

The Commission met on **Friday, June 5, 2015**, with Chair Heydinger and Commissioners Lange, Lipschultz, Tuma, and Wergin present.

The following matters were taken up by the Commission:

ENERGY AGENDA

E-329, 118/SA-15-357

In the Matter of the Joint Request for Approval of Service Territory Boundary Corrections between Willmar Municipal Utilities and Kandiyohi power Cooperative

Commissioner Wergin moved that the Commission approve the requested service territory boundary changes.

The motion passed 5-0.

E-002,132/SA-15-360

In the Matter of the Joint Request for Approval of a Service Territory Orderly Transfer Agreement between Northern States Power Company and People's Energy Cooperative

Commissioner Tuma moved that the Commission approve the requested service territory boundary changes.

The motion passed 5-0.

E-015/M-15-342

In the Matter of Minnesota Power's Request for a Variance to Commission Rules Regarding Billing Errors

Commissioner Lange moved that the Commission approve the Company's request for a variance to Minn. R. 7820.3800 and a one-time modification to its Billing Error Tariff requirements.

The motion passed 5-0.

E-002/M-15-328

In the Matter of the Petition of Northern States Power Company for Approval of a Statement of Work Agreement for Non-Standard Distribution Facilities (SOW)

Commissioner Lipschultz moved that the Commission approve Xcel's proposed SOW and related tariffs as shown in Attachment A of the Petition.

The motion passed 5-0.

E-002/GR-12-961

IN the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota – Compliance Filing – New Electric Service Agreement with Customer Business Incentive and Sustainability Rider

Commissioner Lange moved that the Commission approve Xcel’s compliance filing and finds that it meets the requirements of the BIS Rider.

The motion passed 5-0.

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 in Minnesota

Commissioner Wergin moved to deny Honor the Earth’s motion to stay the Sandpiper certificate of need proceedings and consolidate them with Enbridge’s recently filed Line 3 Pipeline Project certificate of need application.

The motion passed 5-0.

Chair Heydinger moved to amend the following findings in the Administrative Law Judge’s Report:

1. Retain Findings 384 and 385 of the ALJ Report;
2. Delete Findings of Fact 386-394 and 396-397 of the Administrative Law Judge’s Report;
3. Retain Finding 395 of the ALJ Report;
4. Amend Conclusion 5 of the ALJ Report to delete reference to SA-03 AM, and to add the following language:

The record evidence demonstrates that none of the System Alternatives (SA-03, ~~SA-03-AM~~, SA-04, SA-05, SA-06, SA-07 and SA-08) are more reasonable and prudent alternatives than the Project. SA-03 AM was not fully evaluated in this proceeding. It is included and shall be evaluated as a route alternative in the routing permit docket, 13-474.

5. Delete the ALJ’s Recommendation 2 from the ALJ Report:

~~Refer only the proposed project, SA Applicant, for further proceedings in the routing docket (MPUC Docket No. 13-474, OAH Docket NO. 2500-32159).~~

6. Not adopt the ALJ’s Memorandum to the ALJ Report.

7. Amend Finding of Fact 280 as follows:

The total economic benefit of Project construction is estimated at \$2.4 billion. The economic benefit to Minnesota is estimated to be \$1.26 billion.

8. Amend ALJ's Finding of Fact 289 as follows:

If approved, the Project would yield 2,069 person-years jobs and generated \$450 million in economic impact. Typical operations from 2017 to 2025 are estimated to lead to 3,352 full-time equivalent jobs and create an additional \$725 million per year in economic impact. The NDPC expects that the direct operation of the Project will provide an additional 22 full-time equivalent jobs.

9. Add the Department's Proposed Findings of Fact 103 and 113, as set forth below, to discussion of No-Build/Facilities that do not require a certificate of need:

103. There do not appear to be reasonable options regarding current or planned facilities not requiring certificates of need, to which the applicant has access and that could meet the proposed need of this Project.²⁰⁴ In theory, NDPC could build rail oil loading facilities in the Bakken area or contract for capacity on trains to ship the volumes associated with the proposed Project, but these approaches seem highly unlikely to be viable, and the Department's analysis show the significantly higher cost to ship by rail. Thus, the Department concluded, and the Commission agrees, that neither theoretical option was a reasonable alternative. An indirect benefit of the Project likely would be a reduction in the growth of rail shipments across Minnesota.²⁰⁵

204.Ex. 50 at 48 (Heinen Direct).

205.Tr. V. 7 At 172, 230 (Heinen). See also Tr. V. 4 at 39 (Rennicke).

113. The Department's witness Mr. Heinen agreed that production levels in the Bakken formation have increased and will likely continue to increase, and that these crude oil volumes will seek a way to market.²¹⁸ NPDC witness Mr. Rennicke demonstrated that crude oil shipments by rail through Minnesota have increased significantly in recent years and likely would continue to grow at a greater rate if pipeline infrastructure is not constructed.²¹⁹ Thus, a no-build alternative is not more reasonable because it likely would result in negative impacts to Minnesota as crude oil shipments via rail increase and likely would lead to additional congestion on Minnesota railroads as Bakken crude oil find a different way to market²²⁰

218. Id. at 54 and AJF-29.

219. Tr. V. 4 at 7-55 (Rennicke); Ex. 15 at 2 and Sch. 2 (Rennicke Direct); Ex. 50 at 54, 65-72 (Heinen Direct); Tr. V. 7 at 172, 230 (Heinen).

220. Ex. 50 at 54 (Heinen Direct. See generally Ex. 50 at 65-72 (Heinen Direct).

10. Add the following language, adapted from the last half of the last sentence of Department's Proposed Finding of Fact 109, to discussion of alternatives in ALJ Report:

The higher cost of SA-03 would be significantly lower than comparable alternatives such as oil shipment from the Bakken area by other pipelines, purchase of oil from other areas, or shipment of the oil by rail.²¹³

213. Tr.V. 7 at 172-173.

11. Add the following language, adapted from the Department's Proposed Finding of Fact 110, to discussion of alternatives in ALJ Report

:
DOC-DER concluded that SA-03's higher cost did not justify eliminating SA-03 as a potential alternative to the Project at this point because the cost differences do not appear likely to materially impact the demand for volumes associated with the Project, and because environmental impacts of these two options may differ significantly.²¹⁴

214. See Tr..V.7 at 172-173 (Heinen)(Suggesting that the Project, SA-03 and SA-04 modified proceed to routing). The commission did not identify SA-03 modified for analysis in the need proceeding.

12. Add the following language, adapted from the Department's Proposed Finding of Fact 149, to discussion of alternatives in ALJ Report

DOC-DER concluded that shipment of crude oil via pipeline represents the most efficient, cost-effective, and least disruptive option for Minnesota and neighboring states;²⁸² all other non-pipeline alternatives are expensive, would be unable to effectively meet the projected need of the project, and may have deleterious impacts to other parts of the Minnesota economy.

282. Ex. 50 at 87-87 (Heinen Direct).

13. Replace the language of ALJ Recommendation paragraph 3(a) and (c) with the following language:

3.CONDITION the Certificate of Need upon

~~(a) providing permanent road access to all valve locations;~~

~~(c) a program that defrays the costs of first responder training on pipeline-related emergencies;~~

Road Access to Shut off Valves. The Applicant shall provide permanent road access to all valves that meets or exceeds standards for emergency access purposes established by the local unit of government having jurisdiction over a particular site and approved by the Minnesota Department of Public Safety (DPS) as part of the Applicant's Emergency Response Plan. The Applicant shall obtain and register an address or other location indicators for each of the separate above ground facilities and valves with the emergency responders and Public Safety Answering Points (PSAP) having jurisdiction over the facilities in a fashion that is acceptable to the First Responders and the (PSAP). Each of these access roads and facilities shall have signage clearly identifying their approved location identifier for public reporting to first responders and PSAPs.

The approval of the Certificate of Need is conditioned on the applicant providing a compliance filing showing that it has plans to provide and fund these permanent road accesses. Further, that the compliance filing must show at the applicant has notified all local jurisdictions along the route of this requirement.

Emergency Response and Training. The approval of the Certificate of Need is conditioned on appropriate emergency incident response and training. The Applicant shall develop Emergency Response Plans in consultation with and acceptable to the First Responders and PSAPs having jurisdiction over the areas where the pipeline traverses. These emergency plans shall be developed in conjunction with and in the scope and fashion acceptable to the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Minnesota Department of Public Safety (DPS) and Minnesota Pollution Control Agency (PCA). The applicant must assure that First Responders and PSAPs having jurisdiction over the areas where the pipeline traverses have their appropriate emergency response plan and any updates thereto. The Applicant shall fund and provide regular emergency incident training with local first responders and will regularly update their plans based on their experience in these trainings. The applicant shall develop a program that defrays the cost of first response or training and any specialized equipment necessary to respond to pipeline incidences along the pipeline. This program may include, where allowed by DPS, funding already provided by the DPS rail and pipeline safety programming, but shall not be limited by that funding so as to ensure emergency planning and training required under the emergency plans for this pipeline are adequately executed. The Applicant shall on a regular basis, in addition to other reporting requirements to PHMSA, DPS and PCA, keep local first responders informed of 1) the PHMSA schedule for integrity assessments, 2) the results of any integrity assessments or re-assessments and 3) any integrity issues that may lead to emergency responses on the segment of line that is within their jurisdiction. In all compliance filings with the Commission, but no less frequently than annually after the issuance of any site permit, the Applicant shall provide updates regarding:

- the progress regarding development of Emergency Plans,
- engagement with local first responders, PHMSA, DPS and PCA regarding pipeline incident response,
- trainings that have occurred with local first responders,
- proof of funds used to defray emergency response training and equipment,
- proof of notification of First Responders along the route of the emergency plan and training availability, and
- the integrity assessment schedule or approved intervals other than the PHMSA standard five-year assessment interval,
- results of any integrity assessments or re-assessments,
proof of communications on pipeline integrity issues in specific jurisdictions.

14. Clarify ALJ's Finding 96 as proposed by the DOC as set forth below:

DOC Proposed Finding 96. On October 7, 2014, the Commission issued a written order resulting from its September 11, 2014 meeting (October 2014 Order). The Commission separated the CN proceeding from the Route Permit proceeding and postponed action on the Route Permit Application until the Commission made a decision on the CN Application. In addition, the

Commission authorized environmental review of six System Alternatives (SA-03, SA-04, SA-05, SA-06, SA-07 and SA-08) in the CN proceeding, and noted its action on August 25, 2014, that forwarded 53 route alternatives as well as “modified system alternative SA-03” for consideration in the route permit proceeding.⁹ The Commission requested that DOC-EERA staff complete the environmental review of the six System Alternatives prior to the contested case hearings in the CN docket.[Footnote omitted].

9. Order Separating Certificate of Need and Route Permit Proceedings and Requiring Environmental Review of System Alternatives at 2, Dockets PPL-6668/CN-13-473 and PPL-6668/PPL-13-474 (October 7, 2014).

[New Proposed Finding and Conclusion] The Commission makes no finding of fact, conclusion of law or recommendation in this CN proceeding with respect to SA-03-AM, which is a route alternative that may be considered in the route permit docket, MPUC Docket No. PL-6668/PPL-13-474.

15. Clarify the ALJ Findings 195 and 197 as follows:

195. The Applicant testified that the NDPC System to Clearbrook was in constant apportionment between 2006 and 2012, intermittent apportionment during 2013, and back into apportionment in 2014.[FN] However, the St. Paul Park refinery and other shippers argued in the FERC proceeding that they have received timely service from NDPC and they have not been subject to apportionment.¹²[Existing footnotes omitted]

197. When apportionment is announced, refiners and shippers refineries, including the Flint Hills and St. Paul refineries in Minnesota, are may be unable to obtain all of the crude oil originally directed to them. Apportionment may have has an immediate negative impact on producers, shippers, and refiners. [Existing-footnotes omitted]

16. Clarify the ALJ’s Findings 586, 591, and 592 regarding Financial Assistance and add revised Recommendation Condition 3(e) as follows:

586. DOC-DER recommended that the Commission make clear that NDPC is financially responsible for all clean-up costs of any spills and remediation and impose ~~permit~~ conditions that NDPC maintain sufficient insurance or other adequate financial assurance to cover all these costs.¹

1. Ex. 50, at 119:9-10 (Heinen Direct); Ex. 54, at 55:21-23 (Heinen Surrebuttal).

591. DOC-DER and NDPC continued to meet following the close of the contested case record to discuss a permit condition that would satisfy DOOC-DER’s concerns regarding adequate financial assurance. ~~Such talks are constructive and helpful to finding the best resolution of this question.~~⁵⁹¹ As a result of those discussions, DOC-DER and NDPC negotiated a parental guaranty by Enbridge Energy Partners, L.P. in favor of the State of Minnesota, including all agencies and political subdivisions, and any person damaged by a release from the Project. The guaranty memorializes and evidences NDPC’s and Enbridge’s commitments to operate the

Project safely and responsibly. In particular, the guaranty provides that, in the event NDPC is unable to fund the obligations resulting from a release, Enbridge will be full and completely responsible for such obligations.³

3. See Financial Assurance and SAX Construction Update (May 22, 2015)(May 22, 2015) (eDocket Nos. 20155-110679-01 and 20155-110679-02).

~~592. Including a permit condition that requires NDPC to submit a description of the financial arrangements it has made, and will maintain, to meet its obligations under Minn. Stat. § 115E.04, subd. 4 and 49 C.F.R. Part 194 would be appropriate. One possibility might be to require submission of a copy of NDPC's narrative describing the "functional area of finance" required by 49 C.F.R. § 194.107(e)(3).~~592 DOC-DER and NDPC agreed to execute the guaranty as a condition of the certificate of need and agreed that NDPC would efile an executed copy of the guaranty no later than 60 days after the Commission issues its written order granting the certificate of need for the Project.

Revised Recommendation Condition 3(e)

~~(e) submission of a description of the financial arrangements NDPC has made, and will maintain to meet its obligations under Minn. Stat. 115E.04, subd. 4 and 49.C.F.R. Part 194~~ an executed copy of the guaranty no later than 60 days from the date of this written order; and

17. Delete the last three paragraphs of the Introduction section on page 2 of the ALJ's Report as follows:

~~NDPC's proposal is highly controversial. The parties diverge on a central point: whether the benefits of improving access to North Dakota crude oil are worth assuming the risks that there might later be a large scale oil spill from the pipeline.~~

~~From NDPC's perspective, the key goals of the Project are to reduce shipping bottlenecks at its existing Clearbrook Terminal and to develop robust and flexible route for transporting North Dakota crude oil to the refineries that want it. It argues that he risks of large scale oil spill are small, and manageable, and should not impede development of a pipeline that would greatly benefit Minnesota and the region.~~

~~Opponents of the Project maintain that both planned and accidental discharges of oil from the proposed pipeline will foul the air and water; and that these effects are not sufficiently addressed by NDPC's proposal.~~

The motion passed 5-0.

Commissioner Lange moved to modify ALJ's Finding 537 as follows:

537. The Project has the potential to ~~sharply reduce, and potentially eliminate,~~ these impacts.

The motion passed 5-0.

Commissioner Lipschultz moved to add the following finding regarding ALJ's Findings 508 and 514 to the ALJ Report at page. 79, following Finding 514:

The Commission does not find that only a pipeline developer can offer an alternative sufficient to meet the burden of proof under Minn. R. 7853.0130, sub. B.

The motion passed 5-0.

Commissioner Lange moved to amend the ALJ's Finding 491 by adding the following sentence from Finding 9 of the Department's proposed Findings of Fact:

The Project will result in significant economic benefits to Minnesota, generally, and financially distressed counties in Greater Minnesota, in particular. The Applicant did not show that there is a direct need for the Project for Minnesota (i.e., no material direct benefit for Minnesota), but did show that there likely would be indirect benefits of lesser growth in oil shipments by rail and induced development.

The motion passed 5-0.

Commissioner Lipschultz moved to add the Department's proposed Finding 46 to the ALJ Report:

The record does not support a conclusion that the two Minnesota refiners would realize an overall net benefit from the redundancy provided by the Project when the likely associated cost increase of about \$0.40 per barrel rate is considered.¹¹³ The issue of redundancy is relevant to whether the Project is likely to improve reliability and adequacy of supply to the people of Minnesota and neighboring states. While redundancy of any kind in theory should provide benefits, the question of whether those benefits outweigh the associated costs to provide net or overall benefit is a different question. The record does not support a conclusion that the Project would result in a net benefit to Minnesota refiners.¹¹⁴

114. See, E.g., Ex. 50 at 24-29 (Heinen Direct); Ex. 54 at 28-32 (Heinen Surrebuttal).

Commissioner Lipschultz moved to add paragraphs 122 – 151 of the Department's proposed Findings to the ALJ's Report, incorporating any previous changes already made to paragraph 49), and deleting references to the ALJ.

B. ANALYSIS OF SYSTEM ALTERNATIVES

122. DOC-DER examined the six System Alternatives identified by the Commission which initially were proposed by entities including the Minnesota Pollution Control Agency (MPCA), Minnesota Department of Natural Resources, Friends of the Headwaters and Honor the Earth. Mr. Heinen also reviewed a route alternative, SA-03 modified, that was proposed by the DOC EERA.²³⁷

237. Ex. 50 at 86 (Heinen Direct).

123. Largely due to the TSAs that identify receipt points at (or near) Clearbrook and at Superior, Mr. Heinen reasonably concluded in his Direct Testimony that it is unlikely “absent additional information from the proposers,” System Alternatives “other than SA- 03 or [route alternative] SA-03 modified, would be able to achieve the claimed need[.]”²³⁸

238. *Id.*

124. Mr. Heinen testified that SA-03 appears to meet the need identified in the TSAs²³⁹ from a non-environmental perspective, albeit at higher cost, with greater operational issues such as pressure cycling, more integrity digs, and longer time to transport oil to Superior of about a day,²⁴⁰ and with legal uncertainty regarding application of the TSAs and the FERC Declaratory Order referenced by Applicants.²⁴¹

239. Tr. V. 7 at 172 (Heinen); Ex. 54 at 54-55 (Heinen Surrebuttal). Route alternative SA-03 modified also appears to meet the claimed need although at greater cost than SA-03, but due to receipt points at Clearbrook and Superior, would not result in greater operational issues or legal uncertainties as compared to SA-03. *Id.* at 46-49 (Heinen Surrebuttal).

240. Ex. 54 at 37-46 (Heinen Surrebuttal). See Ex. 19 at 4 (Glanzer Rebuttal) (citing \$210 million in added incremental capacity cost, operational issues including added costs of line fill, increased transit time and legal uncertainties).

241. See Ex. 54 at 45-46 (Heinen Surrebuttal).

1. SA-03: Description

125. SA-03 was proposed by the MPCA and would follow the Applicant’s preferred corridor from the North Dakota border for about 20 miles to an intersection with the existing Viking Gas Transmission (natural gas) pipeline right of way, and follow that right of way in a south and easterly direction until roughly 5 miles west of North Branch, Minnesota. Then, SA-03 would follow existing corridors in a northerly direction until it intersects NDPC’s preferred Sandpiper corridor, which would then follow easterly to the Superior terminal; it does not have an interconnection at Clearbrook, but instead SA-03 would have the proposed Clearbrook-West terminal moved to the Crookston, Minnesota area²⁴² which is about 60 miles away from Clearbrook. The total length of SA-03 is approximately 70 miles longer than the proposed Project.²⁴³

242. Ex. 50 at 74 (Heinen Direct); Ex. 54 at 37-38 (Heinen Surrebuttal).

243. Ex. 50 at 75 (Heinen Direct); Ex. 54 at 39 (Heinen Surrebuttal).

2. SA-03 is estimated to cost more than the proposed Project

126. SA-03’s greater length would be about \$210 million more expensive (added incremental capital costs) than the proposed Project,²⁴⁴ and if a potential replacement of Line 81 were included (due to fatigue caused by increased pressure cycling) the total increased cost of SA-03 would be about \$465 million.²⁴⁵ On a percentage basis, SA-03 is estimated to cost between 8 to 17.9 percent more than the \$2.6 billion proposed Project²⁴⁶ It is significant that no Applicant

testified that, if SA-03 were selected for a CN, those increased costs would render the pipeline to be uneconomic to build or operate.

244. Ex. 54 at 46 (Surrebuttal) (citing Ex. 19 at 4 (Glanzer Rebuttal)).

245. *Id.* NDPC witness Mr. Steede testified that complete replacement of Line 81 would cost about \$145 million, Ex. 20 at 14 (Steede Rebuttal); total of increased cost of SA-03 with replacement of Line 81 is \$465 million (\$210 million + \$145 million + approximately \$110 million for operating costs) = \$465 million.

246. $(210,000,000/2,600,000,000 = 0.08; 465,000,000/2,600,000,000 = 0.179)$.

127. Applicant claimed that SA-03 would result in added “line fill” costs of \$25.3 million for shippers taking delivery at Superior, and an additional \$3.9 million for shippers taking delivery at Clearbrook.²⁴⁷ Mr. Palmer testified that the added costs of SA-03 would be significant to MPC.²⁴⁸ Mr. MacPhail claimed that added costs of SA-03 would result in increased rates, be contrary to the TSAs and the FERC Declaratory Order and he concluded that SA-03 is not a more reasonable alternative to the proposed Project.²⁴⁹

247. Ex. 54 at 41 (Heinen Surrebuttal) (citing Ex. 19 at 4 (Glanzer Rebuttal)).

248. Ex. 22 at 2 (Palmer Rebuttal).

249. Ex. 21 at 4 (MacPhail Rebuttal).

128. As to added costs, the record does not show SA-03’s expected higher cost are likely to be of economic significance since there is no showing that the higher cost would materially impact demand for the volumes associated with the Project.²⁵⁰ There appears to be insufficient pipeline capacity to meet the level of oil production.²⁵¹ NDPC witness Mr. Rennie also testified to insufficiency of current pipeline capacity.²⁵²

250. Ex. 54 at 46 (Heinen Surrebuttal). This topic was discussed previously in Section II of this Initial Brief.

251. Tr. V. 7 at 209-210 (Heinen).

252. Tr. V. 4 at 12-14 (Rennie).

129. The higher costs estimated for SA-03 still would be significantly lower than comparable alternatives such as shipment by rail.²⁵³

253. Tr. V. 7 at 223-225 (Heinen); See Ex. 50 at 43 (Heinen Direct).

130. Applicant identified no specific point, either as to costs of alternatives or stated in dollars per barrel of oil over which Applicant would consider the Project to be uneconomic,²⁵⁴ but Mr. Heinen provided an analysis showing that at least a dollar per barrel *above* the estimated costs of alternatives SA-03 or SA-03 modified (a route alternative) likely would be required before other pipelines out of the Bakken area would be more competitive.²⁵⁵ Purchasing light crude oil from Texas on the spot market still is much more expensive, and shipment by rail is approximately \$4 to \$5 dollars more expensive than the estimated costs of SA-03 or SA-03 modified.²⁵⁶

254. See, e.g., Tr. V. 3 at 52-53, 67 (Palmer).

255. Tr. V. 7 at 223-225 (Heinen).

256. Id. MPC witness Palmer testified that MPC has not decided at what price it would terminate its TSA or whether to remain an owner in the event that the Commission grants a CN for SA-03, Tr. V. 3 at 52-57 (Palmer), and he stated that if the Project is not built, MPC's "only near-term options for transporting additional volumes of Bakken crude to MPC's system" would be rail shipments. Ex. 13 at 9 (Palmer Direct).

131. Mr. Heinen explained that "line fill" is working stock in the pipeline and, thus, it is similar to a deposit that shippers will recoup when the oil reaches its delivery point.²⁵⁷ The added line fill costs of SA-03, due to its greater length than the proposed Project, are not significant compared to the overall cost of the Project.²⁵⁸ The record does not show that added line fill costs likely would impact demand for the Project.²⁵⁹

257. See Ex. 54 at 41-42 (Heinen Surrebuttal).

258. Ex. 54 at 42 (Heinen Surrebuttal).

259. See id.

132. Although MPC witness Mr. Palmer testified that the higher costs of SA-03 would negatively impact Marathon's profits,²⁶⁰ he also stated that MPC has not determined a price point over which it would abandon its participation in the project (terminate its TSA or would remain an owner) in the event that the Commission grants a CN for SA-03 rather than the proposed Project.²⁶¹ He testified that if the Project is not built, MPC's "only near-term options for transporting additional volumes of Bakken crude to MPC's system" would be rail shipments.²⁶²

260. Ex. 22 at 2-5 (Palmer Rebuttal); Tr. V. 3 at 52-57 (Palmer).

261. Tr. V. 3 at 52-57 (Palmer).

262. Ex. 13 at 10 (Palmer Direct).

133. In response to Mr. Palmer's claim that the higher costs of SA-03 might negatively affect utilization of the Project by MPC and other shippers,²⁶³ Mr. Heinen observed that he recalled no evidence in the record from which to conclude that the added "tolls" or costs associated with SA-03 likely would be high enough to decrease utilization of the pipeline if the Commission selected SA-03 over the proposed Project.²⁶⁴

263. Ex. 22 at 3-4 (Palmer Rebuttal).

264. Tr. V. 7 at 227-228 (Heinen). Theoretically, assuming "all other factors being equal" and assuming that tolls are a regular good", Mr. Heinen testified, and the ALJ agrees, that increased tolls would decrease utilization. Tr. V. 7 at 185-186 (Heinen).

134. DOC-DER reasonably concluded that SA-03's higher cost did not justify eliminating SA-03 as a potential alternative to the Project from further consideration at this point because the cost differences were not shown to be likely to materially impact the demand for volumes associated with the Project.²⁶⁵

265. Ex. 54 at 46 (Heinen Surrebuttal).

3. SA-03 has greater operational issues

135. Applicant witness Mr. Steede testified that SA-03 would present several challenges, but the primary concern would be pressure cycling.²⁶⁶ Pressure cycling is a concern because it increases integrity risks for the pipeline by causing repeated change in the operating pressure of a pipeline, which increases the likelihood of more cracks and other fatigue-related conditions sooner and more frequently than would otherwise be the case.²⁶⁷ NDPC explained that the operational reasons for pressure cycling are complex and varied, and the Applicant's assets are monitored monthly for pressure cycling to ensure that the lines are always operated in a safe manner.²⁶⁸ NDPC claimed that, due to pressure cycling, SA-03 would require an additional 310 integrity digs within the next 5 to 7 years, beyond those currently planned, and that such digs would increase capital costs by about \$100 million as well as increase planned outages.²⁶⁹

266. Ex. 54 at 42-44 (Heinen Surrebuttal) (citing Ex. 20 at 11 (Steede Rebuttal)).

267. *Id.*

268. *Id.*

269. Ex. 54 at 44 (Heinen Surrebuttal).

136. If Line 81 must be replaced between Crookston and Clearbrook due to the effects of pressure cycling, it would cost about \$145 million, which is a sum included in the section immediately above regarding the higher costs of SA-03.

4. Redundancy

137. Applicant argued that SA-03 would eliminate the benefit of redundancy that the proposed Project would provide to the Minnesota refineries. As discussed previously in these Proposed Findings, NDPC did not demonstrate that redundancy is needed for Minnesota refineries, and Mr. Heinen reasonably observed that Line 81 will continue to exist between Crookston and Clearbrook.

5. A CN approved for SA-03 may create legal uncertainty

138. Applicant argued that if the Commission approves a CN for SA-03 rather than the Declaratory Order setting the rates and terms of transportation via the proposed Project would be called into question.²⁷⁰ NDPC claimed that the TSAs may not bind committed shippers to their commitments to finance the pipeline, and the FERC Declaratory Order may not apply to a pipeline with Crookston and Superior receipt points rather than Clearbrook and Superior.²⁷¹

270. Ex. 21 at 3, 5-6, 13-19 (MacPhail Rebuttal).

271. *Id. generally* at 14-19.

139. Approval of a CN for SA-03 likely would give rise to uncertainty with respect to application of the TSAs as well as the FERC Declaratory Order. That said, and while recognizing the likely significant effort expended by NDPC, committed shippers and perhaps uncommitted shippers as to the TSAs and the FERC Declaratory Order, those documents do not

bind the Commission. The TSAs and the FERC Declaratory Order appear to be subject to opportunities for amendment or renegotiation. If the Commission determines that SA-03 is a more reasonable and prudent project based on consideration of environmental impacts and the record as a whole, then the Commission's CN decision will govern construction of the pipeline in Minnesota if NDPC and shippers choose to proceed.

a. SA-03 effect on TSAs

140. NDPC claimed that Commission approval of a CN for any System Alternative rather than the proposed Project would increase costs, which in turn "increases the risk that the shippers will choose other modes of transportation to go to alternative markets."²⁷² Mr. MacPhail testified that Commission selection of SA-03, or any System Alternative, also would create uncertainty regarding implementing the TSAs, and as to application of the FERC Declaratory Order.²⁷³ He testified that SA-03 would not constitute a "trivial or immaterial" issue, but would go to the question of whether SA-03 could meet the needs of the Project.²⁷⁴

272. Ex. 21 at 4 (MacPhail Rebuttal).

273. Ex. 21 at 5-6.

274. Id. at 6.

141. Section 4.02 of the TSAs sets forth the conditions under which the Applicant or committed shippers have the right to terminate the agreement.²⁷⁵ Article 13 expressly allows parties to be relieved of their commitments under the TSA for an "event of Force Majeure," which is defined at page 6 to include an act of a Government Authority (e.g., the Minnesota Public Utilities Commission) for which parties do not have control, such as Commission approval of a CN for a System Alternative rather than for the proposed Project configuration.

275. Ex. 50 at AJH-6 page 16 (Heinen Direct) (TSAs).

142. NDPC may need to seek the approval from its committed shippers, including MPC, a coowner of the project, of any changes to the proposed Project or other effects of the Commission's decisions. Given that MPC essentially has committed for a period of time through its TSA, and as an owner, to construction of a partially dedicated pipeline to serve its refinery system in Illinois, Ohio and Kentucky and, based on Mr. Palmer's testimony that MPC has not decided what level of cost increase would cause it to abandon the project, and that shipment by rail is the only near-term alternative to a nobuild, the record does not support a finding that moving the Clearbrook receipt point to Crookston likely would result in MPC's termination.

b. FERC Declaratory Order

143. NDPC claimed that the effect on the FERC Declaratory Order of Commission selection of SA-03, rather than for the proposed Project, would be delay, uncertainty, potential opposition of shippers, and increased costs, such that NDPC may seek further assurance of the FERC by filing another petition for a declaratory order.²⁷⁶ It claimed that any

change to the Clearbrook receipt point, as well as added costs associated with SA-03 (and all System Alternatives), would put the viability of the project at issue.²⁷⁷

276. Ex. 21 at 3-6 (MacPhail Rebuttal).

277. See id. at 3.

144. NDPC witness Mr. MacPhail stated, “SA-03 would raise difficult issues with regard to NDPC’s (and its shippers’) ability to rely on the FERC Declaratory Order.”²⁷⁸ He explained that NDPC cannot assume that the FERC Declaratory Order would apply to SA-03, and that SA-03 could undermine the certainty of that approval as to committed contract rates and committed volumes provided in the TSAs.²⁷⁹ NDPC stated that SA-03 would result in the pipeline being “put at risk that the rate structure will be found to be unjust and unreasonable after the project is built.”²⁸⁰

278. Id.

279. Id. at 15.

280. Ex. 21 at 16 (MacPhail Rebuttal).

145. DOC-DER and the ALJ accepts NDPC’s claim of potential uncertainty if the Commission changes the proposed Project or selects a system alternative such as SA-03, and its claims that the remedy for that uncertainty would be for NDPC to seek FERC’s interpretation of its order. FERC acted expeditiously (within three months) on Applicant’s Petition for a Declaratory Order and, given such dispatch, NDPC may be able to secure FERC’s renewed assurance prior to completion of the route proceeding.

146. There is no doubt that Applicant invested its time and efforts to secure shipper commitments as well as to quiet disapproval of some non-committed shippers, and that it expended additional effort to obtain the FERC Declaratory Order. Those facts, however, do not trump the Commission’s authority to consider and decide whether the environmental and socioeconomic impacts of SA-03 are less than those of the proposed Project.

147. Enbridge has filed, and the Commission approved, Enbridge’s Notice Plan to construct its replacement of Line 3 from Clearbrook to follow the proposed Sandpiper pipeline route.²⁸¹ If the Commission approves a CN for SA-03 rather than for the proposed Project configuration, then Applicant’s additional requests of FERC for the current matter may be helpful to NDPC’s parent company’s efforts before FERC in the Line 3 matter.

281. In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement Project in Minnesota from the North Dakota Border, MPUC Docket No. PL-9/CN-14-916, Petition for Approval of Notice Plan (October 214, 2014).

c. Conclusion

148. Approval of a CN for SA-03 likely would give rise to uncertainty with respect to application of the TSAs as well as of the FERC Declaratory Order. In that event, Applicant may revisit with its shippers the TSA changes that would be required due to CN approval of SA-03, and may seek assurance from FERC as to application of its Declaratory Order. If the Commission determines that SA-03 is a more reasonable and prudent project based on consideration of environmental impacts and the record as a whole, then the Commission's CN decision will govern construction of the pipeline in Minnesota if NDPC and shippers choose to proceed.

C. CONCLUSION REGARDING ALTERNATIVES TO THE PROPOSED PROJECT

149. DOC-DER concluded, and the ALJ agrees, that shipment of crude oil via pipeline represents the most efficient, cost effective, and least disruptive option for Minnesota and neighboring states;²⁸² all other non-pipeline alternatives are more expensive, would be unable to effectively meet the projected need of this project, and may have deleterious impacts to other parts of the Minnesota economy.

282. Ex. 50 at 86-87 (Heinen Direct).

150. SA-03 appears to meet the need identified in the TSAs²⁸³ from a non-environmental perspective, albeit at a higher cost, with greater operational issues such as pressure cycling and additional transportation time of about a day for oil to reach Superior, and with legal uncertainties regarding application of the TSAs and the FERC Declaratory Order referenced by Applicants.²⁸⁴ The record does not show that the higher cost likely associated with SA-03 would materially impact demand from volumes associated with the Project.²⁸⁵ Transportation of oil via SA-03 still appears to be less costly than other alternatives including rail.²⁸⁶

284. See Ex/ 54 at 45-46 (Heinen Surrebuttal).

285. Ex. 54 At 46 (Heinen Surrebuttal).

286. Tr.V.7 at 223-225 (Heinen).

Chair Heydinger moved to amend Commissioner Lipschultz's motion by deleting the Departments proposed Finding 151 from those to be added.

~~151. The ALJ agrees that DOC-DER's analysis of economic factors concludes that SA-03's expected higher cost and other factors show that the record does not justify eliminating SA-03 as a potential alternative to the Project prior to consideration of environmental impacts.~~

The motion as amended passed 5-0.

Commissioner Tuma moved to delete paragraphs 526-531 of the ALJ's Report.

~~526. — Many members of the public recommended that the Commission deny the Certificate of Need on the grounds that Minnesota should not facilitate refinery access to crude oil. The commentators maintain that use and refining of crude oil contributes to climate change and that Minnesota should not acquiesce in these changes.⁵²⁶~~

~~⁵²⁶ See, e.g., Comments of Mary and Tim Anderson (January 23, 2015); Comments of Katherine Schafer (January 12 2015); Comments of Gerald Striegel (January 23, 2015); Comments of MN350 (January 23, 2015).~~

~~527. — The non-acquiescence urged by these commentators takes to different forms. The first is that a denial of the CN would be an effective strategy to “shut in” stocks of crude oil from within the Williston Basin.⁵²⁷~~

~~⁵²⁷ See, e.g., Duluth Tr. at 47 (LaForge); Duluth Tr. at 55-56 (Wilson); St. Paul Tr. at 66 (Romano); St. Paul Tr. 75-76 (Adamski).~~

~~528. — The second claim is that even if denial of the CN would not prevent the extraction of crude oil from the Bakken region, there is value in Minnesota refusing to participate in oil-based markets that are environmentally dangerous and immoral.⁵²⁸~~

~~⁵²⁸ See, e.g., Duluth Tr. at 48 (LaForge); Duluth Tr. at 210-13 (Schuyler); Crookston Tr. 89-90 (Hanes); St. Paul Tr. at 121-22 (Hokenson); St. Paul Tr. 224 (Bellingham).~~

~~529. — As to the first claim, the production forecasts show that there will be growing supplies of crude oil production from the Williston Basin regardless of whether the Project is constructed. Additionally, given the fact that the North Dakota segment of the proposed pipeline has already won regulatory approvals in that state, there is real doubt that disapproving the Minnesota segment of the pipeline would be an effective strategy in preventing additional extraction.⁵²⁹~~

~~⁵²⁹ Ex. 14, at 7:142-144 (Earnest Direct); Ex. 31, at 4:81-88 (Earnest Surrebuttal); Ex. 30, at 8:203-9:210 (Crane Surrebuttal); Evid. Hr'g Tr. Vol. 3, at 103:24—104:3 (Steede).~~

~~530. — As to the second claim, to hold that no pipeline alternative is ever acceptable would be to resolve NDPC's Application on criteria that are not in the regulation. Such an analysis conflates two very different things: (1) “the effect of the proposed *facility*” on the natural environment; with (2) the effect that using *crude oil* has upon the natural environment. The first is a matter for the Public Utilities Commission to assess. The latter is a question for the Minnesota Legislature or Congress.⁵³⁰~~

~~530. Compared to the other transportation modes available for moving crude oil from North Dakota to refining markets, the proposed pipeline has the fewest environmental impacts of the System Alternatives under review.~~⁵³¹

~~⁵³¹ See Ex. 3, Part 7853.0600, at 15 (Revised CN Application); Ex. 17, Schedule 1, at 195 and Chart 88, at 201 (Eberth Rebuttal); Ex. 80, at 25 (EERA Report).~~

The motion passed 4-1 (with Commissioner Wergin voting no).

Chair Heydinger moved to add the following language to the Commission's decision in this matter:

The White Earth Band of Ojibwa raised exception to Finding of Fact 267, claiming that granting the Certificate of Need would interfere with its usufructuary rights. The Commission disagrees for the reasons set forth in the Seventh Prehearing Order issued by the Administrative Law Judge.

The motion passed 5-0.

Commissioner Wergin moved to accept the ALJ's Report as revised and as consistent with the Commission's Order.

The motion passed 5-0.

Commissioner Wergin moved the following:

1. Grant a Certificate of Need to NDPC for the Sandpiper Pipeline Project consisting of a 24-inch diameter pipeline from the North Dakota border to Clearbrook, Minnesota, and 30-inch diameter pipeline from the Clearbrook Terminal to the Wisconsin border, ending at the terminal in Superior, Wisconsin, authorizing transport of up to 225,000 bpd of crude oil from North Dakota to Clearbrook and up to 375,000 bpd from Clearbrook to Superior.
2. Include the six conditions on the Certificate of Need included in the ALJ Report as set forth below, as supplemented by Commissioner Tuma's earlier motion:
 - a) Providing permanent road access to all valve locations;
 - b) Implementing state and federal regulatory practice on depth of cover;
 - c) A program that defrays the costs of first-responder training on pipeline-related emergencies;
 - d) Submission of compliance filings that provide updates on the construction of the SAX pipeline;
 - e) Submission of a description of the financial arrangements NDPC has made, and will maintain, to meet its obligations under Minn. Stat. § 115E.04, subd. 4 and 49 C.F. R. Part 194; and

- f) Submission of compliance filings that establish that NDPC has made corresponding offsets of renewable energy credits equal to the amount of electricity NDPC uses for the Project in Minnesota.

Commissioner Lipschultz moved to amend Commissioner Wergin's motion to recognize SA-03 as a suitable alternative as well as to include the following language:

- The route permit proceeding shall include alternatives SA-03 as a suitable modification under the Rules and SA-03AM;
- The Department's environmental analysis in the route permit proceeding shall:
 - a. include a qualitative as well as quantitative analysis of the environmental impacts of the various route alternatives; and
 - b. consider the environmental impact of the Sandpiper facility alone and the cumulative impact of both the Sandpiper facility and the Line 3 Replacement Project.
- The Commission will open a docket to consider amendments to its Certificate of Need rules, including possible changes to Part 7853.0130, Item B related to the burden of proof for reasonable and prudent alternatives.

The motion to amend passed 3-2 (with Chair Heydinger and Commissioner Wergin voting no).

Commissioner Lipschultz moved to reconsider his prior motion.

The motion passed 5-0.

Commissioner Lipschultz re- moved his prior motion to amend Commissioner Wergin's motion. After further discussion, Commissioner Lipschultz withdrew his motion to amend Commissioner Wergin's motion.

Commissioner Lipschultz then moved to amend Commissioner Wergin's motion to add the following findings:

3. The Department's environmental analysis in the route permit proceeding shall
 - a. include a qualitative as well as quantitative analysis of the environmental impacts of the various route alternatives; and
 - b. consider the environmental impact of the Sandpiper facility alone and the cumulative impact of both the Sandpiper facility and the Line 3 Replacement Project.

4. The Commission will open a docket to consider amendments to its Certificate of Need rules, including possible changes to Part 7853.0130, Item B related to the burden of proof for reasonable and prudent alternatives.

The motion passed 5-0.

The Commission then voted on Commissioner Wergin's original motion, as amended by Commissioner Lipschultz's motion to amend.

The motion passed 5-0.

Chair Heydinger moved to add the following to the Commission's decision in this matter:

1. Within 30 days of the Order NDPC shall make a compliance filing, listing with citations to the record, its commitments made during this proceeding concerning the construction, operation and mitigation of the project, beyond those specifically required by state and federal law. Parties will have 30 days to review the filing and submit comments to the Commission which may schedule the matter for hearing to resolve disputes, if necessary. The filing shall be made in this docket and Docket No. PL-6668/PPL-13-474.

2. Require a certificate of need for any expansion of the project to increase the authorized transport of crude oil by 10,000 bpd or more.

The motion passed 5-0.

PL-6668/PPL-13-474

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

Chair Heydinger moved to take the following actions:

1. Reaffirm the August 25, 2014 Order referring alternative SA-03-AM to the administrative law judge for consideration at the routing proceeding;
2. Direct that the CEA give full consideration to the human and environmental impacts, including not only the issues as described in Minn. R. 7852.1900, subp. 3, but also including the disruptions to nearby residents, local businesses, roads and transportation, local government and judicial, private and county ditches;
3. The CEA shall also provide a description and analysis of any measures that might be taken to mitigate these potential human impacts, including the estimated costs of such measures;
4. In light of the length of the proposed Project, the sensitivity of the environment that would be crossed by the proposed route alternatives, the need for an in-depth

environmental review of many alternatives, the need to confer with the parties and affected Indian bands, and the failure of the Applicant to propose a viable alternative for consideration in this proceeding, either in its application or to date, the Routing Proceeding shall be recommenced, subject to the following:

- a. Within 90 days of this Order, the Department of Commerce shall file a document outlining the scope of the Comparative Environmental Analysis to be conducted and the time required to complete it.
 - b. Upon receipt, the Commission delegates to the Executive Secretary authority to establish a comment period for addressing the Department's submission. The Commission shall review the Departments' scope and timeline, and the comments received, for compliance with this order and may offer suggestions or modifications.
5. In addition to complying with the specific provisions of statute and rule, the Department of Commerce is encouraged to confer with the parties, including the parties' experts and the affected Indian bands, the Pollution Control Agency, the Department of Natural Resources, the Army Corps of Engineers, the United States Fish and Wildlife Service, and counties and other applicable units of government to develop the appropriate scope for the Comparative Environmental Analysis, taking into account the intensity, extent and duration of environmental impact. The Department is encouraged to consider: appropriate hydrologic testing, taking into account the specific characteristics and composition of construction materials and the product to be transported through the pipeline; the impact on wild rice resources; impact of forest fragmentation; stream-specific scour analysis; slope calculation and topsoil removal; possible use of directional drilling to avoid or minimize shoreline or river-edge habitat impact; lands identified for historical, archeological and cultural significance;
 6. The Department of Commerce is also encouraged to consider mitigation of the potential risk to the environment that could be addressed through route permit conditions that may exceed the minimum pipeline safety requirements but would minimize significant potential risk of environmental harm. This may include changes to the pipeline design, such as pipe-wall thickness, number and location of shut-off valves, protection of the pipeline, inspection plans and reports, requirements for leak detection (including information about the minimum size of detectable leaks) and reporting, and plans to identify and address pipeline exposure, leaks and ruptures. It should also consider possible changes to the size and location of the right-of-way necessary to protect the environment during construction, and site-specific remediation, as well as the type and number of independent inspectors to be retained during construction and operation. Special attention should be given to mitigation in High Consequence Areas;
 7. The Department of Commerce is encouraged to consult with state and federal pipeline safety authorities, and include risk analysis in its Comparative Environmental Analysis, specifically, the risks of rupture in proximity to multiple pipelines and any increased protections needed to access and address such a rupture;

8. As required by the rules, the Comparative Environmental Analysis should also include the human impact of the route alternatives, including proximity to homes and businesses, parks and recreation areas, historic sites and landmarks and cultural resources, local government development plans, and the creation of or addition to the need for expanded utilities or public services;
9. In light of the Applicant's intention to seek approval of reconstruction of Line 3, the Comparative Environmental Analysis should take into account the potential impact of a second line and corresponding wider right-of-way running adjacent to the Proposed Project, including the specific characteristics of the pipeline and the product to be transported through it;
10. The Commission anticipates that the Comparative Environmental Analysis will include the relative merits of the route alternatives, using the selection criteria established in Minn. R. 7852.1900;
11. For good cause shown, the deadline for completion of the route permit proceeding will be extended to allow for completion of a thorough environmental review and the remaining steps of the routing process;
12. Request the Administrative Law Judge to consult with the parties to schedule at least one hearing on the route permit at a location convenient to the affected Indian Bands.

The motion passed 5-0.

There being no further business, the meeting was adjourned.

APPROVED BY THE COMMISSION: August 12, 2015



Daniel P. Wolf, Executive Secretary