence** to all said persons on the attached Service List, true and correct copies thereof, by eFiling with the eDocket system.

/s/ Mary G. Holly
Mary G. Holly

Subscribed and sworn to before me this
24th day of April, 2015.

/s/ Patricia Rabago
Notary Public

My Commission Expires: January 31, 2020

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