

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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| Katie J. Sieben | Chair |
| Valerie Means | Commissioner |
| Matthew Schuerger | Commissioner |
| Joseph K. Sullivan | Commissioner |
| John A. Tuma | Commissioner |

In the Matter of the Application of Magellan Pipeline Company, L.P. for a Route Permit for the Pipestone Reroute Project in Pipestone County, Minnesota

ISSUE DATE:

DOCKET NO. IP-7109/PPL-23-109

ORDER FINDING APPLICATION COMPLETE AND GRANTING VARIANCE; NOTICE OF AND ORDER FOR HEARING

PROCEDURAL HISTORY

On April 10, 2023, Magellan Pipeline Company, L.P. (“Magellan” or “Applicant”) filed a route permit application to relocate approximately 0.74 mile of its existing 8-inch petroleum products pipeline from federal lands managed by the U.S. Fish and Wildlife Service (USFWS) and National Park Service (NPS) within the Pipestone Creek Unit of the Northern Tallgrass Prairie National Wildlife Refuge, and the Pipestone National Monument.

On April 12, 2023, the Commission issued a Notice requesting comments on the completeness of the Application. Topics open for comment included whether the application contained the required information, the presence of contested issues of fact with respect to representations in the route permit application, whether the Commission should accept the application as complete to initiate the review process, and whether there are other issues or concerns related to this matter.

On April 24, 2023, Magellan filed a letter with the Commission modifying its application to include a 200-foot route width and specifying an 85-foot right of way during the project’s construction. The permanent right-of-way width of the pipeline would remain 30–40 feet depending upon local conditions. The temporary workspace width would remain 35–45 feet as required.

By May 2, 2023, comments had been filed by:

- The Laborers’ International Union of North America-Minnesota and North Dakota (LIUNA);
- The International Union of Operating Engineers, Local 49 (Local 49);
- Mille Lacs Band of Ojibwe; and
- The Department of Commerce, Energy Environmental Review and Analysis unit (EERA).

On May 3, 2023, Magellan filed reply comments.

On June 8, 2023, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

I. The Proposed Project

In its application, Magellan requested a 1.3-mile-long reroute of approximately 0.74 mile of the existing 8-inch diameter pipeline located on lands managed by the USFWS and the NPS. Magellan discontinued service of the segment of the existing pipeline underlying the federal lands before October 1, 2022. Final deactivation and abandonment of this pipeline segment occurred in December 2022.

According to Magellan, the reroute is necessary to ensure the continued operation of the pipeline and provide adequate supply of current and new gasoline to the pipeline that serves communities in eastern North Dakota, eastern South Dakota, and southwestern Minnesota.

The proposed relocation would be on private property and would include 1.3 miles of 8-inch diameter pipeline. Magellan anticipates an in-service date in the fourth quarter of 2024.

II. Legal Standards

A. Application Completeness

Under Minn. Stat. § 216G.02, subd. 2, no person may construct a pipeline without a pipeline routing permit from the Commission unless the pipeline is exempted from the Commission's routing authority under that section. A pipeline requiring a permit may only be constructed on a route designated by the Commission.

A person applying for a pipeline-routing permit must comply with the application procedures of Minn. R. 7852.2000 and file an application containing the information required by Minn. R. 7852.2100 to 7852.3100. These rules require that the application include:

- General information about the applicant and the proposed project and specifications for the design, construction, and operation of the proposed pipeline and associated facilities;
- Land requirements;
- Potential future expansion plans;
- Right-of-way preparation procedures and construction activity sequence;
- Location and environmental description of the applicant's preferred route;
- Environmental impacts associated with the preferred route;
- Right-of-way protection and restoration measures;
- Planned operation and maintenance practices;
- List of permits required for the proposed project and the governmental agencies or authorities responsible for issuing such permits; and
- A summary of the environmental impacts of pipeline construction along alternative routes considered and the applicant's rationale for rejecting the alternative routes.

The Commission must accept the application if it is complete.¹ If the application is not complete, the Commission may either reject it or conditionally accept it, informing the applicant of the deficiencies that will allow the application to be accepted if corrected.²

B. Public Participation and Hearing Process

Under Minn. R. 7852.1300, the Commission must hold public information meetings on the proposed project. A meeting must be held in each county where the proposed pipeline would cross.

Under Minn. R. 7852.1700, the Commission is required to hold at least one public hearing to develop the record for determining whether to issue a route permit. An administrative law judge from the Office of Administrative Hearings (OAH) conducts these hearings as set forth in Minn. R. Ch. 1405.

C. Environmental Review

Under Minn. R. 7852.1500, the Commission must prepare a comparative environmental analysis (CEA) of all pipeline routes and route segments accepted by the Commission for consideration at the public hearing under Minn. R. 7852.1400. The environmental analysis evaluates the potential human and environmental impacts and potential mitigation measures associated with the project.

III. Comments

A. EERA

1. Application Completeness

EERA stated that Magellan's amended application contains the information required by Minn. R. 7852.2100 through 7852.3100 and recommended that the Commission accept the application as complete.

2. Environmental Review

EERA asked the Commission to authorize it to develop and issue a draft CEA to allow for public comment and to provide EERA an opportunity to file responses to any substantive comments. EERA would then issue a final CEA that includes responses to comments.

EERA explained that similar to other forms of environmental review, the review in this case will include scoping meetings, prior to developing a CEA, to give the public the opportunity to comment on the scope of the environmental review of the proposed project, including environmental impacts, mitigation measures, and possible route alternatives for Commission consideration.

¹ Minn. R. 7852.2000, subp. 4.

² *Id.*

3. Budget

EERA requested approval of its estimated \$150,000 budget, which includes costs for staff time, travel, meetings, and hearings. EERA noted that this request does not include CEA preparation costs, which it will request once it has the relevant information to determine those costs.

B. LIUNA

LIUNA recommended that the Commission find the application complete. LIUNA stated that the proposed project has the potential to benefit its members and the public by supporting the continued operation of a pipeline, necessary energy infrastructure to ensure the efficient, reliable, and safe delivery of fuels to communities in western Minnesota and eastern North Dakota.

LIUNA stated that the project will likely create family-supporting employment opportunities for LIUNA members and other local skilled construction trades.

C. Local 49

Local 49 largely echoed the comments and support of LIUNA, stating that the fuel will enable Minnesotans to operate their businesses, heat their homes, and power their cars. Local 49 asserted that its members have significant experience building and repairing oil, gas, and slurry pipelines across the upper Midwest and stressed the importance of employing skilled labor to ensure the safety of such infrastructure projects.

D. Mille Lacs Band of Ojibwe

The Mille Lacs Band of Ojibwe (the Band) asserted that the Pipestone Quarry is a sacred resource, not just for the Band, but for many Tribal nations located across the United States. Given the significance of the site to so many Tribal nations, the Band urged Magellan to broaden its outreach efforts and consult with all affected Tribes in a meaningful and substantive manner to determine the appropriate scope, design, and processes applicable to rerouting the pipeline segment. Until such consultations occur and allow stakeholders to identify a pipeline route that safeguards the sacred pipestone resources, the Band recommended that the Commission deny Magellan's application.

The Band contended that Magellan could do more to mitigate potential risks to culturally sensitive areas including widening the reroute study area and rerouting the pipeline along 40th Avenue (CR-53) and 151st Street (CR-7) to avoid identified areas of cultural importance. The Band noted that Magellan rejected these measures due to cost constraints. Because the proposed project does not adequately consider Tribal needs, the Band recommended that the Commission deny the application and require Magellan to engage with Tribes in a robust consultation to find a routing solution that adequately protects the sacred pipestone.

E. Magellan

Magellan agreed with EERA's recommendations to accept the application as complete, modify the procedural process timeline for additional route proposals, and approve EERA's budget proposal.

Magellan asserted that it has engaged in extensive outreach and coordination with interested tribes regarding this project. Magellan recognized that the Mille Lacs Band of Ojibwe presented a potential route alternative in its comments; however, Magellan noted that the comments did not identify any deficiency related to the completeness of the application.

IV. Commission Action

Having examined the application and the comments in the record, the Commission concurs with EERA that Magellan's application contains the information required by Minn. R. 7852.2100 through 7852.3100. The Commission will therefore accept the application under Minn. R. 7852.2000, subp. 4. This decision on completeness is as to form only; it implies no judgment on the merits of the application.

The Commission will authorize the EERA to begin preparation of a comparative environmental analysis, including a summary, analysis, and recommendation(s) related to all route alternatives identified for consideration by the Commission.

The Commission will also accept the proposed route alternative proposed by the Mille Lacs Band of Ojibwe for full study and evaluation. Ensuring complete record development on potential impacts and mitigation measures facilitates informed decision-making.

Consistent with the requirements of Minn. R. Ch. 1405, the Commission will refer this matter to the Office of Administrative Hearings and request that an ALJ conduct public-hearing proceedings accordingly. This procedure is well-suited for facilitating robust record development and public participation, as well as addressing disputed issues.

The Commission will approve EERA's proposed budget of \$150,000; no party challenged the request.

Minn. Stat. § 138.665 requires that the Commission consult with the State Historical Preservation Office (SHPO) in certain circumstances to identify potential adverse effects, and mitigation measures, on designated or listed properties. To streamline compliance with the statute, the Commission will delegate authority to the Applicant to gather information to identify, and reevaluate if warranted, designated historic properties, and to work in coordination with other interested entities, including Tribal Nations and EERA, to assess the effects of proposed projects on designated historical properties as described in Minn. Stat. § 138.665.

Notwithstanding this delegation of authority, the Commission retains ultimate regulatory responsibility for consultation under Minn. Stat. § 138.665 and for determining whether to issue a route permit for the project.

Additionally, the Commission will delegate authority to the Executive Secretary regarding ongoing scheduling and other administrative matters in this docket, as set forth in the ordering paragraphs below.

V. Rule Variance

Under Minn. R. 7852.1400, subp. 3, item C, anyone proposing a route or route segment other than that proposed by the applicant may do so within 70 days of the Commission's decision accepting the application as complete. Under subpart 4 of the rule, the Commission must determine, within 10 days of receiving an additional route proposal, whether to accept the proposal for evaluation at hearing.

EERA requested a variance, under Minn. R. 7829.3200, to extend the rule's deadlines to enable the agency to fully consider and propose additional routes or route segments to the Commission for consideration. Under Minn. R. 7829.3200, the Commission will vary its rules when: (A) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule, (B) granting the variance would not adversely affect the public interest, and (C) granting the variance would not conflict with standards imposed by law.

The EERA stated that the requirements for a variance are met, including: enforcement of the rule would cause an excessive burden on the EERA and the public by limiting comprehensive evaluation of potential route alternatives; granting the variance would not adversely affect the public interest and would, in fact, further the public interest by providing additional time for consideration of issues raised; and granting the variance would not conflict with standards imposed by law.

The Commission finds that the variance criteria are met.

Enforcement of the rule would impose an excessive burden on the EERA and the public by limiting the time needed to fully consider issues raised. Varying the rule would not adversely affect the public interest; it would promote the public interest by facilitating more complete record development and informed decision-making. Additionally, granting the variance would not conflict with standards imposed by law.

VI. Referral to the Office of Administrative Hearings

Consistent with the requirements of Minn. R. ch. 1405 and to aid full record development, the Commission will refer this matter to the Office of Administrative Hearings as set forth below.

A. Administrative Law Judge

The administrative law judge assigned to this case is James E. LaFave. His office address is: Administrative Law Judge James E. LaFave, Office of Administrative Hearings 600 North Robert Street St. Paul, Minnesota, 55101. His mailing address is: Administrative Law Judge James E. LaFave, P.O. Box 64620 St. Paul, Minnesota 55164-0620. The ALJ can be reached through his legal assistant, Nichole Helmueller at 651-361-7857; Nichole.Helmueller@state.mn.us.

B. Hearing Procedure

• Controlling Statutes and Rules

Hearings in this matter will be conducted in accordance with the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.57 to 14.62; the rules of the Office of Administrative Hearings, Minn. R. 1405.0200 to 1405.2800; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.4000.

These rules and statutes can be accessed free of charge through the State of Minnesota's website at www.revisor.mn.gov/pubs.

The Office of Administrative Hearings conducts proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

• Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. R. 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

• Procedural Questions to Commission Staff

Any questions regarding the proceedings under Minn. R. 1405.0200 to 1405.2800 should be directed to Mike Kaluzniak at the Minnesota Public Utilities Commission. He can be reached at 651-201-2257, mike.kaluzniak@state.mn.us, or at the following address: Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.

• Protecting Not-Public Data

State agencies are required by law to keep some data not public. Parties must advise the ALJ if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

• Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the ALJ if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the ALJ after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (attached) with the ALJ within 20 days of the date of this Notice of and Order for Hearing.

- *Public Participation*

At all hearings conducted pursuant to Minn. R. 1405.0200 to 1405.2800, all persons will be allowed and encouraged to participate without the necessity of intervening as parties. Such participation shall include, but not be limited to, offering direct testimony, offering direct testimony or other material in written form at or following the hearing, and questioning all persons testifying, pursuant to Minn. R. 1405.0800.

- *Sanctions for Non-Compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the ALJ, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are Magellan and the EERA. Other persons wishing to become formal parties shall promptly file petitions to intervene with the ALJ and serve copies of such petitions on all current parties. All persons may participate as set forth in Minn. R. 1405.0800 without the need to intervene as parties.

D. Prehearing Conference

A prehearing conference will be scheduled and noticed at a future date. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible. Hearings may be recessed and reset by the ALJ pursuant to Minn. R. 1405.1400 to 1405.2300.

E. Ex Parte Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this order. Those restrictions and reporting requirements are set forth at Minn. R. 7845.7300 to 7845.7400, which all parties are urged to consult.

ORDER

1. The Commission accepts Magellan's application as substantially complete.
2. The Commission authorizes the EERA to begin preparation of a comparative environmental analysis for the project and requests that EERA staff file a summary, analysis, and recommendation(s) related to all route alternatives provided during the comment period for the Commission's review.
3. The Commission approves the EERA's initial proposed budget of \$150,000.
4. The Commission varies the timeframes of Minn. R. 7852.1400, subparts 3 and 4.
5. The Commission accepts for study and consideration the route alternative proposed by the Mille Lacs Band of Ojibwe in its April 26, 2023 comments.
6. The Commission refers this matter to the Office of Administrative Hearings for a hearing under Minn. Rules chapter 1405.
7. The Commission delegates administrative authority to the Executive Secretary to issue the Delegation of Authority to Magellan as described herein.
8. The Commission delegates administrative authority to the Executive Secretary to do the following:
 - a. provide the name, telephone number, and email address of the staff person designated as Public Advisor to facilitate citizen participation in the process.
 - b. request that EERA continue to study issues and indicate during the hearing process its position on the reasonableness of granting a route permit.
 - c. require the applicant to facilitate in every reasonable way the continued examination of the issues by EERA and Commission staff.
 - d. require that the applicant place a copy of the application for review in at least one government center or public library in each county where the proposed project is located.
 - e. authorize Commission and EERA staff to publish the notice of public information meetings and application acceptance.
 - f. authorize Commission staff to work with the Administrative Law Judge and EERA staff in selecting a suitable location for the public hearing on the application.
 - g. direct the applicant to work with Commission staff to arrange for publication of the notice of hearings in newspapers of general circulation at least ten days prior

to the hearing, that such notice be in the form of visible display ads, and that proof of publication is obtained from the newspapers selected.

9. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.



OAH Docket Number: 60-2500-39436

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Application of Magellan Pipeline Company, L.P. for a Route Permit for the for the Pipestone Reroute Project in Pipestone, County, Minnesota

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that:

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Party's/Agency's Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Party's/Agency's Attorney: _____

Firm Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Respondent's/Opposing Party's Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Dated: _____

Signature of Party/Agency or Attorney

3 In order to opt in to electronic notice, this form must be emailed to OAH.efiling.support@state.mn.us. If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See Minn. Stat. § 14.58, Minn. R. 1400.5550, subps. 2-5.

Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.

CERTIFICATE OF SERVICE

I, Mai Choua Xiong, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

Minnesota Public Utilities Commission

**ORDER FINDING APPLICATION COMPLETE AND GRANTING VARIANCE;
NOTICE OF AND ORDER**

Docket Number **IP-7109/PPL-23-109**

Dated this 7th day of August, 2023

/s/ MAI CHOUA XIONG

| First Name | Last Name | Email | Company Name | Address | Delivery Method | View Trade Secret | Service List Name |
|----------------|--------------------------------|--------------------------------------|------------------------------------|--|--------------------|-------------------|------------------------|
| Generic Notice | Commerce Attorneys | commerce.attorneys@ag.state.mn.us | Office of the Attorney General-DOC | 445 Minnesota Street Suite 1400 St. Paul, MN 55101 | Electronic Service | Yes | OFF_SL_23-109_Official |
| Brandon | Cox | brandon.cox@magellanpipeline.com | Magellan Pipeline Company, L.P. | 6160 Summit Dr N, Suite 205 Brooklyn Center, MN 55430 | Electronic Service | No | OFF_SL_23-109_Official |
| Sharon | Ferguson | sharon.ferguson@state.mn.us | Department of Commerce | 85 7th Place E Ste 280 Saint Paul, MN 551012198 | Electronic Service | No | OFF_SL_23-109_Official |
| James | LaFave | james.lafave@state.mn.us | Office of Administrative Hearings | 600 N Robert Street St. Paul, MN 55164-0620 | Electronic Service | No | OFF_SL_23-109_Official |
| Generic Notice | Residential Utilities Division | residential.utilities@ag.state.mn.us | Office of the Attorney General-RUD | 1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131 | Electronic Service | Yes | OFF_SL_23-109_Official |
| Will | Seuffert | Will.Seuffert@state.mn.us | Public Utilities Commission | 121 7th Pl E Ste 350 Saint Paul, MN 55101 | Electronic Service | Yes | OFF_SL_23-109_Official |