

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: June 5, 2015Agenda Item **6

Company: North Dakota Pipeline Company LLC

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 in Minnesota

- Issues:
- Should the Commission adopt the administrative law judge’s Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation?
 - Should the Commission grant a certificate of need for the Sandpiper Pipeline Project?

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Relevant Documents

Application for a Certificate of Need.....November 8, 2013
Environmental Information Report.....November 8, 2013
Revised Application for a Certificate of Need..... January 31, 2014
Revised Environmental Information Report..... January 31, 2014
Supplemental Information for Certificate of Need Application March 19, 2014
Commission Order – Certificate of Need Application Completeness February 11, 2014
Commission Order – Comment Deadlines and Separation of ProceedingsJuly 7, 2014
Commission Order – Alternatives and Procedural Matters August 25, 2014
Commission Order – Separation of Proceedings and Environmental ReviewOctober 7, 2014
Department of Commerce EERA Environmental Review Document..... December 18, 2014
Administrative Law Judge Report April 13, 2015
Carlton County Land Stewards Exceptions April 28, 2015
Friends of the Headwaters Exceptions..... April 28, 2015
Honor the Earth Exceptions April 28, 2015
Laborers Council Exceptions..... April 28, 2015
Minnesota Chamber of Commerce Exceptions April 28, 2015
Department of Commerce DER Exceptions..... April 28, 2015

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Department of Commerce EERA Exceptions.....	April 28, 2015
Department of Natural Resources and Pollution Control Agency Exceptions	April 28, 2015
North Dakota Pipeline Company Exceptions	April 28, 2015
United Association of Journeymen and Apprentices Exceptions.....	April 28, 2015
White Earth Band of Ojibwe Exceptions.....	April 28, 2015
Honor the Earth Motion to Stay Proceedings and Consolidate	May 20, 2015
NDPC Letter on Financial Assurance Agreement	May 22, 2015
Department of Commerce DER Financial Assurance Confirmation Letter	May 22, 2015

The master exhibit list of the public and evidentiary hearings is on eDockets (Document ID [20154-109214-01](#)) and lists other relevant documents such as testimony and post-hearing briefs.

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

I. STATEMENT OF THE ISSUES

- Should the Commission adopt the administrative law judge's Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation?
- Should the Commission grant a certificate of need for the Sandpiper Pipeline Project?

II. PROJECT DESCRIPTION

On November 8, 2013, North Dakota Pipeline Company LLC (NDPC) filed an application for a certificate of need to construct a new 612-mile pipeline to transport crude oil from its Beaver Lodge Station south of Tioga, North Dakota to an NDPC affiliate terminal in Superior, Wisconsin (Sandpiper Pipeline Project). Approximately 299 miles of the new pipeline installation would be located in Minnesota. The purpose of the project is to transport crude oil from North Dakota to terminals in Clearbrook, Minnesota and Superior, Wisconsin.

The pipeline route proposed by NDPC begins at the Minnesota-North Dakota border approximately two miles south of Grand Forks, North Dakota and follows Enbridge Energy Partner's existing pipeline right-of-way to Clearbrook, Minnesota. From Clearbrook the route proceeds south and generally follows the existing Minnesota Pipe Line Company right-of-way to Hubbard, Minnesota.

From Hubbard the route proceeds east traversing greenfield areas and follows portions of existing electric transmission line and railroad rights-of-way before crossing the Minnesota-Wisconsin border approximately five miles east-southeast of Wrenshall, Minnesota. NDPC's identified route would cross portions of Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin, and Carlton counties.

The route between North Dakota and Clearbrook, Minnesota would be comprised of 75 miles of 24-inch diameter pipeline with a capacity of 225,000 barrels per day (bpd). The route between Clearbrook, Minnesota and Superior, Wisconsin would be comprised of 224 miles of 30-inch diameter pipeline with a capacity of 375,000 bpd. The project also includes adding a new terminal with two 150,000 barrel tanks and a new pump station near the existing terminal at Clearbrook, Minnesota; mainline valves at major waterbody crossings and over the length of the route; a pipeline inspection gauge launcher and receiver traps along with a mainline valve at a site near Pine River, Minnesota.

III. PROCEDURAL HISTORY

The following is not a comprehensive recount of the procedural steps in this case. Rather, it is a summary of the major milestones. A complete narrative is provided in the report of the administrative law judge (Findings 43 – 120).

On June 7, 2013, NDPC filed a notice plan petition for the proposed Sandpiper Pipeline Project.

On September 11, 2013, the Commission issued an order approving the notice plan.

On November 8, 2013, NDPC filed a certificate of need application, a route permit application, and an environmental information report for the proposed Sandpiper Pipeline Project.

On January 31, 2014, NDPC filed a revised certificate of need application, route permit application, and environmental information report. The revised filings indicated that the company had changed its name from Enbridge Pipelines (North Dakota) LLC to NDPC and included information regarding modifications to the proposed route through Carlton County.

On February 11, 2014, the Commission issued an order accepting the certificate of need application as substantially complete pending the submittal of additional information. In a separate order, the Commission accepted the associated pipeline route permit application as complete.¹ Both matters were referred to the Office of Administrative Hearings (OAH) for a combined contested case proceeding.

¹ Commission Docket No. PL-6668/PPL-13-474

Between March 3 and 13, 2014, staff from the Commission and the Minnesota Department of Commerce Energy Environmental Review and Analysis unit (EERA) conducted seven public information meetings in six different counties along NDPC's proposed route.

On March 24, 2014, the Commission issued a letter confirming that NDPC had submitted the required additional data for the certificate of need application and that the application was substantially complete as of March 19, 2014, the date NDPC submitted the additional data.

On April 4, 2014, Honor the Earth filed a motion requesting that the Commission extend the comment deadline associated with the comparative environmental analysis, provide additional public hearings, and consider separating the certificate of need and route permit proceedings.

On April 14, 2014, the Commission issued three notices: (1) a notice extending the deadline for submitting comments in the route permit proceeding from April 4, 2014 to May 30, 2014; (2) a notice of denying additional public information meetings in the route permit proceeding; and (3) a notice of comment period on whether to separate the certificate of need and route permit proceedings.

On July 7, 2014, the Commission issued an order reaffirming its decision to extend the comment deadline associated with the comparative environmental analysis, deny additional public information meetings, and to deny Honor the Earth's motion to separate the certificate of need and route permit proceedings.

On July 17, 2014, EERA filed comments and recommendations that summarized the alternative route designation process and identified alternative routes and route segments that it recommended for further consideration.

On August 7, 2014, the Commission met to consider the selection of alternative routes and route segments for further development in the route permit proceeding. As part of its decision, the Commission verbally authorized a 14-day comment period following the August 7th meeting to receive additional comments concerning further review of eight system alternatives (SA-01 to SA-08), and the legal basis for including one or more system alternative in the certificate of need proceeding, the route proceeding, or both.²

On August 25, 2014, the Commission, among other procedural items, issued an order accepting 53 alternative route segments, seven expanded route widths, and modified system alternative SA-03 and forwarded them to the administrative law judge for consideration at route permit hearings.

² A notice of comment period was issued on August 12, 2014.

On September 11, 2014, the Commission met to consider the comments received in response to its August 12th notice regarding further consideration of the eight system alternatives. The issues addressed included the appropriate procedural treatment of the system alternatives; the appropriate environmental review process in the certificate of need proceeding; and the separation of the certificate of need and route permit proceedings.

On October 7, 2014, the Commission issued an order separating the certificate of need and route permit proceedings, postponing action on the route permit application, and authorizing environmental review of six system alternatives (SA-03 to SA-08) in the certificate of need proceedings.

On December 18, 2014, EERA filed the Comparison of Environmental Effects of Reasonable Alternatives report that contained an evaluation of the six system alternatives; NDPC's proposed route; and other alternatives such as the no-build option, rail, truck, and other pipelines.

On January 5-7, 9, and 12, 2015, Administrative Law Judge (ALJ), Eric L. Lipman presided over public hearings that were conducted in the cities of St. Paul, Duluth, Bemidji, St. Cloud, and Crookston. A public comment period was open until January 23, 2015.

On January 27-30, 2015, Judge Lipman presided over evidentiary hearings conducted in St. Paul.

On April 13, 2015, Judge Lipman filed his Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation (ALJ Report).

On April 28, 2015, exceptions to the ALJ Report were filed by the applicant and 11 parties to the proceeding.

IV. STATUTES AND RULES

Under Minn. Stat. § 216B.243, subd. 2, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission.

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

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

7853.0640 specifically address large petroleum pipeline facilities. The specific criteria for granting a certificate of need are set out in Minn. R. 7853.0130 as follows:

- A. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states;
- B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant;
- C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate; and
- D. it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

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

The proposed project also requires a route permit because it is a pipe with a nominal diameter of six inches or more that is designed to transport hazardous liquids.³ The route permit proceeding has been postponed until a decision is made on the certificate of need application, per Commission order. The docket number in the route permit proceeding is PL-6668/PPL-13-474.

V. REPORT OF THE ADMINISTRATIVE LAW JUDGE

On April 13, 2015, the ALJ filed his Findings of Fact, Summary of Public Testimony, Conclusions of Law and Recommendation. The Report included 625 findings of fact; eight conclusions of law; and three recommendations.

The findings of fact were further divided into the following sections: Description of the applicant; Procedural history before the Federal Energy Regulatory Commission; Procedural history before the Commission; Description of the proposed project; Application of need criteria; Potential conditions upon the certificate of need; and Summary of public comments.

The ALJ summarized his conclusions as follows:

³ Minn. Stat. § 216G.02, subd. 1(1)

“NDPC has complied with all relevant statutes and regulations regarding its Certificate of Need application. NDPC has demonstrated that application of the criteria in Minn. R. 7853.0130, to the facts in the hearing record, support issuance of a Certificate of Need. Moreover, no party demonstrated, under Minn. R. 7853.0130(8), that there was a more reasonable and prudent alternative to the proposed project.”

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

- Demand exists for both crude oil from the Bakken region and transportation services from North Dakota to refineries in PADD II (Findings 140 – 173).
- No conservation programs, at either the state or federal level, will eliminate the need for the project (Findings 174 – 186).
- NDPC has not conducted promotional practices which have created the need for the project (Findings 187 – 189).
- There are no existing or planned facilities that can satisfy the demand for the project (Findings 190 – 205).
- NDPC has demonstrated that the project makes effective use of resources by expanding the existing NDPC System and providing back-up service to Line 81 (Findings 206 – 215).
- The project will enhance the future adequacy, reliability, and efficiency of the energy supply needed by the state of Minnesota and the surrounding region (Findings 517 – 525).
- The project is as compatible, or better, for the natural environment than competing alternatives, including the no-build alternative (Findings 526 – 531).
- The project will have positive socioeconomic impacts on Minnesota and the surrounding region (Findings 532 – 539).
- The project will have a positive impact on future development through increased economic activity, greater employment, and additional property tax revenues for local governments; and will facilitate development by providing a reliable, efficient, and safe method for transporting Bakken crude oil to market (Findings 540 – 543).
- The project is the most socially beneficial method to transport crude oil which will be turned into refined products, including fuel and petrochemicals required by Minnesota consumers (Findings 544 – 546).
- The design, construction, and operation of the project will comply with the relevant government policies, rules and regulations (Findings 547 – 553).
- No party or person demonstrated by a preponderance of the evidence that there is a more reasonable and prudent alternative to the project (Findings 217 – 301 on Proposed Project; Findings 302 – 515 on Alternatives).

The ALJ recommended that the Commission grant a certificate of need to NDPC for the Minnesota portion of 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.

The ALJ recommended that the Commission condition the certificate of need upon:

- providing and maintaining permanent road access to all valve locations;
- implementing and maintaining state and federal depth of cover requirements;
- employing a program that defrays the costs of first-responder training on pipeline-related emergencies;
- submission of periodic updates on the construction of the Southern Access Extension pipeline;
- submission of the financial arrangements NDPC will maintain to meet its obligations under Minn. Stat. § 115E.04, subd. 4, and 49 C.F.R. Part 194; and
- submission of compliance filings demonstrating that offsets of renewable energy credits equal to the amount of electricity used for the project have been acquired.

In addition, the ALJ recommended that the Commission refer only the applicant's proposed route for further proceedings in the pipeline route docket (Commission Docket No. 13-474, OAH Docket No. 2500-32159).⁴

VI. EXCEPTIONS

Under Minn. R. 7829.2700, exceptions to the ALJ Report must be filed within 15 days of the filing of the report for cases subject to statutory deadlines. The ALJ report was filed on April 13, 2014, therefore, the filing deadline for exceptions was April 28, 2015. There is no provision for replies to exceptions.

Exceptions were filed by Carlton County Land Stewards (CCLS), Friends of the Headwaters (FOH), Honor the Earth (HTE), Laborers District Council of Minnesota and North Dakota (Laborers Council), Minnesota Chamber of Commerce, Minnesota Department of Commerce Division of Energy Resources (DER), Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA), Minnesota Department of Natural Resources (DNR), Minnesota Pollution Control Agency (MPCA), NDPC, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (United Association), and White Earth Band of Ojibwe (WEBO).

⁴ Depending on the outcome of the certificate of need docket, the Commission may need to address this recommendation and other procedural issues with respect to the routing docket.

The documents filed by NDPC, Laborers Council, Minnesota Chamber of Commerce, and United Association all indicated support for the ALJ Report without exceptions. These parties all recommended that the Commission adopt the ALJ's Report and grant a certificate of need for the project as requested by NDPC. In addition, DER and EERA proposed a number of limited changes to the ALJ Report.

A. Denial of Certificate of Need

The documents filed by CCLS, FOH, HTE, and WEBO all indicated dissatisfaction with the ALJ's Report. These parties all recommended that the Commission reject the ALJ Report and deny a certificate of need for the project. CCLS and FOH provided proposed findings and conclusions in support of their recommendation.

Issues raised by the parties in their exceptions to the ALJ Report can be categorized as follows:

- Fundamental disagreement with the idea of a petroleum pipeline in Minnesota.
- General disagreement with the applicable rules and statutes that govern the certificate of need regulatory process.
- Belief that the certificate of need process is subject to specific requirements found in Minnesota Statutes Chapter 116D, namely the preparation of an EIS.
- General disagreement with the record of evidence and the ALJ's findings and conclusions.
- Perceived conflict with the opinions of the MCPA and DNR.

Many of the arguments and exceptions provided by these parties do not appear to be supported by facts in the record and instead provide their strong opinion that a petroleum pipeline is not right for Minnesota. Staff believes that no party provided compelling evidence or citation to anything in the record that contradicts the fact that the applicable legal criteria for a certificate of need has been met or that would demonstrate there is more reasonable and prudent alternative to the project.

Additionally, the exceptions and proposed findings submitted are the same proposals that were submitted to the ALJ during the post-hearing briefing period. The ALJ considered and addressed these proposals in preparing his Report. For these reasons, staff recommends the Commission reject the proposed findings provided by CCLS and FOH unless it determines that a certificate of need should not be granted for the project.

B. Environmental Review Concerns

CCLS provided a thorough discussion of the Minnesota Environmental Policy Act (MEPA). CCLS argued that preparation of a MEPA-compliant environmental impact statement (EIS) is required before the Commission can make a decision on a certificate of need for the project.⁵ CCLS maintained that the Commission should reject the ALJ Report and should not grant a certificate of need until a MEPA-compliant review has been performed. CCLS provided a number of proposed findings and conclusions to support its argument.

The Commission has already ruled on this matter. In an order issued October 7, 2014, the Commission ruled that an EIS is neither required nor appropriate at the certificate of need stage for a pipeline project, and that full environmental review of a pipeline project occurs during the pipeline route permit proceeding.⁶ The Commission, however, authorized a high-level environmental review of six system alternatives, the proposed route, and other alternatives (no-build option, rail, truck and other pipelines) to ensure that an adequate environmental record is developed in the certificate of need process.

Additionally, the question of whether the Commission is required to prepare an EIS at the certificate of need stage is currently being decided in the State of Minnesota Court of Appeals (Case #A15-0016). Accordingly, staff believes the question of environmental review related to pipeline certificate of need applications is not properly before the Commission at this time. Staff does not recommend that the Commission adopt any of the proposed findings and conclusions submitted by CCLS concerning environmental review concerns.

CCLS also questioned whether NDPC has complied with the Section 404 of the Clean Water Act as administered by the U.S. Army Corps of Engineers (USACE). CCLS argued that NDPC has not successfully completed the Section 404 application process.

Should the Commission choose to grant a certificate of need for the project, the applicant would still be required to satisfy any requirements of the USACE, or any other state or federal permitting authority prior to constructing the project. There is no requirement that an applicant complete a Section 404 review or other permit process concurrent with the state certificate of need review process. Initiation of downstream permitting for these types of projects typically happens during route permit proceedings or thereafter.

⁵ Friends of the Headwaters also argued that the Commission is required to prepare an EIS under MEPA.

⁶ Subsequently, the Commission heard the matter on reconsideration and issued an order on December 5, 2014, denying parties petitions for reconsideration of its October 7th Order.

C. System Alternative SA-03-As Modified

The comments submitted by DER, EERA, MPCA, and DNR indicated exceptions to the ALJ's treatment of alternative SA-03-As Modified (SA-03-AM). The parties argued that no weight or consideration should be given to SA-03-AM in the ALJ Report because it was not one of the six system alternatives. EERA, MPCA, and DNR also requested that the Commission confirm that SA-03-AM will continue as an alternative in the pipeline routing docket. DER and EERA recommended that the Commission reject Findings 384-397 and Conclusion 5. DER also recommended clarifying changes to Finding 96, and proposed a new conclusion.

There is no requirement in rule and statute that states the Commission must refer an alternative to the Office of Administrative Hearings for it to be considered in certificate of need proceedings. On the contrary, as provided under Minn. R. 7853.0120, "The commission shall consider only those alternatives proposed before the close of the public hearing and for which there exists substantial evidence on the record with respect to each of the criteria listed in part 7853.0130."

The Commission did not refer the six system alternatives to the ALJ. Rather, the Commission authorized environmental review of the six system alternatives identified by the MPCA.⁷ Staff believes the parties are incorrectly referring to Minn. R. 7852.1400, related to pipeline routing that states, "No route shall be considered at the public hearing unless accepted by the Commission..."

Alternative SA-03-AM was brought forward by multiple parties before the close of the hearing and there is substantial evidence on the record related to SA-03-AM. For example, SA-03-AM was analyzed by NDPC in the System Alternatives Analysis Report, DER discussed SA-03-AM in its initial testimony, SA-03-AM was discussed during the evidentiary hearings, and SA-03-AM was discussed in NDPC's and DER's Initial Briefs.

Staff believes it would be improper for the Commission to exclude information related to SA-03-AM from the findings and conclusions of the case. The ALJ correctly characterized SA-03-AM as an alternative and properly included findings relevant to SA-03-AM in this matter. Therefore, the information concerning SA-03-AM is important to the record.

Concerning the request by EERA, MCPA, and DNR that the Commission confirm that SA-03-AM will continue as an alternative in the pipeline routing docket, staff notes that this matter is complicated in that the decisions related to SA-03-AM in the certificate of need docket would affect its standing in the routing docket.

⁷ See Commission Order, October 7, 2015.

The Commission could decide to adopt the findings and conclusions of the ALJ in the certificate of need matter. Such a decision would indicate that the Commission agrees with the ALJ's conclusion and recommendation that SA-03-AM is not a more reasonable and prudent alternative than the proposed project. Logically, that would mean there is no reason to review the alternative in the routing docket.

The Commission could otherwise choose to adopt the findings related to SA-03-AM and reject Recommendation No. 2. and amend Conclusion No. 5 to remove mention of SA-03-AM as follows:

Conclusion 5. 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.

Under this option, the Commission would not be limited in the routing docket to only the applicants proposed route. Alternatively, the Commission could choose to follow the recommendations of DER and EERA which would lead to the same result, except that all findings related to SA-03-AM would be removed.

Staff recommends that the Commission adopt the ALJ's findings related SA-03-AM, amend Finding 96 as suggested by DER, reject the ALJ's Recommendation No. 2, and amend Conclusion No. 5 as indicated above. Accordingly, staff recommends that any decisions made regarding further analysis of SA-03-AM should be contemplated under the routing docket.

D. 1855 Treaty

WEBO and HTE indicated a concern that the ALJ Report did not consider or discuss the usufructuary rights within the 1855 Treaty ceded territory crossed by the proposed pipeline. WEBO recommended that the Commission exclude Finding 267 from the ALJ Report which states the Preferred Route does not cross any federal or tribal lands.

The matter of usufructuary rights under the 1855 Treaty was considered by the ALJ earlier in this certificate of need proceeding. On March 16, 2014, HTE filed a Notice of Lis Pendens and Motion to Dismiss on the grounds the State of Minnesota lacks authority to permit the pipeline through ceded territories.⁸ Upon accepting comments and hearing arguments from parties, the ALJ issued a Seventh Prehearing Order denying the motion.⁹

⁸ Honor the Earth, Notice of Lis Pendens and Motion to Dismiss for Lack of Jurisdiction, March 16, 2014, Document ID 20143-97361-02.

⁹ Office of Administrative Hearings, Seventh Prehearing Order, May 20, 2014, Document ID 20145-99699-01.

The ALJ concluded that the Treaty of 1855 does not forbid the creation of new rights-of-way on the land, and that HTE had not established that the proposed pipeline would necessarily impair its rights held by its members in the ceded territory. The question of state authority related to ceded territory under the 1855 Treaty is not properly before the Commission at this time. Staff recommends that the Commission retain Finding 267.

E. Apportionment and Financial Assurance Clarifications

DER provided a few clarifying exceptions that concern apportionment and financial assurance as a condition of the certificate of need. To ensure that the financial assurance condition is clear and unequivocal DER suggested amendments to ALJ Findings 586 and 592, and Condition 3(e) of the Recommendation. With regard to apportionment, DER suggested amendments to ALJ Findings 195 and 197, that simply provide further clarification. Staff recommends that the Commission accept the DER's suggested amendments.

On May 22, 2015, NDPC filed an update indicating that it had reached an agreement that satisfied DER's concerns regarding financial assurance. A copy of the Guaranty was included with the letter. NDPC also included the 1st Quarter Construction Report for the Southern Access Extension pipeline project in Illinois.¹⁰ On that same day, DER filed a letter indicating that the Guaranty would satisfy DER's proposed condition that NDPC provide adequate financial assurance to protect Minnesotans in the event of releases.

VII. HONOR THE EARTH MOTION

On May 20, 2015, HTE filed a Motion to stay the Sandpiper Pipeline certificate of need proceedings and consolidate the proceedings with the recently filed Line 3 Pipeline Project certificate of need application. The Motion, as stated by HTE, is based on, "...the reality of simultaneous, overlapping, concurrent pipeline projects and applications (mostly by Enbridge), files, records, exhibits and testimony provided by the Minnesota Department of Natural Resources and Pollution Control Agency..."

Staff has reviewed the Motion and does not believe that HTE provided a compelling reason for the Commission to stay the current Sandpiper proceeding and combine with the Line 3 Pipeline Project certificate of need application. Rather, much of the argument provided by HTE focused on the merits of the particular pipeline projects or its disagreement with Minnesota laws governing review of pipeline certificate of need applications. Therefore, staff recommends that the Commission deny the Motion.

¹⁰ The financial guaranty and the Southern Access Extension pipeline construction update are conditions of the certificate of need as recommended by the ALJ.

Further, even if the Commission was to consider the Motion staff does not believe that the proceedings can be combined for the following reasons:

- The Line 3 Replacement Project certificate of need and route permit applications have been filed, however, the Commission has not officially acted on the applications. That is, the Commission has not accepted the applications as substantially complete to start the review process.
- Review of the Sandpiper certificate of need is in its final stage; the Line 3 certificate of need review process has yet to begin. It would be prejudicial to deny the applicant a decision on its Sandpiper certificate of need application.
- The applicants for the two certificate of need applications are two different and distinct entities: North Dakota Pipeline Company LLC (Sandpiper Pipeline) and Enbridge Energy, Limited Partnership (Line 3 Replacement).
- The stated need for each project is different. The stated need for the Sandpiper project is to construct a new pipeline to transport crude oil from the Bakken region of North Dakota to Superior, Wisconsin. The stated need for the Line 3 project is to address safety and integrity issues associated with the existing Line 3 pipeline that currently transports petroleum from the oil sands region of Canada.
- The routes and pipeline systems that these two projects serve are different. Although, the proposed routes from Clearwater, Minnesota to Superior, Wisconsin are very similar, the routes between North Dakota and Clearwater are distinctly different.

Thus, the Commission's consideration of need and routing for each project will be based on separate and distinct sets of facts.

Regarding the concern over the potential for incremental effects from the two proposed projects, staff affirms that those potential impacts will be considered. Specifically, Minn. R. 7852.1900, subp. 3(I), requires that the Commission, in selecting a route for a pipeline, shall consider the cumulative potential effects of related or anticipated future pipeline construction.

VIII. STAFF DISCUSSION

ALJ Report

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

The applicant has established the need for the Sandpiper pipeline project; has demonstrated that there are no better alternatives to the proposed project; and has demonstrated that the consequences of granting the certificate are more favorable than the consequences of its denial. In addition, there is no reason to believe that NDPC will not continue to follow the law and obtain the necessary permits or licenses required for the construction and operation of the project.

Therefore, staff recommends that the Commission adopt the administrative law judge's Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation as modified below; and grant NDPC a certificate of need for its proposed Sandpiper Pipeline Project. As indicated above, staff also recommends that the Commission:

- accept DER's recommended amendments and clarifications to ALJ Findings 96, 195, 197, 586, and 592, and Condition 3(e) of the Recommendation concerning procedures, apportionment, and financial assurance;
- reject the ALJ's Recommendation No. 2 and amend ALJ's Conclusion No. 5, as suggested by staff.
- reject the proposed findings or amendments suggested by CCLS, FOH, and WEBO;
- reject the recommendations of DER and EERA concerning the removal of Findings 384-397 and Conclusion No. 5 in the ALJ Report that are related to alternative SA-03-AM;
- reject the new conclusion as recommended by DER; and
- condition the certificate of need as recommended by the ALJ on page 100 of his report.

System Alternatives

With respect to the system alternatives that were considered during this proceeding, staff believes that the record contains strong evidence that there are no better alternatives (i.e., six system alternatives; SA-03-AM; and other alternatives such as the no-build option, rail, truck, and other pipelines) to the proposed project. Of the 625 findings made by the ALJ, over one-third of them were devoted to facts related to alternatives. The findings indicate that a robust comparison of the proposed project to the alternatives was completed comparing features that included:

- | | | |
|---------------------------|------------------------|-----------------------------------|
| ▪ Cost | ▪ Feasibility | ▪ Reliability |
| ▪ Economics | ▪ Length | ▪ Population Density |
| ▪ Land Use | ▪ Land Type | ▪ Watersheds |
| ▪ Wetlands | ▪ Surface Waters/Flows | ▪ Greenhouse Gas Emissions |
| ▪ Drinking Water Aquifers | ▪ Valve Placement | ▪ Drinking Water Management Areas |
| ▪ Domestic Wells | ▪ Power Consumption | ▪ Wellhead Protection Areas |

Ultimately, when considering the range of factors, the findings made by the ALJ demonstrate that the proposed pipeline has the fewest environmental impacts of the system alternatives under review.

Staff appreciates that the MPCA supported the six alternatives that were introduced into the record to ensure a comprehensive comparison and review. At the initial stages of the certificate need process, MPCA provided, by its own admission, a basic high-level analysis of the alternatives.¹¹ As the process progressed, the record benefitted from the more concise environmental review prepared by EERA¹² as well as the separate environmental analysis performed by the applicant.¹³ Staff finds it unfortunate that comments provided by both DNR and MPCA during the exception period indicated disagreement with the environmental review information in EERA's document. It is unclear to staff why the two agencies disagree with the environmental report and the related findings. Staff maintains that the environmental information in the record with regard to the proposed project and alternatives is substantial and of high quality.

Lastly, the Commission also has the option to deny a certificate of need for the project. If the Commission decides that the record does not demonstrate that need for the proposed pipeline has been established it must provide a statement of the reasons for that decision. In this case there are six system alternatives that were also evaluated in contrast to the proposed project. Staff believes that if the Commission decides to deny a certificate of need it should do only that and should not further consider issuing a certificate of need for one of the alternatives, as there has been no certificate of need application submitted, and no sponsor to construct any of the system alternatives.

COMMISSION DECISION ALTERNATIVES

A. Honor the Earth Motion to Suspend and Consolidate Proceedings

1. Accept Honor the Earth's Motion.
2. Deny Honor the Earth's Motion.
3. Take some other action deemed appropriate.

¹¹ Minnesota Pollution Control Agency, Comments on System Alternatives, August 21, 2014, Document IDs 20148-102458-02 and 20148-102458-04.

¹² Department of Commerce EERA, Sandpiper Pipeline: Comparison of Environmental Effects of Reasonable Alternatives, December 2014, Hearing Exhibit 80.

¹³ NDPC, System Alternatives Analysis Report, January 5, 2014, Hearing Exhibit 17, Sch. 1.

B. Findings of Fact, Conclusions of Law, and Recommendation

1. Adopt the ALJ's Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation for the NDPC Sandpiper Pipeline Project.
2. Adopt the ALJ's Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation, as modified by:
 - a. DER's recommended clarifications to Findings 96, 195, 197, 586, and 592, and Condition 3(e) of the Recommendation concerning procedures, apportionment, and financial assurance.
 - b. Staff recommendation to reject Recommendation No. 2 and amend Conclusion No. 5 that relate to the routing docket.
 - c. DER's and EERA's recommendation to reject Findings 384-397 and Conclusion No. 5 related to alternative SA-03-AM, and reject the new conclusion recommended by DER.
3. Do not adopt the ALJ's Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation.
4. Take some other action deemed appropriate.

C. Certificate of Need

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.
2. Grant a Certificate of Need to NDPC for the Sandpiper Pipeline Project *and impose* the six conditions identified in the ALJ's Recommendation.
3. Deny a Certificate of Need to NDPC for the Sandpiper Pipeline Project and provide a statement of the reasons for that decision.
4. Take some other action deemed appropriate.