

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Route Permit and Partial Exemption for the Fond du Lac Line 4 Project in Saint Louis and Carlton Counties

ISSUE DATE: April 11, 2019

DOCKET NO. PL-9/PPL-18-752

ORDER ACCEPTING APPLICATION,
ESTABLISHING REVIEW PROCESS,
AND GRANTING VARIANCES

PROCEDURAL HISTORY

On February 25, 2019, Enbridge Energy, Limited Partnership (Enbridge or the Applicant) filed an application for a pipeline routing permit and partial exemption for the Fond du Lac Line 4 Project (the Project).

Enbridge stated that the Project was being proposed in response to a request from the Fond du Lac Band of Lake Superior Chippewa (Fond du Lac) that Enbridge remediate an above-grade segment of the Line 4 pipeline that runs across Fond du Lac’s reservation. Fond du Lac raised concerns that the pipeline creates a barrier to natural water flow across the reservation and, in some areas, impedes land access for band members. The proposed Project entails replacing ten miles of the existing 48-inch-diameter pipe, located at the center of Enbridge’s Mainline Corridor, with 36-inch-diameter pipe buried at the outer edge of the corridor.

On March 11, the Minnesota Department of Commerce, Energy Environmental Review and Analysis (the Department) filed comments on the application. The Department raised several concerns with the application and recommended that Enbridge file a revised application addressing these issues.

On March 15, Enbridge filed a revised application.

On March 20, the Department filed a letter stating that the revised application contained the information required by the Commission’s pipeline-routing rules. The Department recommended that the Commission find the application complete.

On March 28, 2019, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

No person may construct a pipeline in Minnesota without a route permit from the Commission.¹ A pipeline is defined as “pipe with a nominal diameter of six inches or more that is designed to transport hazardous liquids,”² which include “petroleum, petroleum products, or anhydrous ammonia.”³ Enbridge’s proposed Project requires a route permit because it involves the construction of ten miles of 36-inch-diameter pipe designed to transport crude oil.

II. Application Completeness

Minn. R. 7852.2100–.3100 identify the content requirements for a route-permit application filed under the Commission’s full pipeline route-selection procedures. Under Minn. R. 7852.0600–.0700, an applicant may seek a partial exemption from the full route-selection procedures. Under the partial-exemption process, an applicant must still file most of the information required under the full process; however, an applicant need not provide evidence that it considered alternative routes under Minn. R. 7852.3100.⁴

After reviewing Enbridge’s revised application, the Department found that the Applicant had addressed the issues raised in the Department’s earlier comments, concluded that the application contained the information required by the Commission’s pipeline-routing rules, and recommended that the Commission find the application complete. The Commission agrees and accepts the application as complete under Minn. R. 7852.2100–.3000.

III. Review Process

The acceptance of a partial-exemption application triggers a review process through which the Commission decides whether to grant or deny the application.⁵ To facilitate this process, an applicant must publish notice of its application, provide the application to certain state agencies, and mail the application to local government entities and affected landowners.⁶

¹ Minn. Stat. § 216G.02, subd. 2.

² *Id.*, subd. 1.

³ Minn. R. 7852.0100, subp. 18.

⁴ *See* Minn. R. 7852.0600, subp. 1 (providing that, “[t]o apply for a partial exemption, a person . . . submit an application that contains the information identified in parts 7852.2100 to 7852.3000” but not part 7852.3100).

⁵ *See* Minn. R. 7852.0700, subp. 2 (providing that, to grant a partial exemption, the Commission must find that “the proposed pipeline and associated facilities will not have a significant impact on humans or the environment”).

⁶ Minn. R. 7852.0600, subp. 2.

Interested parties may submit written comments on the application.⁷ Additionally, the Commission conducts public-information meetings in the counties where the pipeline is proposed to be located to assist it in determining whether the application should be granted.⁸

In this case, the Commission will take further steps to aid public participation in the application-review process. First, the Commission will designate a member of its staff to serve as public advisor. His contact information is as follows:

Charley Bruce, Public Advisor
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147
(651) 296-0406, or 1-800-657-3782
publicadvisor.puc@state.mn.us

Second, the Commission will request that the Office of Administrative Hearings appoint an administrative law judge (ALJ) to preside over the public-information meetings and provide a written summary of the comments received during the public-comment period.

Third, the Commission will authorize its Executive Secretary to establish an application-review schedule and will direct its staff to work with the ALJ, Fond du Lac, and the Department to select suitable dates and locations for the public-information meetings.

For the reasons discussed in the next section, the Commission will allow all public-information meetings to be held in Carlton County, at the discretion of the participants. The meetings may be held at the same location; however, there must be a minimum of two meetings, and they must be held at different times that will encourage broad participation.

IV. Variances Granted

The Commission concludes that two alterations to the partial-exemption process outlined above are warranted in this case and will grant rule variances for the reasons, and under the conditions, described below.⁹

⁷ *Id.*, subp. 3.

⁸ *Id.*, subp. 4.

⁹ Under Minn. R. 7829.3200, the Commission must grant a variance to its rules when it determines that the following requirements are met:

1. Enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting the variance would not adversely affect the public interest; and
3. Granting the variance would not conflict with any standards imposed by law.

Minn. R. 7829.3200, subd. 1. A variance may be granted contingent upon compliance with conditions imposed by the Commission. *Id.*, subd 2.

First, the pipeline-routing rules normally require that public-information meetings be held in each county where a pipeline is proposed to be located.¹⁰ In this case, Enbridge's proposed Project would be constructed in two counties—Carlton and St. Louis. However, only about one mile of the pipeline would be located in St. Louis County; the great majority of it would be in Carlton County.

In this case, the Commission finds that enforcing the rules would impose an excessive burden on the Department, the Applicant, and others by requiring the holding of a meeting in St. Louis County.

Nor would granting a variance conflict with standards imposed by law or adversely affect the public interest. Given the geographic location of the proposed pipeline, few residents of St. Louis County are likely to be impacted by the pipeline. Affected landowners in St. Louis County will still be notified of the public-information meetings, and Fond du Lac will be consulted to ensure that the meetings are held at a location accessible to band members in both counties.

For these reasons, the Commission will vary Minn. R. 7852.0600, subd. 4, and 7852.1300 to waive the requirement that any public-information meetings be held in St. Louis County. The Commission will do so on two conditions: (1) there must be two meetings in Carlton County, which may be at the same location but must be at different times, and (2) Fond du Lac must be consulted in selecting suitable times and locations for the public meetings.

Finally, the partial-exemption rules require the Commission to decide whether to grant or deny an application within 90 days after its acceptance.¹¹ The Commission will grant a variance to Minn. R. 7852.0600, upon the consent of the Applicant, to extend the timeline for determination of the partial-exemption request.

V. Estimated Budget Approved

Minn. R. 7852.4000 requires an applicant to pay a fee covering the actual costs necessarily and reasonably incurred to process an application, including the cost of the pipeline route selection, permit compliance activities, administrative overhead, and legal expenses.

The Department requested that the Commission approve a project-review budget of \$150,000. It stated that this estimate includes staff time, travel, hearing costs, and administrative-law-judge and attorney-general fees and should cover all actual costs associated with Commission review of the Project. The Commission finds the Department's analysis to be sound and consistent with the objectives of Minn. R. 7852.4000 and will approve the proposed budget.

¹⁰ See Minn. R. 7852.0600, subp. 4 (governing public-information meetings under the partial-exemption process); Minn. R. 7852.1300 (governing public-information meetings under the full route-selection process).

¹¹ Minn. R. 7852.0600, subp. 1.

ORDER

1. The Commission accepts Enbridge's revised application as complete.
2. The Commission requests that the Office of Administrative Hearings appoint an administrative law judge to facilitate public-information meetings on the Project and provide a summary of the comments received during the public-comment period. All public-information meetings may be held in Carlton County, and may be at the same location, but must be held at different times that would encourage broad public participation.
3. The Commission grants a variance from the requirement of Minn. R. 7852.0600, subp. 4, and 7852.1300, subp. 1(B), that public meetings be held in each of the counties where the proposed pipeline will be located, under the following conditions:
 - a. There must be two meetings for both the 7852.0600 and the 7852.1300 requirements, which may be at the same location but must be at different times to encourage broad participation; and
 - b. The Fond du Lac Band of Lake Superior Chippewa must be consulted in selecting suitable times and locations for the public meetings.
4. The Commission grants a variance to Minn. R. 7852.0600, upon consent of the Applicant, to extend the timeline for determining the partial-exemption request.
5. The Commission approves the \$150,000 estimated budget proposed by the Department.
6. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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