

No. A15-0016

**State of Minnesota
In Court of Appeals**

*In the Matter of the Application of North Dakota Pipeline Company LLC
for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota*

*In the Matter of the Application of North Dakota Pipeline Company LLC
for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota*

**BRIEF AND ADDENDUM OF INTERVENOR/RESPONDENT
NORTH DAKOTA PIPELINE COMPANY LLC**

Richard D. Snyder (#191292)
John E. Drawz (#24326)
Patrick D.J. Mahlberg (#0388028)
FREDRIKSON & BYRON, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
Telephone: (612) 492-7000
Facsimile: (612) 492-7077

*Attorneys for Intervenor/Respondent
North Dakota Pipeline Company LLC*

Lori Swanson (#0254812)
Alethea Huyser (#0389270)
OFFICE OF THE MINNESOTA
ATTORNEY GENERAL
1100 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101-2128
Telephone: (651) 757-1243
Facsimile: (651) 282-5832

*Attorneys for Respondent
Minnesota Public Utilities Commission*

Kathryn M. Hoffman (#0386759)
Leigh K. Currie (#0353218)
MINNESOTA CENTER FOR ENVIRONMENTAL
ADVOCACY
26 East Exchange Street, Suite 206
St. Paul, MN 55101
Telephone: (651) 287-4863
Facsimile: (651) 287-4873

*Attorneys for Relator
Friends of the Headwaters*

Gerald W. Von Korff (#113232)
RINKE NOONAN
1015 W. St. Germain Street, Suite 300
P.O. Box 1497
St. Cloud, MN 56302-1497
Telephone: (320) 251-6700
Facsimile: (320) 656-3500

*Attorneys for Amicus Curiae
Carlton County Land Stewards*

TABLE OF CONTENTS

Page

STATEMENT OF THE ISSUE	1
INTRODUCTION.....	2
REGULATORY BACKGROUND	3
A. Pipeline Certificate of Need and Route Permit Requirements.	3
B. Pipeline Environmental Review Requirements.....	5
STATEMENT OF THE CASE.....	7
A. The Sandpiper Pipeline Project.	7
B. The “System Alternatives” and “Route Alternatives” Proposed During the Joint Proceedings.....	8
C. The Commission’s August 25, 2014 Order.	11
D. The Commission’s October 7, 2014 Order.....	13
E. The Motions for Reconsideration	16
ARGUMENT	17
I. THE COMMISSION’S DECISION TO NOT REQUIRE AN EIS IS SUBJECT TO A DEFERENTIAL STANDARD OF REVIEW.....	17
II. THE COMMISSION’S DECISION TO NOT REQUIRE AN EIS AT THE PIPELINE CERTIFICATE OF NEED STAGE IS A CORRECT INTERPRETATION OF THE LAW AND IS CONSISTENT WITH THE COMMISSION’S LONG-STANDING PRACTICE.	19
A. MEPA Does Not Require the Preparation of an EIS at the Certificate of Need Stage	19
1. A Certificate of Need is not a Category of Governmental Action Requiring a Mandatory EIS.	19
2. A Certificate of Need is not a Final Governmental Action Requiring an EIS.....	21
B. MEPA’s Requirements are Satisfied by the Environmental Review that Takes Place at the Pipeline Route Permit Stage.....	25

C.	Relator’s and Amicus’s Assertion that an EIS is Mandatory at the Certificate of Need Stage is Unsupported and Meritless.....	25
1.	The Assertions of Relator and Amicus are Inconsistent with MEPA.	26
2.	Relator’s Argument is Circular.....	27
3.	Relator Erroneously Treats “System Alternatives” and “Route Alternatives” as Interchangeable Terms.	28
4.	The Environmental Review Standard Proposed by Relator and Amicus is Impractical and Would Lead to Abuses.....	29
	CONCLUSION.....	31

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Cnty. of Dakota v. City of Lakeville</i> , 559 N.W.2d 716 (Minn. Ct. App. 1997)	27
<i>Connaughty v. Winona Cnty. Bd. of Comm'rs</i> , 849 N.W.2d 71 (Minn. Ct. App. 2014)	27
<i>Friends of Twin Lakes v. City of Roseville</i> , 764 N.W.2d 378 (Minn. Ct. App. 2009)	18, 19
<i>Harviex v. Scott Cnty.</i> , No. C5-97-1735, 1998 WL 279218 (Minn. Ct. App. June 2, 1998)	23
<i>In the Matter of the Cities of Annandale and Maple Lake NPDES/SDS Permit Issuance</i> , 731 N.W.2d 502 (Minn. 2007)	18
<i>In re Application of Great River Energy</i> , No. A09-1646, 2010 WL 2266138 (Minn. Ct. App. June 8, 2010).	24, 25
<i>In re Declaring a Negative Need for an Env'tl. Impact Statement for the Proposed Living Word Bible Camp Project</i> , No. A13-1153, 2014 WL 3557954.....	19, 20
<i>In re Env'tl. Assessment Worksheet for 33rd Sale of Metallic Leases in Aitkin</i> , 838 N.W.2d 212 (Minn. Ct. App. 2013)	1, 22, 23
<i>In re Minn. Pipe Line Co.</i> , No. A07-1318, 2008 WL 2344736 (Minn. Ct. App. June 10, 2008)	6
<i>Markwardt v. State Water Res. Bd.</i> , 254 N.W.2d 371 (Minn. 1977)	17
<i>Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency</i> , 644 N.W.2d 457 (Minn. 2002)	17, 18, 19
<i>Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency</i> , 660 N.W.2d 427 (Minn. Ct. App. 2003)	18
<i>Minn. Ctr. for Env'tl. Advocacy v. Minn. Public Utilities Comm'n</i> , No. A10-812, 2010 WL 5071389 (Minn. Ct. App. Dec. 14, 2010).	6
<i>Minnesotans for Responsible Recreation v. Dep't of Natural Res.</i> , 651 N.W.2d 533 (Minn. Ct. App. 2002)	22

STATUTES

Minn. Stat. § 14.38, subd. 120

Minn. Stat. § 14.6917

Minn. Stat. § 116.04, subd. 5a(9).....6

Minn. Stat. § 116D.04, subd. 2a(a)5, 25

Minn. Stat. § 116D.04, subd. 2b27

Minn. Stat. § 116D.04, subd. 4a.....1

Minn. Stat. § 116D.04, subd. 5a.....20, 26

Minn. Stat. § 116D.04, subd. 101

Minn. Stat. § 216B.2433, 24

Minn. Stat. § 216E.0324

Minn. Stat. § 216G.014

Minn. Stat. § 216G.02, subd. 23, 5

RULES

Minn. R. 4410.0200, subp. 6522

Minn. R. 4410.0300, subp. 4.....6

Minn. R. 4410.310027

Minn. R. 4410.36005

Minn. R. 4410.3600, subp. 26, 26

Minn. R. 4410.440020

Minn. R. 4410.4400, subp. 24.....2, 5, 25

Minn. R. 4410.4600, subp. 2(E).....6, 26

Minn. R. 78521, 6, 20

Minn. R. 7852.0100, subp. 319

Minn. R. 7852.1400, subp. 19

Minn. R. 7852.15008

Minn. R. 7852.1900, subp. 35

Minn. R. 78533, 28

Minn. R. 7853.01304

Minn. R. 7853.0130(B)11

Minn. R. 7853.0130(B)(3)4

ADMINISTRATIVE PROCEEDINGS

In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project, MPUC Docket No. PL9/CN-13-15320

In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline, MPUC Docket No. PL5-CN-06-2.....21

In the Matter of the Application of Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for the Alberta Clipper and Southern Lights Diluent Pipeline Projects, MPUC Docket No. PL-9/CN-07-465 and CN-07-46421

In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kV Transmission Projects, MPUC Docket No. ET-2, E-002, et al./CN-06-111521

ADMINISTRATIVE MATERIALS

In the Matter of the Proposed Permanent Rules Relating to Pipeline Routing, Statement of Need and Reasonableness22, 25

STATEMENT OF THE ISSUE

Does the Minnesota Environmental Policy Act require preparation of an environmental impact statement at the certificate of need stage for a proposed pipeline?

Rulings below: *The Commission ruled that an environmental impact statement is neither required nor appropriate at the certificate of need stage for a pipeline project, and that full environmental review of the project will occur at the route permit stage.*

Authority:

- Minn. Stat. § 116D.04, subd. 4a
- *In re Env'tl. Assessment Worksheet for 33rd Sale of Metallic Leases in Aitkin*, 838 N.W.2d 212 (Minn. Ct. App. 2013)

The sole issue in this appeal is whether the Minnesota Environmental Policy Act (“MEPA”) requires an environmental impact statement (“EIS”) to be prepared at the certificate of need stage. Relator appealed under Minn. Stat. § 116D.04, subd. 10, which permits an aggrieved party to obtain judicial review of “a final decision on . . . the need for an environmental impact statement, or the adequacy of an environmental impact statement.” The Commission determined that an EIS is not required, and one was not prepared. Therefore, the only issue before the Court is whether an EIS was required.

The extensive discussion in the briefs of Relator and *amicus curiae* Carlton County Land Stewards (“Amicus”) about the adequacy of the environmental review that the Commission ordered for use in the certificate of need proceeding is not properly before the Court. Similarly, the validity of the alternative form of environmental review for pipeline route permits adopted by the Environmental Quality Board contained in Minn. R. Ch. 7852 is not before the Court. Amicus’s arguments ignore the Court’s

admonition in its February 27, 2015 Order that its brief should be confined to issues raised by the parties and to evidence in the record.

INTRODUCTION

Under MEPA, environmental review equivalent to an EIS must take place at the *route permit* stage for a proposed crude oil pipeline. Minn. R. 4410.4400, subp. 24. Here, the Sandpiper Pipeline project proposed by North Dakota Pipeline Company LLC (“NDPC”) will undergo an EIS-equivalent environmental review in the route permit proceeding that the Minnesota Public Utilities Commission (“Commission”) will conduct. That EIS-equivalent environmental review will include review of 54 alternative routes that have been proposed.

Contrary to the assertions of Relator and Amicus, Minnesota law *does not require* the preparation of an EIS as part of the Commission’s consideration of a certificate of need. Neither does Minnesota law require that multiple environmental reviews occur for a single project; the opposite is true. Relator and Amicus cite no authority to support their assertions because none exists.

Nevertheless, despite the fact that Minnesota law does not require it, the Commission ordered the preparation of an environmental review document for use by the parties and the Commission in the certificate of need proceeding. This is *in addition* to the EIS-equivalent environmental review that will occur later at the route permit stage. The Commission ordered the type and scope of environmental analysis that, in the Commission’s judgment, was appropriate to the criteria it is required to consider in making a determination on a certificate of need. Despite Relator’s assertions, the

Commission's decision to require *more* environmental analysis than is required by Minnesota law is no reason to reverse the Commission's decision.

REGULATORY BACKGROUND

A. Pipeline Certificate of Need and Route Permit Requirements.

An applicant proposing to build a crude oil pipeline in Minnesota must acquire both a certificate of need and a pipeline route permit from the Commission. *See* Minn. Stat. § 216B.243, subd. 2 (requiring a certificate of need for any large energy facility); Minn. Stat. § 216G.02, subd. 2 (prohibiting pipeline construction without a route permit issued by the Commission).

Different criteria apply to the Commission's evaluation of a certificate of need application and its evaluation of a route permit application. Four primary criteria govern issuance of a certificate of need. Minn. Stat. § 216B.243 and Minn. R. Ch. 7853. A certificate must be granted if the Commission determines that:

- 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.

Minn. R. 7853.0130. The rule also enumerates seventeen “considerations” and sub-considerations for the Commission’s determination. *Id.* One of the considerations bearing on whether a “more reasonable and prudent alternative” exists is “the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives.” Minn. R. 7853.0130(B)(3).

The criteria and the process for pipeline route permits are governed by Minn. Stat. § 216G.01–.12, and Minn. R. 7852.0100–.4100. These rules require public participation, input from other agencies, and extensive consideration of alternative routes and environmental impacts. The criteria for a pipeline route permit require the Commission to consider:

- A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;
- B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;
- C. lands of historical, archaeological, and cultural significance;
- D. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;
- E. pipeline cost and accessibility;
- F. use of existing rights-of-way and right-of-way sharing or paralleling;
- G. natural resources and features;
- H. 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 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices;

- I. cumulative potential effects of related or anticipated future pipeline construction; and
- J. the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minnesota Statutes, section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

Minn. R. 7852.1900, subp. 3.

B. Pipeline Environmental Review Requirements.

Under MEPA, the Environmental Quality Board (“EQB”) is required to establish “categories of actions” for which environmental review is mandatory. Minn. Stat. § 116D.04, subd. 2a(a). The EQB, by rule, has established that “*routing* of a pipeline” is a category of action requiring mandatory environmental review. Minn. R. 4410.4400, subp. 24 (emphasis added). The Commission is the responsible governmental unit (“RGU”) for conducting the review. *Id.* No pipeline can be built unless a route permit is approved by the Commission, and no route permit can be approved unless the required environmental review has occurred. *Id.*; Minn. Stat. § 216G.02, subd. 2.

MEPA authorizes the EQB to promulgate rules relating to “alternative forms” of environmental review for projects that undergo environmental review under other governmental processes, such as the Commission’s route permit process, as long as the processes “address substantially the same issues” as an EIS, and use similar procedures as an EIS, including the opportunity for participation by the public and other agencies. Minn. R. 4410.3600. Allowing “alternative forms” of environmental review furthers MEPA’s goal of “elimination of unnecessary duplication of environmental reviews.”

Minn. Stat. § 116.04, subd. 5a(9). *See also* Minn. R. 4410.0300, subp. 4 (stating that the objectives of the EQB's rules, including the rule permitting alternative forms of environmental review, are to "reduce delay and uncertainty in the environmental review process" and "eliminate duplication").

The EQB has concluded that the extensive review of environmental impacts required in Minn. R. Ch. 7852 for granting a pipeline route permit satisfies the requirements for an "alternative form" of environmental review. This Court has held that the environmental review requirements contained in Minn. R. Ch. 7852 comply with MEPA. *See Minn. Ctr. for Env'tl. Advocacy v. Minn. Public Utilities Comm'n*, No. A10-812, 2010 WL 5071389, at *3-4 (Minn. Ct. App. Dec. 14, 2010) (examining the alternative environmental review process contained in the route permit rules in Minn. R. Ch. 7852 and concluding that the Commission "complied with the alternative environmental-review process and thereby satisfied its environmental review responsibilities under MEPA"); *see also In re Minn. Pipe Line Co.*, No. A07-1318, 2008 WL 2344736, at *10 (Minn. Ct. App. June 10, 2008) (stating that, consistent with MEPA, Minn. R. Ch. 7852 contains an approved alternative form of environmental review for proposed pipelines).

No EIS needs to be prepared. An alternative form of environmental review for a project has been approved by the EQB, and the project is "exempt" from further environmental review under MEPA. *See* Minn. R. 4410.3600, subp. 2 ("projects reviewed under that alternative review procedure shall be exempt from environmental review"); Minn. R. 4410.4600, subp. 2(E) (providing "exemptions" under MEPA for

“projects for which environmental review has already been completed or for which environmental review is being conducted pursuant to part 4410.3600 or 4410.3700”).

STATEMENT OF THE CASE

A. The Sandpiper Pipeline Project.

NDPC has proposed the Sandpiper Pipeline to transport crude oil from Beaver Lodge Station, North Dakota, to terminals in Clearbrook, Minnesota, and Superior, Wisconsin. (Rec. Table 1 No. 16.)¹ Approximately 299 miles of the Sandpiper Pipeline will be located in Minnesota. (Rel. Add. p. 3.)²

In 2013, NDPC filed two applications with the Commission: an application for a certificate of need and an application for a pipeline route permit. (Rec. Table 1 No. 16; Rec. Table 2 No. 2.) Following hearings and public comment, the Commission accepted the applications as complete and referred both to the Office of Administrative Hearings for a joint contested case proceeding, public meetings, and public comments. (Rec. Table 1 No. 90; Rec Table 2 No. 79.)

The certificate of need application and the route permit application have separate dockets and separate docket numbers. *See* MPUC Docket Nos. PL-6668/CN-13-473, PPL-13-474. The two proceedings present different issues, which are considered under the different criteria discussed above. Relevant to this appeal, in the certificate of need

¹ “Rec. Table ___” refers to the document on the Administrative Record Index that the Minnesota Public Utilities Commission filed with the Court.

² “Rel. Add. ___” refers to the cited page in Relator’s Addendum. “NDPC Add. ___” refers to the cited page in North Dakota Pipeline Company LLC Addendum attached to this brief.

docket, NDPC is seeking a determination that a need exists for the Sandpiper Pipeline as proposed. In the route permit proceeding, the issue is: what is the appropriate route that should be used to connect Beaver Lodge Station, Clearbrook, and Superior? NDPC's "Preferred Route" will cross Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin, and Carlton counties in Minnesota.

B. The "System Alternatives" and "Route Alternatives" Proposed During the Joint Proceeding.

Originally, the two applications were processed in a joint proceeding, and the comments and input from the public and other agencies addressed both applications. The Commission established a lengthy comment period to give the public and other agencies and organizations an opportunity to comment on potential human and environmental impacts, and to suggest alternative pipeline routes to be considered in the comparative environmental analysis ("CEA") that is prepared as part of the EIS-equivalent review in the route permit proceeding. *See* Minn. R. 7852.1500 ("A comparative environmental analysis of all of the pipeline routes accepted for consideration at a public hearing shall be prepared . . ."). The CEA is prepared by the Department of Commerce, Energy Environmental Review and Analysis ("DOC-EERA"). (Rec. Table 1 No. 272.) In March 2014, DOC-EERA conducted seven public information meetings in six counties along the proposed pipeline route. On April 14, 2014, the Commission extended the public comment period until May 30, 2014. (Rec. Table 2 No. 163.)

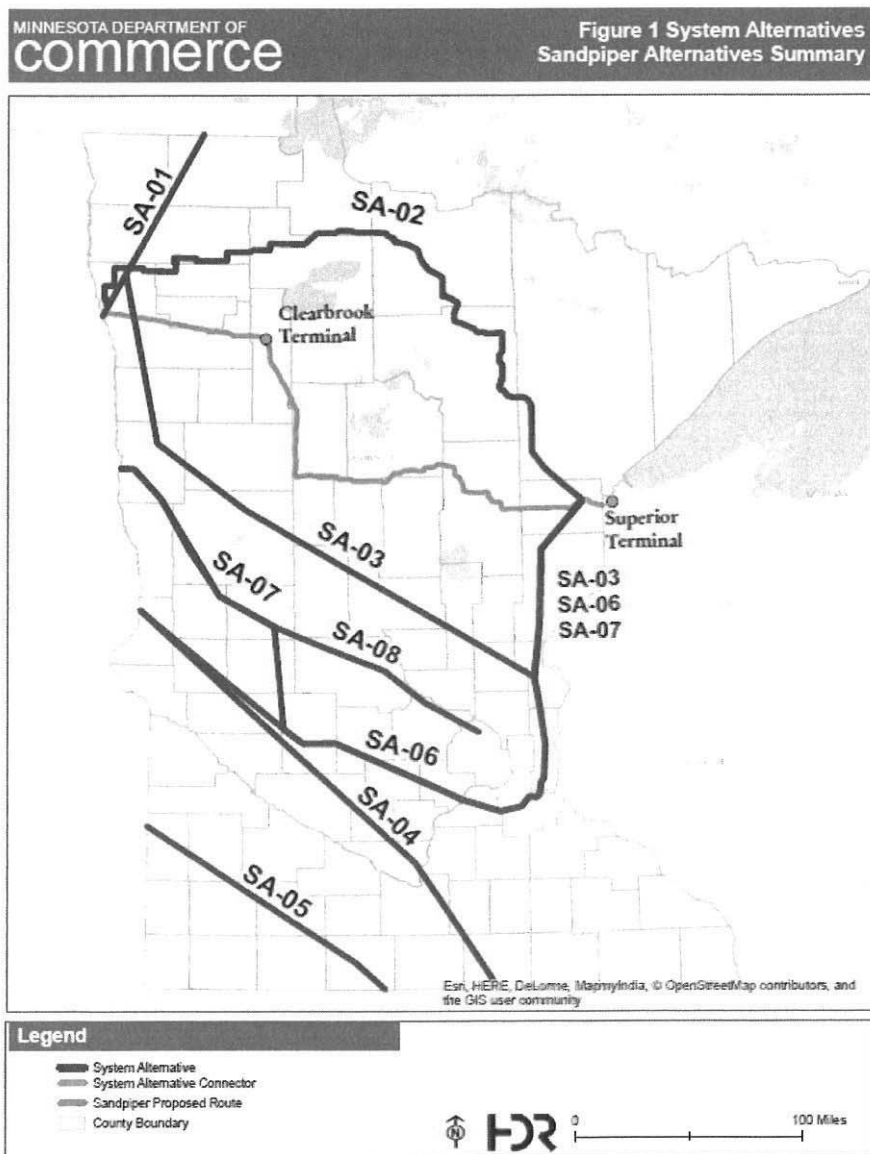
The Commission received over 1,000 comments from more than 900 commenters and organizations. (Rec. Table 1 No. 272; Rec. Table 2 No. 406.) (NDPC Add. 4.) The

comments provided suggestions for both “route alternatives” and “system alternatives” for the proposed project. (*Id.*)

“Route alternatives” are variations on an applicant’s proposed route. The Commission and DOC-EERA define a “route alternative” as “a deviation from the Company’s proposed route to address a concern or issue and that meets the stated purpose and need of the proposed project with no apparent major engineering or environmental issues.” (Rec. Table 1 No. 272; Rec. Table 2 No. 406.) (NDPC Add. 4, n.5.) Route alternatives have specified geographic locations, including lengths and centerlines. *See* Minn. R. 7852.0100, subp. 31 (defining “route” as “the proposed location of a pipeline between two end points”). Because route alternatives have defined geographic locations, it is possible to determine which parcels of land are crossed by a route alternative and which environmental features may be affected by that alternative. The Commission has broad discretion when determining which route alternatives will be accepted for further consideration in the route proceeding and evaluated in the comparative environmental analysis. Minn. R. 7852.1400, subp. 1 (stating that the Commission may accept route alternatives “it considers appropriate for further consideration”).

“System alternatives” are not proposed routes, but are hypothetical alternatives to the project itself, including alternative transportation systems such as truck, rail, or different pipeline systems. The Commission and DOC-EERA define the eight “System Alternatives” at issue in this appeal as “a pipeline route that is generally separate or independent of the pipeline route proposed by the Company, and that does not connect to

the specified Project endpoints (the North Dakota border to Clearbrook and Clearbrook to Superior, Wisconsin).” (Rec. Table 1 No. 272; Rec. Table 2 No. 406.) (NDPC Add. 4, n.5.) The eight System Alternatives are theoretical project alternatives, not actual projects that anyone proposes to build.



Alternatives proposed by Relator (designated as SA-04) is a theoretical pipeline that

would traverse North Dakota, South Dakota, Minnesota, Iowa, and terminate in Illinois (only the Minnesota portion is depicted here). (Rec. Table 2 No. 318.) Even if built, it would not move crude oil to terminals in Clearbrook, Minnesota and Superior, Wisconsin, which is the “need” that the Sandpiper Pipeline is designed to meet.

Unlike route alternatives, the proposed System Alternatives do not have specific geographic locations and centerlines. Instead, they are corridors, approximately two miles wide, somewhere within which a pipeline could be constructed. They are intended to test whether an actual need exists for the Sandpiper Pipeline or if other “more reasonable and prudent alternatives” exist by comparing the proposed pipeline to other, hypothetical alternatives. The System Alternatives, to the extent they are relevant, are relevant solely to the certificate of need application. *See* Minn. R. 7853.0130(B).

C. The Commission’s August 25, 2014 Order.

On July 17, 2014, DOC-EERA filed comments and recommendations summarizing the alternative route designation process and identifying 54 route alternatives and eight System Alternatives proposed during the public comment period. (Rec. Table 2 No. 318.) DOC-EERA recommended that the Commission consider 53 of the proposed route alternatives but not the eight System Alternatives, because “they do not meet the purpose of the project as identified in the permit application and are, therefore, not alternative routes for accomplishing the purpose of the project.” (*Id.*) On August 7, 2014, the Commission met to consider which route alternatives would be accepted for further consideration in the comparative environmental analysis and in the route permit public hearings. (Rec. Table 2 No. 337.)

On August 12, 2014, the Commission issued a Notice of Comment Period requesting comments on:

- what if any of the eight system alternatives identified in the EERA Alternative Routes Summary Report should be considered further in these proceedings?
- what is the legal basis for determining whether a system alternative should be considered in the certificate of need proceedings?
- what is the legal basis for determining whether a system alternative should be considered in the route permit proceeding?

(Rec. Table 1 No. 233; Rec. Table 2 No. 369.)

On August 25, 2014, the Commission issued an Order accepting for further review the 53 route alternatives recommended by DOC-EERA, as well as one of the System Alternatives modified by DOC-EERA to include a connection at Clearbrook, and directed that the administrative law judge consider the alternatives as part of the route permit proceeding. (Rec. Table 1 No. 272; Rec. Table 2 No. 406.) (NDPC Add. 4, 12.) Thus, importantly, *all* route alternatives selected for further review *will be* subject to the EIS-alternative comparative environmental analysis that will take place in the route permit proceeding.

With respect to the eight proposed System Alternatives, the Commission determined that it would be beneficial to receive additional input from the parties and the public on whether and how to consider them, including “how these options should be considered in the certificate of need process” and “whether they ought to be treated as route alternatives, system alternatives, or both.” (Rec. Table 1 No. 272; Table 2 No. 406.) (NDPC Add. 13.)

D. The Commission's October 7, 2014 Order.

In response to the Commission's August 12, 2014 Notice of Comment Period, the Commission received 158 comment letters from the parties, state and local government agencies, citizens groups, and members of the public. (Rel. Add. 3.) Many of the commenters, including the MPCA and DNR, suggested bifurcating the two proceedings so as to permit "better understanding by the public and the parties of the issues being considered in each of them." (*Id.*) They stated that "the certificate of need proceeding is the appropriate forum for consideration of the System Alternatives," and that the certificate of need proceeding should occur before the route permit proceeding. (*Id.*)

The Commission held a meeting on September 11, 2014, at which the parties presented arguments on whether the joint proceedings should be bifurcated, and on the scope of environmental review, if any, that should take place at the certificate of need stage. The DOC-EERA representative responsible for conducting environmental reviews explained to the Commission that an environmental analysis of the System Alternatives occurring at the certificate of need stage *necessarily* could not include the same level of detail as a comparative environmental analysis conducted at the route permit stage. (Rec. Table 1 No. 300 (Tr. 90-93).) (NDPC Add. 23-26.) The DOC-EERA representative explained that, unlike the detailed route alternatives that are analyzed in the route permit proceeding, the System Alternatives do not describe the geographic location for a pipeline, only a general corridor. (*Id.* Tr. 91.) (NDPC Add. 24.) Accordingly, the same level of detailed analysis is not possible. The DOC-EERA representative illustrated the difference in the level of detail that can be achieved when analyzing broad System

Alternatives as opposed to defined routes: “if you’re looking at land use and you’re going through populated areas, we would know [for the System Alternative] a basic density through that area, while when we are looking at routing, we’re going to be looking at number of houses within so many feet” of the proposed pipeline. (*Id.* Tr. 93.) (NDPC Add. 26.)

Representatives of Relator and Amicus also testified at the September 11, 2014, Commission meeting. Contrary to the position that Amicus now takes, on September 11, it *agreed* that the environmental analysis conducted in the certificate of need proceeding necessarily would be a high-level review, not an EIS. (*Id.* Tr. 72:1-5; Tr. 73:2-3.) (NDPC Add. 20, 21.) Amicus “agree[d] completely” with the Commission Chair’s statement that “what we’re trying to do with the certificate of need stage is only have enough large-scale environmental information that we’re not making a decision without regard to the environmental impact,” and that “[i]t’s a very different level of review.” (*Id.* Tr. 78:10-16.) By contrast, Relator’s representative asserted that an EIS was required in order to consider the System Alternatives at the certificate of need stage. (*Id.* Tr. 52:11-19.) (NDPC Add. 18.) However, despite demanding an EIS, Relator’s representative could not explain how an EIS could be prepared under these circumstances. (*Id.* Tr. 53:8.) (NDPC Add.19) (stating “again, I’m not exactly sure how you do that”).)

On October 7, 2014, the Commission bifurcated the two proceedings, and stayed the route permit proceeding until the certificate of need stage is completed. It further ordered that six of the eight System Alternatives be subject to review in a high level

environmental document at the certificate of need stage.³ Citing Minn. Stat. § 216B.243, subd. 3(6), the Commission reasoned that the criteria for a certificate of need includes an evaluation of “possible alternatives for satisfying the energy demand or transmission needs,” and that therefore, evaluation of the six proposed System Alternatives was relevant to the question of whether there is a need for the pipeline project as proposed. (Rec. Table 1 No. 272; Rec. Table 2 No. 406.) (Rel. Add. 7.) Because the System Alternatives are theoretical alternatives, not actual proposed projects, and are not site-specific proposals that lend themselves to detailed environmental review, the Commission recognized that, “of necessity,” a detailed environmental document was impossible in the certificate of need proceeding:

[T]he certificate of need decision is a preliminary decision, involving a high level of examination and review appropriate for the type of decision being made. Accordingly, the Commission seeks to ensure that the record in the certificate of need proceeding contains an adequate, albeit preliminary, environmental analysis of the system alternatives. The Commission recognizes that the environmental analysis, *of necessity*, will be a more tiered, broad-based analysis, reflecting a *high-level review appropriate to the level of detail of the [system] alternative being considered. The more detailed and site-specific environmental review will be completed as part of the routing proceeding, if need is shown.* . . . The analysis need not, and likely cannot, include the significant analytical detail used in the comparative environmental analysis to be conducted in the routing process.

³ The Commission agreed with the MPCA that two of the proposed System Alternatives should not be considered. SA-01 “would require crossing the border into Canada,” and SA-02 presented a “heightened risk to natural resources.” (Rel. Add. 11.)

(*Id.* at 12 (emphasis added).) The Commission then directed DOC-EERA “to conduct the necessary environmental analysis of the six System Alternatives, as well as the Company’s proposed corridor.” (*Id.*)

E. The Motions for Reconsideration.

Both Relator and NDPC moved for reconsideration of the Commission’s October 7, 2014 Order. (Rec. Table 1 No. 319; Rec. Table 1 No. 314.) Reiterating the argument that it made at the September 11, 2014 hearing, Relator argued that “prior to the Commission making a decision on the request for a certificate of need (“CON”), a full environmental impact statement (“EIS”) must be prepared . . . ,” but again offered no explanation for how that would be feasible. (Rec. Table 1 No. 319 at 2.) NDPC moved for reconsideration, arguing that the Commission should not have bifurcated the proceedings, and that the Commission should not have required *any* form of environmental analysis of the System Alternatives at the certificate of need stage. NDPC argued that “requiring environmental review in both the [certificate of need] and route permit proceedings would be unnecessarily duplicative and inconsistent with the objectives of MEPA . . . to ‘eliminat[e] . . . unnecessary duplication of environmental reviews.’” (Rec. Table 1 No. 314 at 20) (quoting Minn. Stat. § 116.04, subd. 5a).

On December 5, 2014, the Commission denied both Relator’s and NDPC’s motions for reconsideration. (Rec. Table 1 No. 404.) Relator filed its petition for writ of certiorari on January 5, 2015, seeking review of the Commission’s December 5, 2014, Order denying reconsideration.

ARGUMENT

I. THE COMMISSION'S DECISION TO NOT REQUIRE AN EIS IS SUBJECT TO A DEFERENTIAL STANDARD OF REVIEW.

An RGU's decision to not require an EIS is subject to the deferential standard of review provided in Minn. Stat. § 14.69. *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency (MCEA v. MPCA)*, 644 N.W.2d 457, 463-64 (Minn. 2002). On review of an agency decision, this Court may:

[A]ffirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69. The party seeking review bears the burden of proving that the agency's conclusions violate one or more provisions of Section 14.69. *Markwardt v. State Water Res. Bd.*, 254 N.W.2d 371, 374 (Minn. 1977).

When reviewing an agency decision, the Court must:

adhere to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness,

and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience.

Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency, 660 N.W.2d 427, 433 (Minn. Ct. App. 2003) (quoting *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977)). "The agency decision-maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency's authority." *Id.* (citing *In re Special Instruction & Servs. for Pautz*, 295 N.W.2d 635, 637 (Minn.1980)).

The judicial deference and the presumption of correctness that agency decisions receive extend to the agency's interpretation of its rules, particularly where the agency's interpretation involves technical issues, unclear or ambiguous language, or where the agency's interpretation is one of long standing. *In the Matter of the Cities of Annandale and Maple Lake NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 513 (Minn. 2007).

The rationale for the reviewing court's deference is rooted in the separation of powers doctrine: "the legislature may not delegate to the courts 'duties which are essentially administrative in character.'" *MCEA v. MPCA*, 644 N.W.2d at 463-64 (quoting *Reserve Mining*, 256 N.W.2d at 824). It is further justified by agency subject matter expertise. *In re Annandale*, 731 N.W.2d at 513.

The Supreme Court has held an RGU's conclusion that an EIS is not required under MEPA is presumed to be correct and is entitled to deference by the reviewing court. *See MCEA v. MPCA*, 644 N.W.2d at 464; *see also Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378, 381 (Minn. Ct. App. 2009) (holding that a court must defer to an RGU's negative determination on the need for an EIS "unless the decision reflects

an error of law, is arbitrary and capricious, or is unsupported by substantial evidence”). In *MCEA v. MPCA*, the Supreme Court explained that whether an EIS is required “necessarily requires application of the agency’s technical knowledge and expertise to the facts presented” and that, therefore, “it is appropriate to defer to the agency’s interpretation of whether the statutory standard is met.” 644 N.W.2d at 464.

II. THE COMMISSION’S DECISION TO NOT REQUIRE AN EIS AT THE PIPELINE CERTIFICATE OF NEED STAGE IS A CORRECT INTERPRETATION OF THE LAW AND IS CONSISTENT WITH THE COMMISSION’S LONG-STANDING PRACTICE.

Relator cites no authority to establish that an EIS shall be prepared for a pipeline certificate of need. No such authority exists. In the absence of direct authority requiring the preparation of an EIS at the certificate of need stage, the Commission’s decision to order the preparation of an environmental document tailored to the relevant certificate of need criteria was neither an error of law nor arbitrary and capricious.

A. MEPA Does Not Require the Preparation of an EIS at the Certificate of Need Stage.

1. A Certificate of Need is not a Category of Governmental Action Requiring a Mandatory EIS.

“Environmental review in Minnesota is governed not only by MEPA, but also by rules adopted by the EQB.” *In re Declaring a Negative Need for an Envntl. Impact Statement for the Proposed Living Word Bible Camp Project*, No. A13-1153, 2014 WL 3557954, at *4 (Minn. Ct. App. July 21, 2014) (citing Minn. R. 4410.1000-.3100). “The legislature has conferred broad rulemaking authority on the EQB, requiring it to promulgate rules governing particular procedures and ‘any additional rules which are

reasonably necessary to carry out the requirements of environmental review under MEPA.” *Id.* See Minn. Stat. § 116D.04, subd. 5a (authorizing EQB to adopt rules implementing MEPA). Rules adopted by the EQB pursuant to its statutory authority have “the force and effect of law.” Minn. Stat. § 14.38, subd. 1 (2012).

The EQB has determined that an EIS is *not* needed for a certificate of need. It has established “Mandatory EIS Categories” for certain governmental actions. Minn. R. 4410.4400. The consideration of a certificate of need for a pipeline is *not* a governmental action for which the EQB requires a mandatory EIS. Instead, the EQB has determined that the environmental review required by MEPA is satisfied by the review that takes place under the route permit rules for pipelines. Minn. R. Ch. 7852. Significantly, Relator admits this fact. It concedes that “[t]he route permit process includes MEPA-compliant environmental review.” (Rel. Brf., at 3.)

Consistent with the EQB’s determination, the Commission has never required an EIS for a pipeline certificate of need. For example, in a recent certificate of need proceeding involving an upgrade to an existing pipeline, environmental intervenors argued that MEPA required the Commission to conduct an EIS before granting the certificate of need. The Commission disagreed, stating that “neither MEPA nor its rules require the Commission to evaluate a formal environmental review document for purposes of granting a certificate of need.” *In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project*, Docket No. PL9/CN-13-153, Order Granting a Certificate of Need, 22 (Nov. 7, 2014). In other cases, the Commission has consistently *not* required

preparation of an EIS in pipeline certificate of need proceedings. *See e.g., In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline*, MPUC Docket No. PL5-CN-06-2; *In the Matter of the Application of Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for the Alberta Clipper and Southern Lights Diluent Pipeline Projects*, MPUC Docket Nos. PL-9/CN-07-465 and CN-07-464. The Commission, applying similar criteria for certificates of need for high voltage transmission lines, also has not required EISs to be prepared. *E.g., In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kV Transmission Projects*, MPUC Docket Nos. ET-2, E-002, *et al.*/CN-06-1115. The Commission's consistent interpretation that an EIS is not mandatory in a certificate of need proceeding is correct and is entitled to deference.

2. A Certificate of Need is not a Final Governmental Action Requiring an EIS.

Under MEPA and the relevant administrative rules, environmental review is project-based, not permit-based. The EQB's rules define "project" as:

A governmental action, the results of which would cause *physical manipulation of the environment*, directly or indirectly. The determination of whether a project requires environmental documents shall be made by reference to the physical activities to be undertaken and *not to the governmental process* of approving the project.

Minn. R. 4410.0200, subp. 65 (emphasis added).⁴ A “‘project’ for purposes of the MEPA is a definite, site-specific, action that contemplates on-the-ground environmental changes.” See *Minnesotans for Responsible Recreation v. Dep’t of Natural Res.*, 651 N.W.2d 533, 540 (Minn. Ct. App. 2002) (holding that to the extent a “system plan” for off-highway vehicle use in forests did not propose any site-specific development, it was not a “project” requiring an environmental assessment worksheet under MEPA); see also *In re Env’tl. Assessment Worksheet for the 33rd Sale of State Metallic Leases in Aitkin*, 838 N.W.2d 212, 217 (Minn. Ct. App. 2013) (“*Metallic Leases*”) (holding that a mineral rights lease that did not contain detailed site-specific plans for mineral extraction was not a “project” requiring detailed environmental review).

In *Metallic Leases*, the DNR announced its intent to lease mineral interests in certain vast expanses of land. Several individuals submitted a petition to require an

⁴ Similarly, the *Statement of Need and Reasonableness* for the pipeline route permit rules contemplates that the alternative environmental review provided for in the rules will apply to the project as a whole:

Under this approach, *pipelines* subject to the proposed rules would not actually be reviewed through environmental assessment worksheets or environmental impact statements, but would receive equivalent review under the routing and permitting process established in the proposed rules. . . . The proposed rules provide a review process that minimizes duplication, provides for timely review, meets the requirements of environmental review, and establishes an orderly method for the routing and permitting of *pipeline projects*.

In the Matter of the Proposed Permanent Rules Relating to Pipeline Routing, Statement of Need and Reasonableness, at p. 2 (Sept. 30, 1988) (emphasis added). (NDPC Add. 30.)

environmental assessment worksheet (“EAW”). As with an EIS, MEPA requires an EAW for certain “projects.” 838 N.W.2d at 216. DNR denied the EAW request, and the individuals appealed. This Court held that an EAW was not required because the mineral leases were not “projects.” The leases did not authorize site-specific, on-the-ground changes to the environment, only the possibility that such changes might occur at some point and location in the future if other events occur first:

To the extent that the leases grant exclusive rights to explore for and mine minerals, they also contemplate the possibility of on-the-ground physical changes to the environment. And the leases are somewhat site-specific, designating mining units, each encompassing hundreds of acres, in which mineral exploration and mining may occur in the future. But the contemplated physical changes are indefinite. And the locations of any particular future activities are not ascertainable now because the sites in question cover a vast area Whether any such activities take place will depend not only on . . . business decisions to pursue them, but also on [the lessees’] ability to obtain required approvals and permits.

Id. at 217-18. The Court noted that environmental review would be required “if and when more definite exploration plans coalesce.” *Id.* at 218; *see also Harviex v. Scott Cnty.*, No. C5-97-1735, 1998 WL 279210, at *3 (Minn. Ct. App. June 2, 1998) (holding that a “successful bid for the purchase of land does not involve ‘governmental action’ triggering the need for an assessment” because the applicant will need to obtain additional permits before it can begin any activity on the property).

Like the DNR’s mineral leases, a certificate of need for a pipeline, standing alone, does not authorize on-the-ground environmental changes. Rather, additional regulatory approval – specifically, a route permit – is required, and the required EIS-equivalent

environmental review occurs at that stage. Like the mineral leases, which contain no details or site specific areas where activities will occur, any system alternatives considered at the certificate of need stage are not site-specific locations, but are alternative modes of transportation (e.g., truck and rail), or as in this case, alternative two-mile-wide corridors somewhere within which a pipeline could be routed. Like the mineral leases, the certificate of need does not trigger an EIS because, standing alone, it is not a “project.”

This same rationale was applied by this Court to conclude that an EIS, or an equivalent environmental review, is neither necessary nor practical at the certificate of need stage for a high voltage transmission line. *In re Application of Great River Energy*, No. A09-1646, 2010 WL 2266138 (Minn. Ct. App. June 8, 2010). Similar to the approval process for pipelines, an applicant seeking to build a high voltage transmission line must obtain both a certificate of need and a route permit from the Commission. Minn. Stat. §§ 216B.243 and 216E.03. In *Great River*, similar to the arguments in this case, environmental groups argued that the environmental review conducted in the certificate of need proceeding was inadequate and should have been more detailed. This Court disagreed, explaining that “an environmental report at the need stage, although important, *does not address the site-specific environmental details that will necessarily be addressed in route permit proceedings.*” 2010 WL 2266138, at *4 (emphasis added). The Court concluded that “what the relators claim to be insufficiencies in the environmental report are not insufficiencies for a need-stage report but rather are matters required to be addressed in significant analytical detail at the permit stage.” *Id.* Here, as

in *Great River*, the detailed, site-specific environmental review required by MEPA will occur at the route permit stage.

B. MEPA's Requirements are Satisfied by the Environmental Review that Takes Place at the Pipeline Route Permit Stage.

EQB's broad rulemaking authority under MEPA includes establishing "categories of action" for mandatory environmental review. Minn. Stat. § 116D.04, subd. 2a(a). The EQB is also authorized to "identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement . . . to be used in lieu of an environmental impact statement." *Id.* subd. 4a.

The EQB, by rule, has established that "routing of a pipeline" is a category of action for mandatory environmental review. Minn. R. 4410.4400, subp. 24. The EQB has further determined that the pipeline routing rules, which provide for extensive environmental analysis and input from the public and from other agencies, are sufficiently equivalent to the EIS as to constitute an approved "alternative form" of environmental review that substitutes for an EIS. *See In the Matter of the Proposed Permanent Rules Relating to Pipeline Routing, Statement of Need and Reasonableness*, p 2 (Sept. 30, 1988). (NDPC Add. 30).

MEPA's requirements are satisfied by the environmental review that will take place at the route permit stage.

C. Relator's and Amicus's Assertion that an EIS is Mandatory at the Certificate of Need Stage is Unsupported and Meritless.

Relator and Amicus are unable to identify any provision in MEPA, or in the EQB's rules, expressly requiring an EIS to be prepared in a pipeline certificate of need

proceeding. They are likewise unable to identify cases in which the Commission has required an EIS in a pipeline certificate of need proceeding, and are unable to identify cases in which a court has required it. Instead, they offer a view of what they think the law should be, not what it is. Their assertions are misplaced.

1. The Assertions of Relator and Amicus are Inconsistent with MEPA.

The assertion that EIS-equivalent environmental review must take place not only at the route permit stage, but also at the certificate of need stage, is contrary to MEPA's language and intent. MEPA's objective is to *avoid* multiple environmental reviews of a project, not *require* them. See Minn. Stat. § 116D.04, subd. 5a (requiring the EQB to establish rules to, among other things, "eliminat[e] unnecessary duplication of environmental reviews").

Under the EQB's rules, if the EQB has approved an alternative form of environmental review (as it has done in the pipeline route permit rules) "projects reviewed under that alternative review procedure *shall be exempt*" from further environmental review. Minn. R. 4410.3600, subp. 2 (emphasis added). See also Minn. R. 4410.4600, subp. 2(E) (exempting from the EIS requirement projects "for which environmental review is being conducted pursuant to part 4410.3600," *i.e.*, the alternative environmental review procedure). Because the Sandpiper Project is undergoing alternative environmental review under the Commission's route permit rules, it is exempt from any further review under an EIS. The Commission correctly concluded that an EIS is not required at the certificate of need stage.

2. Relator's Argument is Circular.

Relator argues that the prohibition on final governmental approval of projects contained in Minn. Stat. § 116D.04, subd. 2b, and Minn. R. 4410.3100 makes an EIS mandatory at the certificate of need stage. (Rel. Brf. at 21.) Both the rule and the statute state that “*if*” an environmental impact statement is required, “a project may not be started and a final governmental decision may not be made to grant a permit, approve a project or begin a project” until the EIS is completed or “a negative declaration on the need for an EIS is issued.”

Relator's argument is wholly circular; it relies on provisions that are applicable only “if” an EIS is required to argue that an EIS, in fact, is required. In this case, the Commission has determined that an EIS is *not* required, so the “prohibition” in the cited provisions is inapplicable.⁵ Moreover, the alternative form of environmental review that the EQB has determined is equivalent to an EIS will take place at the route permit stage. Because a route permit is required before any construction can begin, the Sandpiper Pipeline project will not be started, and final approval of the project will not be granted, until all required environmental review has been completed in the route permit proceeding.

⁵ See *Connaughty v. Winona Cnty. Bd. of Comm'rs*, 849 N.W.2d 71, 83 (Minn. Ct. App. 2014) (holding that a county permit was not granted prematurely where the county issued negative EIS declaration before final governmental decision to grant a CUP); see also *Cnty. of Dakota v. City of Lakeville*, 559 N.W.2d 716, 720 (Minn. Ct. App. 1997) (“Neither the MEPA nor the eminent domain statutes prohibit a county board from initiating condemnation proceedings to secure right-of-way for a project before the environmental review process for the project is complete.”).

3. Relator Erroneously Treats “System Alternatives” and “Route Alternatives” as Interchangeable Terms.

Relator erroneously argues that an EIS is required because the Commission’s decision on the certificate of need is a “final government decision” that “will eliminate other routes from consideration, thereby limiting alternatives and prejudicing the ultimate decision prior to completion of environmental review.” (Rel. Brf. at 22.) That argument, which the Commission heard and rejected, misunderstands and misstates the purpose of the certificate of need proceeding, and the purpose of considering the system alternatives, in the need proceeding.

First, the purpose of the certificate of need proceeding is to determine whether a “need” exists for the proposed pipeline project; its purpose is *not* to select a route or rule out route alternatives. Need is determined by the criteria contained in Minn. R. Ch. 7853. The end result is a determination that a need for the pipeline, as proposed, either exists or does not exist, and is *not* a determination of the route it will follow.

Second, the certificate of need determination does not “determine which route or routes will be examined as part of the route permit proceeding,” and will not “eliminate other routes from consideration,” as Relator contends. (Rel. Brf. at 22.) The Commission already selected 54 alternative routes to be considered in the route permit stage. (Rec. Table 1 No. 272; Rec. Table 2 No. 406.) *All* of those alternatives will be considered and will be included in the comparative environmental analysis that will take place at the route permit stage. (*Id.* at 2.) The certificate of need proceeding will not “eliminate” any of those alternative routes from consideration in the route proceeding.

Relator's argument erroneously treats route alternatives and the System Alternatives as interchangeable terms, when, in fact, they are not the same. See *supra*, pp. 9-11. The System Alternatives are not proposals for routing the proposed pipeline project. Instead, they are different, hypothetical system configurations with different endpoints, to be considered at the certificate of need stage solely to evaluate whether a need for the proposed project exists. The System Alternatives are not "under consideration" as alternative routes in the certificate of need proceeding, as Relator incorrectly asserts, and therefore are not being "eliminate[d] . . . from consideration" in that proceeding.

4. The Environmental Review Standard Proposed by Relator and Amicus is Impractical and Would Lead to Abuses.

In its Order, the Commission explained that the environmental analysis at the certificate of need stage, "of necessity" would be performed at a high level because the System Alternatives are not detailed, site-specific proposals, but rather are hypothetical alternative projects that are conceptual in nature. As the Commission recognized, the level of detailed environmental analysis possible at the route permit stage, where detailed, site-specific proposals and alternatives exist, is *not* possible at the certificate of need stage, where undefined, two-mile-wide system alternative "corridors," anywhere within which a pipeline might be located, are involved. The environmental impact of a pipeline would vary depending on where within the corridor it was located.

Although Relator and Amicus criticize the "high level" environmental review that the Commission ordered, they fail to explain how a more detailed environmental review

could be conducted. At the September 11, 2014, Commission hearing, Relator’s representative conceded that he was “not exactly sure” how an EIS could be prepared. (Rec. Table 1 No. 300 (Tr. 53:8).) Even now, Relator and Amicus fail to explain how, without the benefit of a defined pipeline route showing which specific parcels of land are crossed and which specific resources are impacted, anything more than the level of environmental review ordered by the Commission was possible. Instead, they unreasonably demand a detailed level of environmental review in the certificate of need proceeding that they know is not achievable.

The approach to environmental review that Relator and Amicus demand, if accepted, would provide opponents of major projects with an almost unfettered ability to delay a project simply by proposing numerous project alternatives, and requiring full EIS-level environmental review of each before the project could proceed. Under Relator’s argument, RGUs would be powerless to eliminate *any* proposed alternative unless it was first analyzed in an EIS. (*See* Rel. Brf. at 22 (arguing that MEPA prohibits “limiting alternatives and prejudicing the ultimate decision prior to completion of environmental review”).) That is not the law and is an unreasonable interpretation of MEPA’s requirements.⁶

⁶ Relator cites no statute, rule or case to support its interpretation of MEPA. Rather, it relies only on selected portions, taken out of context, from a nonbinding “guide” prepared by the EQB. The guide contains a “disclaimer,” warning that it “is not intended to substitute for the rules themselves,” yet that is exactly how Relator uses the guide – as a substitute for the rules.

CONCLUSION

Relator has failed to carry its burden of overcoming the presumption of correctness due the Commission's Order. The Commission's decision to not require an EIS in the certificate of need proceeding should be affirmed.

Dated: April 13, 2015.

Respectfully submitted,



Richard D. Snyder (#191292)

John E. Drawz (#24326)

Patrick D.J. Mahlberg (#0388028)

FREDRIKSON & BYRON, P.A.

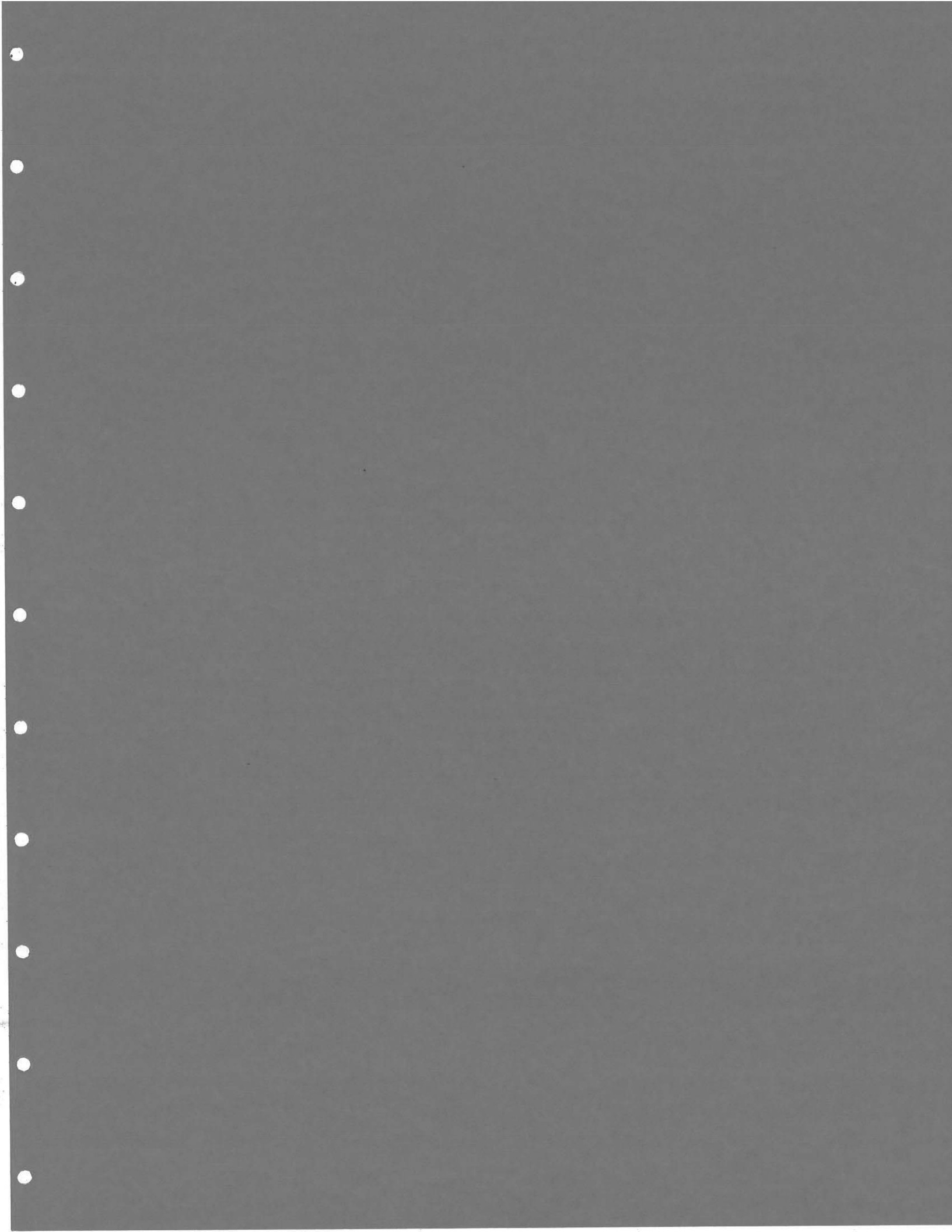
200 South Sixth Street, Suite 4000

Minneapolis, MN 55402

Phone:(612) 492-7000

Fax: (612) 492-7077

**Attorneys for Intervenor/Respondent
North Dakota Pipeline Company LLC**



ADDENDUM

	<u>Page</u>
State of Minnesota Public Utilities Commission Notice of Comment Period Issued: August 12, 2014	NDPC Add. 1
State of Minnesota Public Utilities Commission Order Accepting Alternative Route and System Alternatives for Evidentiary Development, Requiring Notice, and Setting Procedures Issued: August 25, 2014	NDPC Add. 3
Excerpts from Transcript of September 11, 2014 Staff Briefing – Oral Arguments – Deliberations Before the Minnesota Public Utilities Commission	NDPC Add. 17
Excerpts from <i>In the Matter of the Proposed Permit Rules Relating to Pipeline Routing</i> , Statement of Need and Reasonableness dated September 30, 1988 ¹	NDPC Add. 29

53065513_1.DOC

¹ The full version of the 1988 SONAR is available at <http://www.leg.mn/archive/sonar/SONAR-01316.pdf>.)



A handwritten signature in cursive script, reading "Burl W. Haar".

Burl W. Haar, Executive Secretary

STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

NOTICE OF COMMENT PERIOD

Issued: August 12, 2014

In the Matter of the Applications of North Dakota Pipeline Company LLC for a Certificate of Need and a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota

PUC Docket Number: PL-6668/CN-13-473 (Certificate of Need)
PL-6668/PPL-13-474 (Route Permit)

Comment Period: Comment period closes Thursday, August 21, 2014, at 4:30 p.m.

Topics Open for Comment:

- What if any of the eight system alternatives identified in the Department of Commerce Alternative Routes Summary Report should be considered further in these proceedings?
- What is the legal basis for determining whether a system alternative should be considered in the certificate of need proceeding?
- What is the legal basis for determining whether a system alternative should be considered in the route permit proceeding?

Project Description: North Dakota Pipeline Company LLC (NDPC) has filed applications for a certificate of need and a pipeline route permit to construct a new 612-mile interstate pipeline to transport crude oil from Beaver Lodge Station south of Tioga, North Dakota to an NDPC affiliate terminal in Superior, Wisconsin. Approximately 300 miles of the new pipeline installation would be located in Minnesota.

Filing Requirements: Utilities, telecommunications carriers, official parties, and state agencies are required to file documents using the Commission's electronic filing system (eFiling). All parties, participants and interested persons are encouraged to use eFiling: mn.gov/puc, select *eFiling*, and follow the prompts.

Submit Public Comments: Visit mn.gov/puc, select *Comment on an Issue*, find this docket, and add your comments to the discussion. Persons without Internet access may send by U.S. mail to: Burl Haar, Executive Secretary, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul MN 55101-2147. Please include the PUC Docket Numbers (13-473 and 13-474) in all communications.

Full Case Record: All documents filed in this docket are available at mn.gov/puc, select *Search eDockets*, enter the year (13) and the docket number (473 or 474), select *Search*.

Subscribe to the Docket: Receive email notification when new documents are filed in this matter. Note – subscribing may result in a large number of emails.

1. mn.gov/puc
2. Select green box *Subscribe to a Docket*
3. Type your e-mail address
4. For *Type of Subscription*, select *Docket Number*
5. For *Docket Number*, select (13) in the first box, type (473 or 474) in the second box
6. Select *Add to List*
7. Select *Save*

Questions about this docket or Commission process and procedure? Contact Commission staff, Scott Ek, at 651-201-2255 or scott.ek@state.mn.us.

Change your mailing preferences: E-mail docketing.puc@state.mn.us or call 651-201-2204.

This document can be made available in alternative formats (i.e., large print or audio) by calling 651-296-0406 (voice). Persons with hearing or speech disabilities may call us through their preferred Telecommunications Relay Service.

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of
North Dakota Pipeline Company LLC for a
Pipeline Routing Permit for the Sandpiper
Pipeline Project in Minnesota

ISSUE DATE: August 25, 2014

DOCKET NO. PL-6668/PPL-13-474

DOCKET NO. PL-6668/CN-13-473

In the Matter of the Application of
North Dakota Pipeline Company LLC for a
Certificate of Need for the Sandpiper
Pipeline Project

ORDER ACCEPTING ALTERNATIVE
ROUTE AND SYSTEM ALTERNATIVES
FOR EVIDENTIARY DEVELOPMENT,
REQUIRING NOTICE, AND SETTING
PROCEDURES

PROCEDURAL HISTORY

On November 8, 2013, North Dakota Pipeline Company LLC (the Company) filed two applications with the Commission: the first for a Certificate of Need (CON)¹ and the second for a pipeline routing permit to construct the Sandpiper Pipeline Project (the Project), a new 612-mile pipeline to transport crude oil from its Beaver Lodge Station south of Tioga, North Dakota to a Company affiliate terminal in Superior, Wisconsin. In connection with the route permit application, the Company also submitted an environmental information report for the Project.

On January 31, 2014, the Commission issued a Notice of Application Acceptance and Public Information (Scoping) Meetings. The public was invited to submit comments on potential human and environmental impacts and to suggest alternative pipeline routes to be considered in the comparative environmental analysis to be prepared by the Energy Environmental Review and Analysis unit (EERA) of the Minnesota Department of Commerce.

On February 11, 2014, the Commission issued an order finding the route permit application complete and referring the application to the Office of Administrative Hearings for contested case proceedings.²

¹ In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota, Docket No. PL-6668/CN-13-473.

² The Order authorized the EERA to 1) facilitate the development of route proposals beyond those proposed by the Company; 2) to prepare an analysis of alternative route proposals on the basis of their harm to the environment; and 3) take other procedural steps to enable an evaluation of the Company's proposed pipeline route.

Between March 3 and 13, 2014, the EERA conducted seven public information meetings in six counties along the Company's proposed route.³ ⁴ By May 30, 2014, the route proposal deadline, numerous route permit alignment modifications and alternative route proposals had been received. Over 1,000 comments from some 940 commenters and organizations were submitted.

On July 17, 2014, EERA filed its comments and recommendations summarizing the alternative route designation process, and identifying some 54 route alternatives and eight system alternatives it had considered.⁵ EERA recommended that 53 route alternatives be further considered in the contested case procedures.⁶

On August 7, 2014, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary of Action Taken

In this Order, the Commission takes the following steps in the route permitting process for the Sandpiper Pipeline Project:

- Accepts the 53 route alternatives recommended by EERA in its comments and recommendations and system alternative SA-03 proposed by the Minnesota Pollution Control Agency, as modified by the EERA, and forwards them to the administrative law judge for consideration at the contested case hearings;
- Accepts the seven expanded route width areas recommended by EERA, with the clarification of the expanded route width for Carlton County 2 requested by the Company;
- Requires the Company to prepare a pipeline safety report, to compile landowners' mailing information on the 53 route alternatives and system alternative SA-03, and to assist with the increased landowner notification necessitated by the Commission's actions in this matter; and

³ Meetings were held in Crookston in Polk County (March 3, 2014); McIntosh in Polk County (March 4, 2014); Clearbrook in Clearwater County (March 4, 2014); Park Rapids in Hubbard County (March 12, 2014); Pine River in Cass County (March 12, 2014); McGregor in Aitkin County (March 13, 2014); and Carlton in Carlton County (March 13, 2014).

⁴ The Project crosses eight counties in Minnesota. Because the counties are sparingly populated, the Commission varied its rule requiring that a public information meeting be held in each county through which a proposed route is expected to pass, and allowed the EERA to hold meetings near, and conveniently spaced along, the proposed route.

⁵ As it has in previous Commission dockets, the EERA defined a "route" alternative as a deviation from the Company's proposed route to address a concern or issue and that met the stated purpose and need of the proposed project with no apparent major engineering or environmental issues. The EERA defined what it identified as a "system" alternative as a pipeline route that is generally separate or independent of the pipeline route proposed by the Company, and that does not connect to the specified Project endpoints (the North Dakota border to Clearbrook and Clearbrook to Superior, Wisconsin).

⁶ The EERA's comments discuss 54 route alternatives, but excluded one alternative -- RA-31 -- from consideration on grounds that two other alternatives adequately addressed similar concerns.

- Requests additional comments on whether consideration should be given in the certificate of need docket to the eight system alternatives identified in this proceeding, and, if so how to incorporate that consideration into the certificate of need docket and/or route permit proceedings or both in this matter.

II. The Proposed Project

As noted above, the proposed Sandpiper Pipeline would transport crude oil 612 miles from Beaver Lodge Station south of Tioga, North Dakota, to terminals in Clearbrook, Minnesota, and Superior, Wisconsin. Approximately 299 miles of the new pipeline would be located in Minnesota.

As proposed, a 24-inch diameter pipeline with a capacity of 225,000 barrels per day would enter Minnesota approximately two miles south of Grand Forks, North Dakota. It would follow Enbridge Energy Partners' existing pipeline right-of-way for 75 miles to Clearbrook Minnesota. There, the Company proposes to build a new terminal and other facilities.

After Clearbrook, the pipeline would expand to a diameter of 30 inches and a capacity of 375,000 barrels per day, and extend for another 224 miles. It would generally follow the existing Minnesota Pipeline Company right-of-way south to Hubbard, Minnesota. From Hubbard the route would proceed east traversing undeveloped area and follow portions of existing rights-of-way for electric transmission lines and railroads. Finally, the pipeline would cross the Minnesota-Wisconsin border approximately five miles east-southeast of Wrenshall, Minnesota.

This route would pass through Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin, and Carlton counties, and would require the acquisition of 25 to 50 feet of new right-of-way, plus an additional 40 to 70 feet of temporary right-of-way.

III. Issue to be Decided in this Order

In this Order, the Commission must decide what routes and/or system alternatives will be considered in the contested case hearing in the route permit proceeding, which is being conducted in conjunction with the Certificate of Need proceeding.

IV. The Public Comment Process

The EERA reviewed approximately 1,090 comments by 940 individual commenters and organizations submitted in response to the January 31, 2014 Commission notice. The comment period closed on May 30, 2014.

Comments were submitted orally and in writing at public meetings, and by mail, e-mail, and fax.⁷ The commenters included representatives of the following groups:

⁷ At the Commission hearing on this matter, the Commission also allowed public comments.

Tribal

Honor the Earth
Mawinzo AsiniGaazo Berry Pickers
The Minnesota Chippewa Tribe
White Earth Reservation Tribal Council

State Agencies and Elected Representatives

Minnesota Department of Transportation
Minnesota Department of Natural Resources
Minnesota Pollution Control Agency
Minnesota Representative Steve Green, District 2B

Local Units of Government

Hubbard County
Polk County
The townships of Arago, Badora, Clover, Lake Emma, Todd and Wrenshall

Organization and Business Comments

Association of Cass County Lakes
Big Sandy Lake Association
Carlton County Land Stewards
Detroit Lakes Chamber of Commerce
EOG Resources
Friends of the Headwaters
Hubbard County COLA
Kennecott Exploration Company
Long Lake Association
Minnesota Backcountry Hunters and Anglers
Minnesota Coalition of Lake Associations
Minnesota League of Woman Voters
Minnesota Trout Unlimited
Palmer Lake Organization
Park Rapids League of Woman Voters
Pine River Watershed Alliance
RE/MAX First Choice
The Climate Crisis Coalition of the Twin Cities
Tidal Energy Marketing
Trout Unlimited
Northwestern Minnesota
University of Minnesota Northwest Research and Outreach Center
White Fish Area Property Owners Association

Citizen Comments

Numerous written comments were received from citizens.

The Company also submitted comments.

There were many comments submitted. Some were very detailed. Most comments fell into the following broad categories:

- General opposition
- General support
- Support for the positive economic impact of the proposed line
- Concerns regarding impacts to water, wildlife, and trees and forests
- General environmental concerns
- General agricultural concerns, as well as concerns for soils, organic and sustainable farming, and wild rice cultivation
- Concerns regarding tribal and cultural resource
- Concerns regarding property values and landowner rights
- Preferences for one or more alternative routes

V. The Department's Review and Recommendation

After consideration of the comments received in this proceeding, EERA initially identified some 62 alternative proposals for consideration. After further evaluation, the EERA designated 8 of the 62 alternative proposals as system alternatives and 54 as route alternatives.⁸

On July 17, 2014, EERA filed comments and recommendations concerning the alternative route designation process for the proposed Project. EERA's comments set out a detailed description of the steps taken to satisfy the requirements of the pipeline route permit process, the methodology used in determining the alternatives recommended for consideration at hearing and evaluation in the comparative environmental analysis, and a document entitled the Sandpiper Alternative Routes Summary Report, which provides a description, discussion, and detailed maps of the 54 identified route systems alternatives and eight system alternatives considered.

A. Route Alternatives

EERA stated that the Company had offered 23 of the 54 route alternatives to address individual landowner concerns, agency concerns, engineering constraints, or constructability issues. The Minnesota Department of Natural Resources and the Minnesota Pollution Control Agency also offered suggestions for routing options, including following Enbridge's mainline corridor that contains up to seven pipelines, the Great Lakes Natural Gas Pipeline, Highway 2, and the Soo Line Railroad right-of-way.⁹

⁸ See note 6, *infra*.

⁹ Other route alternatives were submitted by the public and/or other commenters.

EERA recommended that 53 of the 54 route alternatives be carried forward for further evaluation in the comparative environmental analysis and in the contested case hearings.¹⁰ Those route alternatives are identified in the EERA's July 17, 2014 Sandpiper Alternative Routes Summary Report.

B. Route Width

The EERA also noted that in general, a width of 500 feet is recommended for use in analyzing proposed and alternate routes in the comparative environmental analysis. However, in this docket, there are several areas where a wider width would be beneficial to its analysis due to existing conditions or the presence of multiple route alternatives in close proximity to each other. The EERA identified the following areas where a wider width is requested:

Carlton County 1

Eight route alternatives (RA-42 to RA-49) were suggested in an area surrounding several existing pipelines, Highway 61, and Interstate-35 in Carlton County. The EERA requested a width ranging from 2,500 feet to 6,500 feet to allow for flexibility in using different parts of the route alternatives to develop a route that minimizes impacts.

Carlton County 2

Carlton County 2 is a smaller area adjacent to Carlton County 1 and encompasses three route alternatives (RA-50, 51, and 52) that deviate slightly from the proposed route. The EERA requested a width of 1,500 feet to 2,500 feet to allow for analysis of these alternatives.

Aitkin County

Four route alternatives (RA-33 to RA-36) were suggested in Aitkin County along Highway 65. The EERA requested a width of 1,500 feet to 4,700 feet to allow for flexibility in comparing the alternatives and developing a route that minimizes impacts.

Spire Valley Aquatic Management area

The Department of Natural Resources requested that a wider width be analyzed in this area (RA-20) to find routes to avoid and minimize potential impacts to the Spire Valley fish hatchery, due to construction activities. The width recommended for this area is 3,000 feet.

Crow Wing Chain Wildlife Management Area (Crow Wing WMA)

The Department of Natural Resources expressed concerns regarding the crossing of the Crow Wing Chain WMA (RA-16) because of deed restrictions associated with gifted properties from the Nature Conservancy to the State. Enbridge provided a route alternative in late June to avoid the WMA. A width of 9,400 feet is recommended, which would provide flexibility in further developing a route in the area of the WMA.

LaSalle Creek

Two similar route alternatives (RA-09 and 10) were suggested to minimize impacts to Big LaSalle Lake and LaSalle Creek. A 6,500 foot width is recommended to allow for flexibility to avoid impacts to Big LaSalle Lake and LaSalle Creek.

¹⁰ EERA did not recommend that further evaluation be given to one route alternative identified (RA-31), stating that two other alternatives proffered by the same landowner adequately addressed similar concerns.

Northern Pipelines

Numerous commenters, including the Department of Natural Resources and Minnesota Pollution Control, expressed interest in analyzing existing pipeline corridors (Enbridge and Great Lakes) that run generally along Highway 2 from Clearbrook to Superior (RA-7 and 8). A width of 500 feet to 6,500 feet would allow flexibility in following the existing pipelines, railroad, and/or Highway 2 and is based on the proximity of the existing infrastructure to each other.

C. System Alternatives

Finally, EERA identified eight system alternatives proposed, as summarized below:

SA-01. SA-01, as offered by Robert and Karen Lindesmith, calls for the pipeline upon entering Minnesota to proceed in a northeasterly direction to enter Canada, without a clear connection to terminals in either Clearbrook or Superior.

SA-02. SA-02 was offered by Sharon Natzel, Long Lake Area Association, as a system alternative to avoid impacting ground water resources and the lakes area of northern Minnesota. SA-02 is approximately 340 miles in length and attempts to follow existing road rights-of-way and areas without extensive water resources.

SA-03. SA-03 was suggested by the Minnesota Pollution Control Agency (PCA) as a system alternative to avoid the lakes areas crossed by the Company's preferred route and to provide for a new terminal in the Crookston area, so as to provide for greater routing flexibility for future pipeline projects.

As proposed, this system alternative would follow the existing 24-inch Viking natural gas pipeline southward to Clay County, then southeast across the counties of Becker, Ottertail, Wadena, Todd, Morrison, Benton, Milles Lacs, and Isanti before proceeding northward generally following either an 8-inch Magellan petroleum products pipeline or a Northern Natural Gas Pipeline, in proximity to I-35 through the counties of Chisago, Pine, and Carlton before connecting with one of the proposed Sandpiper route alternatives in Carlton County. SA-03 as proposed is approximately 360 miles long.

SA-04. System alternative SA-04, suggested by Friends of the Headwaters, is proposed to follow the existing Alliance Pipeline, a natural gas pipeline, with an outside diameter of approximately 42-inches, built in 2000, which traverses North and South Dakota, Minnesota, Iowa, and Illinois and is approximately 1,050 miles in length. SA-04 does not connect with terminals in Clearbrook or Superior. This alternative was proposed to avoid the lakes areas traversed by the Company Sandpiper proposed route.¹¹

¹¹ The Alliance Pipeline route crosses the Minnesota counties of Traverse, Stevens, Swift, Chippewa, Kandiyohi, Renville, Sibley, Nicollet, Blue Earth, Waseca, Freeborn and Mower, crossing primarily agricultural land in Minnesota. The Alliance Pipeline was permitted by the Federal Energy Regulatory Commission (FERC).

SA-05. SA-05, also suggested by Friends of the Headwaters, if it were to connect to Superior would be approximately 1,100 miles in length. As with SA-04, it also follows a gas pipeline, the Northern Border Natural Gas Pipeline, which cuts across southwestern Minnesota, through the counties of Lincoln, Lyon, Murray, Cottonwood, Jackson, and Martin. SA-05 does not connect with the terminals in Clearbrook or Superior.

SA-06. SA-06, also suggested by Friends of the Headwaters, would follow Minnesota Highway 9 south, until it intersects an existing Magellan products pipeline, approximately 8 to 12 inches in diameter. Then it would follow south and east to a point where it intersects with the existing 24-inch MinnCan crude oil pipeline. It would then follow the MinnCan route to the refineries, then continue north along the I-35 corridor in proximity to the 8-inch Magellan products pipeline and Northern Natural Gas Pipeline until it intersects with other Sandpiper route alternatives.

As a part of this proposal it was also suggested that the pipeline route could follow an existing 8-inch Magellan products pipeline east into Wisconsin until it intersects the existing Enbridge right-of-way at which point a pipeline could be built to carry the oil up to Superior or down to Chicago.

SA-07. SA-07, also suggested by Friends of the Headwaters, appears to be a combination of two different system alternatives: first, a combination of SA-07 and SA-06, and second as a combination of SA-07 and SA-08. SA-07 does not connect with the terminal in Clearbrook.¹²

SA-08. As proposed by Honor the Earth, SA-08 would be located adjacent to or within the right-of-way of I-29 and I-94. SA-08 does not connect to terminals in Clearbrook or Superior.

According to the EERA, the system alternatives do not meet the stated purpose and need of the proposed project because they do not connect with one or both of the route endpoints. Accordingly, the EERA considered these alternatives as entirely different projects than that proposed by the Company. EERA discussed each of the eight system alternatives identified in its July 17, 2014 Alternative Routes Summary Report, but did not recommend that these options be forwarded for consideration at the route permit contested case proceeding.

¹² SA-07 and SA-06 when combined to form SA-07 would follow I-29 in North Dakota to Fargo, then follow the same corridor east and southeast adjacent to I-94, then follow an existing Magellan Product pipeline south and east to a point where it intersects the MinnCan 24-inch crude oil pipeline and follow it to Minnesota's two refineries. At those points it is suggested that the pipeline can proceed northward to the Duluth area by following I-35 or the existing Magellan product and Northern Natural Gas pipelines to a point where it intersects with other Sandpiper route alternatives and then proceed to the Superior terminal.

The other system alternative would combine SA-07 and SA-08, by following SA-08 (I-94) and extending it through the Twin Cities along the freeway or existing Magellan product pipeline to 1) a point where it intersects I-35 and two other pipelines (Magellan and Northern Natural Gas) that proceed northward as described above, or 2) follow an existing Magellan Product pipeline east into Wisconsin until it intersects the existing Enbridge right-of-way at which point a pipeline could be built to carry the oil back up to Superior or down to Chicago.

EERA, did, however, identify two of the eight system alternatives (SA-02 and SA-03) that could potentially be modified to include appropriate connections to the Clearbrook facility, which could make these system alternatives potentially viable route alternatives. SA-02 was proposed by a member of the public, Sharon Natzel, from the Long Lake Area Association. SA-03 was proposed by the Minnesota Pollution Control Agency.

SA-02 as modified would follow the Company's proposed route from the North Dakota border to Clearbrook. With the addition of a new route segment to run north from Clearbrook to join with SA-02, this alternative would provide a northern alternative route into Superior, Wisconsin. SA-03 as modified would follow the Company's proposed route from the North Dakota border to Clearbrook, and from Clearbrook south following NDCP's proposed route to Hubbard. From there, the route would continue south to join with SA-03 to provide a southern alternative route into Superior.

VI. The Company's Response

The Company did not support further consideration of any of the eight system alternatives identified in this proceeding, arguing that they did not meet the stated need and purpose of the project as identified. The Company also specifically argued against inclusion of either SA-02 or SA-03 as modified for further consideration in this matter. The Company asserted, among other things, that each system alternative modification would result in a longer, more circuitous route, would have additional impacts on new counties and landowners, would create the need for additional pump stations, and would engender substantial delay in the administrative proceedings.

VII. Commission Analysis and Action Regarding Proposed Alternative Route and System Alternatives

A. Route Alternatives

Review of the pipeline routing permit application is taking place in the current docket under Minn. Stat. § 216G.02 and the Pipeline Route Selection Procedures in Minn. R. Parts 7852.0800 to 7852.1900.

Minn. R. 7852.1400 states:

The commission shall accept for consideration at the public hearing the routes and route segments proposed by the applicant and may accept for public hearing any other route or route segment it considers appropriate for further consideration. No route shall be considered at the public hearing unless accepted by the commission before notice of the hearing. Routes accepted shall be identified by the commission in accordance with part 7852.1600. A proposer of a route or route segment that the commission has accepted for consideration at the hearing shall make an affirmative presentation of facts on the merits of the route proposal at the public hearing. (Emphasis added).

In this matter, the Commission concurs that all of the 53 route alternatives recommended by the EERA to be referred to the administrative law judge for consideration merit consideration. Accordingly, the Commission accepts these route alternatives and will forward them to the administrative law judge for consideration at the contested case proceeding.

B. Expanded Route Widths

The Commission also accepts expanding the seven route width areas recommended by the EERA, with the clarification of the expanded route width for Carlton County 2 requested by the Company in a letter filed August 6, 2014, and discussed at the hearing. The Company stated that it had recently identified that the route width of 1,500 to 2,500 feet recommended by the EERA would not encompass the entire area of land being discussed with the landowner who proposed RA-51 and RA-52, and requested that the Commission clarify that the expanded route width in this area be expanded slightly farther as shown in its attached Figure 5 to the Company's August 6, 2014 letter.¹³

The Department stated its support for the expanded route width for the seven areas originally identified as well as the increased width expansion proposed by the Company for RA-52. No party voiced opposition to the proposed expansion of the route width for these seven areas, and the Commission accepts them as reasonable.

C. System Alternatives

After consideration of the record, and the comments submitted at the Commission hearing, the Commission will also at this time forward system alternative SA-03, proposed by the Minnesota Pollution Control Agency and modified by the EERA, to the administrative law judge for consideration at the contested case hearing in this proceeding. As modified, SA-03 appears to provide an alternative southern route from Clearbrook into Superior that bypasses the lakes and wetland areas identified as problematic by the various agency and public commenters in this proceeding, while also adding to the length of the route.¹⁴ For these reasons, the Commission finds that further consideration of SA-03 as modified in the contested case proceeding is not unreasonable.

Public opposition to the proposed route and the route alternatives in this proceeding has to date been high, with a significant majority of those offering comments in the docket urging the Commission to include system alternatives for further consideration in this matter in lieu of the routes proposed by the Company, in an effort to reduce environmental and public health risks.

The Minnesota Pollution Control Agency asserted that "limiting the alternatives to route options alone at this state would unnecessarily narrow the scope of project options to reduce the environmental and public health risks." The agency also recommended that the Commission incorporate SA-03 as originally proposed (without the connector segments recommended as modifications by the EERA) into the ongoing certificate of need proceeding for further consideration.

After consideration of the written and oral record in this proceeding, the Commission will take the following actions to further evaluate these issues. The Commission will issue a notice requesting additional comments concerning the further review of the eight system alternative options identified

¹³ This would affect an area slightly outside and south of the area originally proposed by the Company.

¹⁴ SA-03 as modified is estimated at 360 miles in length, as opposed to the proposed route alternative, which is 299 miles in length.

in the Department of Commerce Alternative Routes Summary Report issued July 17, 2014. The Commission requests that the comments submitted address the question of how these options should be considered in the certificate of need process and whether they ought to be treated as route alternatives, system alternatives, or both.

The Commission also requests the Executive Secretary to prepare a notice announcing the date of the Commission meeting at which time these matters will be discussed and the scope of the determinations to be made on that date.

D. Other Action Taken

1. Generic pipeline route permit template

The Commission will also approve, as it has in recent pipeline routing matter, the issuance of a generic pipeline route permit template developed by Commission staff and attached as Attachment A to the Commission's briefing papers in this matter.

At the hearing on this matter, Friends of the Headwaters objected to the Commission taking action to issue a generic permit template. Friends of the Headwaters asserted that the 1) route permit template was not properly noticed for the Commission meeting, and 2) use of the template at this early stage of the proceeding would give the impression to the public that the Commission staff has predetermined that this proceeding will result in the issuance of a permit.

The Commission disagrees. First, adequate notice was given for purposes of discussion and action at the Commission meeting. Second, the Commission has on several prior route permit matters filed a generic pipeline route permit template to give interested parties and governmental agencies an early opportunity to review the standard permit language and provide suggestions of additional language and/or special conditions specific to the proposed project. The Commission will do so again in this proceeding.

2. Notice to landowners

Further, to assist in providing notice of the Commission's actions in this matter, the Commission will require the Company to promptly 1) supply to Commission staff the mailing addresses for all landowners located on the Company's proposed route and any alternative route or route segment accepted for hearing by the Commission; 2) send the staff-approved notice of alternative routes to the comprehensive landowner mailing list; and 3) assist with publication of the staff-approved notice in the appropriate newspapers.

All potentially affected landowners (those on the 53 route alternatives and the eight system alternatives) will, accordingly, receive notice of the proceedings as expanded herein and have the opportunity to participate in the public hearing and evidentiary stages of the route permit and certificate of need proceedings.

3. Pipeline safety report request

Finally, Commission staff recommended that the Company be required to prepare a pipeline safety report that discusses issues related to pipeline safety for submission into the record in this

proceeding. Friends of the Headwaters objected to the Commission taking action with regard to the proposed report, asserting that 1) the issue was not properly noticed for the Commission meeting, and 2) arguing that it is inappropriate for a regulated entity to provide its opinion about what pipeline safety law requires when there has been no process or proceeding to determine such obligations.

Again, the Commission believes that adequate notice of possible Commission action as to this proposal was provided through its notice and the briefing papers filed. The Commission believes requiring the Company to prepare a report responsive to the questions posed regarding pipeline safety as providing a starting point for further conversation and consideration by the parties during the course of this proceeding. Accordingly, the Commission will require the Company to prepare a report that responds to the questions outlined in Attachment 1 to this Order, related to pipeline safety, which shall be addressed as part of its direct testimony by a sponsoring witness and as a separate document for issuance into the record.

ORDER

1. The Commission hereby accepts the 53 route alternatives recommended by EERA in its July 17, 2014 comments and recommendations (Sandpiper Alternative Routes Summary Report) and system alternative SA-03 as modified by the EERA and forwards them to the administrative law judge for consideration at the contested case hearing.
2. The Commission hereby accepts the seven expanded route width areas recommended by EERA with the clarification of the expanded route width for Carlton County 2 requested by the Company at the hearing as set forth herein.
3. The Commission hereby approves the issuance of the generic pipeline route permit template attached as Attachment A to Commission staff's briefing papers in this matter into the record.
4. The Company shall prepare a pipeline safety report in this matter that responds to the questions listed in Attachment 1 to this Order, which shall be addressed as part of its direct testimony by a sponsoring witness and as a separate document for issuance into the record.
5. The Company shall promptly:
 - A. supply to Commission staff the mailing addresses for all landowners located on the Company's proposed route and any alternative route or route segment accepted for hearing by the Commission;
 - B. send the staff-approved notice of alternative routes to the comprehensive landowner mailing list; and
 - C. assist with publication of the staff-approved notice in the appropriate newspapers.

6. The Commission will accept, within 14 days of the date of the Commission's meeting (or, August 21, 2014), additional comments concerning further review of the eight system options identified in the Department of Commerce Alternative Routes Summary Report issued July 17, 2014. The comments should address the question of how these options should be considered in the certificate of need process and whether they ought to be treated as route alternatives or system alternatives or both. The Commission requests the Executive Secretary to prepare a notice announcing the date of the Commission meeting at which these matters will be discussed and the scope of the determinations to be made on that date.
7. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

- Explain why the Company proposed to place the new pipeline where it has. Describe the costs and benefits of the placement of a pipeline along multiple existing pipelines or within a pipeline “green field” area.
- List the areas along the proposed Sandpiper Pipeline Project that are considered High Consequence Areas.
- Has an integrity management plan been developed for the proposed Sandpiper Pipeline Project? Where can examples of existing integrity management plans be found?
- What is the life expectancy of a typical crude oil pipeline? Is there any difference for a pipeline that carries diluent?
- Describe the state and federal pipeline inspection processes. Explain what if any oversight is required after the pipeline has been constructed and is in operation and identify the government entities responsible for such oversight.
- What steps are taken when erosion has exposed the pipeline in upland areas or where pipelines cross surface flows? Are exposed pipelines at increased risk of being damaged or rupturing due to human or naturally occurring events in such areas?
- Is there a prescribed or required pipeline replacement timetable for existing pipelines? What is their age and condition, and anticipated timeframe for replacement?
- What mechanisms or practices are in place for leak prevention, detection and control? Describe the response plans in the event of a leak (breach) or spill? Who reviews such plans? Are they available for public review?
- What is the process to determine proper locations for shut-off valves along a pipeline route? Is there an operational limit to the number that can be located or installed along the pipeline?
- What has been learned from previous leaks and spills? What new protections have been introduced and utilized?
- Describe the process for determining the appropriate location of equipment and training of local personnel to respond to spills or leaks both during construction and during the operation of the pipeline. What is an acceptable response time?
- What measures are in place to ensure there is adequate funding to pay for response and remediation of spills and leaks? Who is liable? Who pays for such events? Are pipeline operators required to have a special fund available for emergency response and cleanup costs?
- Include as an attachment to the report, the federal regulations concerning pipeline safety.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STAFF BRIEFING - ORAL ARGUMENTS - DELIBERATIONS
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger, Chair
David C. Boyd, Commissioner
Nancy Lange, Commissioner
Dan Lipschultz, Commissioner
Betsy Wergin, Commissioner

In the Matter of the Application of North Dakota Pipeline
Company, LLC for a Pipeline Routing Permit for the
Sandpiper Pipeline Project

MPUC DOCKET NO. PL-6668/PPL-13-474

Minnesota Public Utilities Commission
350 Metro Square Building
121 Seventh Place East
St. Paul, Minnesota

September 11, 2014

COURT REPORTER: Janet Shaddix Elling, RPR

1 And that's one of the struggles that I
2 hear today. I hear counsel for North Dakota
3 Pipeline Company saying that the review under the
4 CEA, which is very detailed for particular routes,
5 it doesn't really fit for doing a more broad review
6 of other kinds of alternatives like system
7 alternatives. Well, that's because the CEA was
8 never designed to do that kind of analysis. It
9 simply wasn't designed to do an analysis under the
10 CON.

11 And all this means that what the
12 Commission must do to comply with MEPA is apply MEPA
13 in the EIS process as prescribed within the MEPA
14 regulations as its environmental review for the CON
15 docket. The Commission can't just, you know, can't
16 approve an alternative environmental review for a
17 process, only the EQB can do that. And the EQB has
18 not approved a alternative environmental review for
19 the CON docket.

20 And I point out that under -- my
21 understanding is under for power lines and for
22 transmission lines, high voltage transmission lines,
23 there are separate EQB approvals of alternative
24 environmental reviews for each, for both the CON and
25 the routing siting processes there. So the

1 Commission understands in the past that it needs to
2 get EQB approval for these different processes. It
3 hasn't gotten it, again, for the CON process in
4 pipelines.

5 So then the question becomes, as we see
6 it, how does the Commission coordinate its MEPA
7 review for the CON docket with the CON docket
8 itself? And that becomes, you know, again, I'm not
9 exactly sure how you do that. But at the same time,
10 it -- excuse me -- it needs to be done carefully, it
11 needs to be done clearly, and it needs to be done
12 logically. And we would encourage the Commission to
13 apply MEPA fully to the CON docket as it's required
14 by law.

15 And I think I'll leave my remarks with
16 that today, and thank you for your attention.

17 CHAIR HEYDINGER: Questions for
18 Mr. Blackburn?

19 Mr. Bibeau.

20 MR. BIBEAU: Thank you.

21 I've heard the phrase take a crayon and
22 draw a line a few times, and that's exactly how we
23 feel up north. I was looking at the Corps of
24 Engineers' document the other day that explained
25 that Leech Lake Reservation had told Enbridge that

1 general corridor, if you will. And so it seems to
2 me that what we would ask at the certificate of need
3 level, potentially, is for the Department to give us
4 a broad view of what the environmental impact would
5 be of those various routes, or system alternatives.
6 And, in fact, the PCA has already begun that process
7 by all the maps they've put in here that show this,
8 that and the other thing and so forth and so on.
9 That doesn't mean, then, though, that someone still
10 has to take that environmental information and bear
11 the burden of showing that including the
12 environmental information there's a more reasonable
13 and prudent alternative to what the Applicant is
14 providing.

15 They're really two different things. One
16 is what's the broad responsibility to do an
17 environmental review. The other is, A, has the
18 Applicant demonstrated there is a need; if so, what
19 is that need, and then is there a more reasonable
20 and prudent alternative to meeting that need.

21 I mean, there's really -- it's kind of a
22 multipart question to which the environmental report
23 is -- I don't want to say a piece of evidence, it's
24 important input that we'll be evaluating in trying
25 to determine is there a more reasonable or prudent

1 alternative to whatever need ultimately is proven.

2 MR. VON KORFF: Everything you said we
3 agree with except the burden of proof, and we can
4 argue the burden of proof later.

5 CHAIR HEYDINGER: Or to the ALJ, I guess.

6 MR. VON KORFF: What I said was a
7 long-winded way of saying my client wants a robust,
8 high quality environmental review of the system
9 alternatives with a sense of reasonableness. I
10 don't want you to haul off and do something -- I
11 mean, judgment is involved. But at the end of the
12 day, that there is adequate information so that
13 someone can't say we don't have enough information
14 to make a judgment as to what's environmentally
15 superior. The burden of proof --

16 CHAIR HEYDINGER: But would you agree
17 that environmentally superior, it's a very important
18 part of the decision, it's not the only part of the
19 decision on the certificate of need?

20 MR. VON KORFF: The MEPA says that if
21 it's feasible and environmentally --

22 CHAIR HEYDINGER: Right. But there's a
23 feasible piece, too.

24 MR. VON KORFF: Absolutely.

25 CHAIR HEYDINGER: Okay.

1 MR. VON KORFF: Yes.

2 CHAIR HEYDINGER: And I think it's really
3 important to be clear about that.

4 MR. VON KORFF: I think that's a great
5 point.

6 CHAIR HEYDINGER: And so it's only when
7 we're looking at route alternatives, and there's
8 already -- it's already clear what the need is, that
9 you've got this issue of is there a more prudent
10 alternative. I mean, what we're trying to do with
11 the certificate of need stage is only have enough
12 large-scale environmental information that we're not
13 making a decision without regard to the
14 environmental impact. It's a very different level
15 of review.

16 MR. VON KORFF: I agree completely. If
17 it's proven that SA-03 is a feasible, less impact
18 alternative, that would -- could result in denial of
19 the permit, but it might not result in the grant of
20 the permit for SA-03, they might not even want it.

21 Thank you.

22 CHAIR HEYDINGER: Additional questions
23 for Mr. Von Korff?

24 All right. We will come back at 2:15 and
25 hear from the Department. And, also, I don't know

1 readily available data sources, so things like the
2 National Wetlands Inventory, land cover, federal
3 lands, stream crossings, those are all pretty
4 broad-based data sets that we can draw on to look at
5 a general sort of corridor or system location
6 analysis.

7 That said, I would disagree with the
8 suggestion of the Department of Natural Resources
9 that we should look at the system alternatives in
10 the same level of detail as we are in the routing.
11 We are getting very detailed in looking at the
12 routes and the route alternatives. In those
13 situations we're looking at, as we do with
14 transmission lines, looking at an unanticipated
15 alignment, you know, actually where that space of
16 right-of-way is going to be sitting and the impacts
17 of that. We will not be able to do that in any kind
18 of look at the system alternatives, it will be more
19 what are the impacts of following a particular
20 pipeline that's out there or following a particular
21 roadway.

22 CHAIR HEYDINGER: Commissioner
23 Lipschultz.

24 COMMISSIONER LIPSCHULTZ: Thank you,
25 Madam Chair. And thank you, Ms. Pile, 'cause you

1 went right where I wanted to go with you and I just
2 wanted to explore this a little further.

3 When you say that the environmental
4 review for the system alternatives would not be at
5 the same level of detail, it sounds like that detail
6 is geographic, right? Because you won't know as
7 precisely where the actual facility will be, you'll
8 know a little more generally based on where the
9 corridor has been drawn for the system alternatives
10 as opposed to a route alternative. Is that a fair
11 statement of where you're going with this?

12 MS. PILE: Chair and Commissioners,
13 that's generally a fair statement. It is different
14 data sets, too.

15 COMMISSIONER LIPSCHULTZ: You mentioned
16 different data sets. And so, first of all, just so
17 I'm understanding, less specific geographic analysis
18 because of the nature of the proposals actually in
19 play, or alternatives in play. Let's get to the
20 data. Explain to me a little bit more and maybe
21 give me some examples of the difference between the
22 two as far as data sets are concerned?

23 MS. PILE: Chair and Commissioner
24 Lipschultz, some of it would be the resolution of
25 the information. So, for example, some of the land

1 use information would be a particular reading for a
2 square that would be a bigger square, if that --

3 COMMISSIONER LIPSCHULTZ: And that makes
4 sense. And I'm really not trying to sort of split
5 hairs here, but I want to make sure I'm looking at
6 this the way -- I want to look at it correctly from
7 an analytical standpoint. And so what you just told
8 me there -- but tell me if you disagree -- gets to
9 the issue of geography again. The data set will
10 differ because the scope of the geography is more
11 general, given that the system alternatives are not
12 identified as specifically geographically. Am I
13 right?

14 MS. PILE: Chair and Commissioners, that
15 is correct. The data set itself is not as specific
16 as well.

17 COMMISSIONER LIPSCHULTZ: And can you
18 kind of help me understand where data sets might
19 differ for the system alternative environmental
20 analysis as opposed to the route alternative
21 analysis in a way other than would be dictated by
22 geography, less specific geographic area?

23 MS. PILE: Well, Chair and Commissioners,
24 perhaps the one example that Ms. Brusven alluded to
25 a little earlier might be that. So, for example, if

1 you're looking at land use and you're going through
2 populated areas, we would know a basic density
3 through that area, while when we're looking at the
4 routing, we're going to be looking at number of
5 homes within so many feet.

6 COMMISSIONER LIPSCHULTZ: And that seems
7 to relate, at least in my mind, to the less specific
8 geographic identity of the system alternative versus
9 a route alternative, which has been spec'd very
10 specifically geographically, right? And here's
11 where I'm getting at, and I'll ask you my general
12 question, I'll just kind of cut right to the chase.
13 I mean, if the Commission would -- let me back up a
14 little bit.

15 We have what's called the comparative
16 environmental analysis that we use in route
17 proceedings, correct?

18 MS. PILE: That is correct.

19 COMMISSIONER LIPSCHULTZ: And that's been
20 determined by the EQB to be a MEPA-compliant
21 analysis, right?

22 MS. PILE: That is correct.

23 COMMISSIONER LIPSCHULTZ: Could you adapt
24 that analysis to the more general level of review
25 that would be appropriate for the system

1 alternatives in the certificate of need proceeding
2 if we, in fact, refer those alternatives to that
3 proceeding?

4 And when I think of comparative
5 environmental analysis, I think of different
6 alternatives and comparing their relative
7 environmental impacts using the criteria you use,
8 but I guess in this case having less specificity for
9 some of your data sets in the case of the system
10 alternatives versus the route alternatives. Can you
11 respond to that and tell me what you think and
12 whether you agree or disagree?

13 MS. PILE: Chair and Commissioners, if
14 I'm -- if I'm understanding what you're asking, I
15 think it is what we would indeed always do in
16 analyzing system alternatives or analyzing something
17 even at a corridor level. Years ago, the Power
18 Plant Siting Act actually had a corridor review that
19 preceded moving to the route review.

20 What I've thought about with this
21 particular situation is that we would be -- if we
22 were asked to do something, we would be looking at
23 the proposed route and then these various system
24 alternatives compared to each other, but the
25 proposed route itself would have to be brought up to

1 the same level of data sets that we have to be able
2 to compare to the other routes. So, for example, if
3 I'm, again, back on a density type element, I would
4 be looking at that same data set that would tell me
5 something about the land use through the area so
6 that I had this comparable information to provide a
7 comparison between those various systems.

8 COMMISSIONER LIPSCHULTZ: So to your last
9 point, you would want to do an apples-to-apples
10 comparison and you'd want to --

11 MS. PILE: I try not to use that, but
12 yes. Yeah.

13 COMMISSIONER LIPSCHULTZ: But I have to
14 use that because, remember, I have a simple mind and
15 so forgive me from where I'm starting.

16 So if we were to direct your agency to do
17 a comparative environmental analysis of the system
18 alternatives and the Sandpiper corridor in the
19 certificate of need proceeding, adapted to the level
20 of specificity or granularity appropriate for those
21 alternatives, is that something you would understand
22 and be able to implement?

23 MS. PILE: Chair and Commissioners, yes,
24 it is.

25 COMMISSIONER LIPSCHULTZ: Okay.

STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL
QUALITY BOARD

In the Matter of the Proposed
Permanent Rules Relating to
Pipeline Routing

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The 1987 Minnesota Legislature passed legislation which specifically addressed pipelines and several safety related issues and topics. One component of this legislation, Minnesota Statute, section 116I.015, authorizes and directs the Environmental Quality Board (EQB) to adopt rules governing the routing of pipelines and provides direction as to what the rules must address. Further, Minnesota Statute, section 116I.015, subd. 3., requires that "The rules apply only to the routes of pipelines and may not set safety standards for the construction of pipelines."

The pipeline routing legislation, in part, was based upon selected portions of Minnesota Statutes, section 116C.51 to 116C.69, which is known as the Power Plant Siting Act. Similarly, the EQB's rules (chapter 4400) for routing high voltage transmission lines and siting electric power generating plants and (chapter 4410) environmental review program requirements for pipelines provided a foundation and procedural basis for development of the proposed pipeline routing rules. Other rules and statutes were also relied on and they are briefly discussed below.

Selected parts of the proposed pipeline routing rules also incorporate other elements and responsibilities the EQB has under its enabling legislation, Minnesota Statute, section 116C. Among these is the mandate to provide for broad public participation and notice of board actions.

Development of the rules also relied are the direction provided by Minn. Stat., section 116D.03, subd. 1, which states that "the legislature authorizes and directs that, to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06", which is the State Environmental Policy Act.

The proposed pipeline routing rules also reflect the regulatory requirements which will allow the proposed rules to qualify as an alternative review process approvable by the EQB under part 4410.3600 of the environmental review rules. Under this approach, pipelines subject to the proposed rules would not actually be reviewed through environmental assessment worksheets (EAWs) or environmental impact statements (EISS), but would receive equivalent review under the routing and permitting process established in the proposed rules.

Selected parts of the proposed rules are consistent with notification and meeting requirements provided for in Minnesota Statute, section, 116I.02. Public hearings, when required, will be held pursuant to chapter 1405, which are the Office of Administrative Hearings rules for the siting of high voltage transmission lines and power plants. The proposed rules incorporate by reference several definitions from other state agency rules where there is regulatory authority for pipelines.

The proposed rules provide a review process that minimizes duplication, provides for timely review, meets the requirements of environmental review, and establishes an orderly method for the routing and permitting of pipeline projects.

Rulemaking began in November, 1987 with publication of Notice of Intent to Solicit Outside Opinion in the State Register. Three drafts of the proposed rules were prepared and sent out for review between April and August, 1988. As part of the rule development process, a meeting was held to discuss each draft of the proposed rules. The first draft of the proposed rules were sent in April, 1988 to approximately three hundred and fifty interested persons on the pipeline rule mailing list. The second (June 9, 1988) and third (July 22, 1988) draft of the proposed rules were sent to approximately one hundred and fifteen interested person who remained on the mailing list. The proposed rules were also sent to and reviewed by the Pipeline Safety Advisory Council.

During the drafting process numerous changes were made to the proposed rules based upon: 1) the written responses received as a result of the notice of intent to solicit outside information or opinions and the proposed draft rules governing pipeline routing; 2) the public meetings held to discuss the proposed draft rules; and 3) internal staff review.

II. STATEMENT OF BOARD'S AUTHORITY

The EQB's statutory authority to adopt rules relating to pipeline routing is set forth in Minnesota Statutes, section 116.015 (1987). Under this statute the Board has the necessary authority to adopt the proposed rules.

An amendment to section 116I.015 subdivision 3, was made in the 1988 legislative session (Laws of Minnesota 1988, chapter 624). This amendment allows the Board to hold public hearings pursuant to the requirements of Minnesota Rules, chapter 1405.

