BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Application of Minnesota Pipe Line Company, LLC For a Certificate of Need for the Minnesota Pipe Line Reliability Project To Increase Pumping Capacity on the Line 4 Crude Oil Pipeline In Hubbard, Wadena, Morrison, Meeker, McLeod and Scott Counties	**OAH Docket No. 68-2500-31889** **MPUC Docket No. PL-5/CN-14-320**

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF MINNESOTA PIPE LINE COMPANY, LLC, AS EDITED BY THE MINNESOTA DEPARTMENT OF COMMERCE

April 23~~9~~, 2015

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

An evidentiary hearing was held before Administrative Law Judge ("ALJ") Jeanne M. Cochran on March 10, 2015 at 9:30 a.m. in the Large Hearing Room at the offices of the Minnesota Public Utilities Commission ("Commission" or "MPUC") in St. Paul, Minnesota. Public Hearings were held in: Park Rapids and Motley, Minnesota on February 24, 2015 and in Litchfield and New Prague, Minnesota on February 25, 2015.

Appearances:

Eric F. Swanson, Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, Minnesota 55402, appeared on behalf of Minnesota Pipe Line Company, LLC ("MPL" or "Company").

Peter Madsen, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Department of Commerce Division of Energy Resources ("Department" or "DOC-DER").

Linda Jensen, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Department of Commerce Energy Environment Review and Analysis ("DOC-EERA").

Commission Staff Cezar Panait appeared for the Commission.

STATEMENT OF THE ISSUE

Has MPL met the criteria set forth in Minnesota law for its proposed project to increase the pumping capacity of its MPL Line 4 pipeline?

FINDINGS OF FACT

I. SUMMARY OF THE PROJECT

1. The proposed MPL Reliability Project ("Project") will increase the pumping capacity of the 305 mile-long MPL Line 4, the newest pipeline on the MPL System, from its current throughput capability of approximately 165,000 barrels per day to its original design capacity of approximately 350,000 barrels per day.[1]

2. The Project was anticipated at the time MPL Line 4 was originally permitted, as documented in the Findings of Fact in that matter, which found that MPL Line 4 "will add capacity of approximately 165,000 bpd initially to the MPL system, with the ability to expand to a capacity of approximately 350,000 bpd with the placement of additional pump stations along the pipeline."[2]

3. The Project will not change the pipeline itself but would simply change the potential throughput capability. The MPL Line 4 pipeline is already capable of handling the additional pumping capacity, so work on pump stations is the only construction necessary to complete the Project.[3]

4. The Project will upgrade the two existing pump stations on MPL Line 4 in Clearbrook and Albany, Minnesota and install six new pump stations along the current MPL Line 4 route.[4]

5. The new pump stations will be located entirely on land owned by MPL and in rural areas in the counties of Hubbard, Wadena, Morrison, Meeker, McLeod and Scott. No new pipeline will be installed beyond that necessary to connect the pump stations to the existing MPL Line 4 infrastructure and no new pipeline right-of-way will be acquired for this Project.[5]

6. The expected maximum operating pressure of MPL Line 4 will not change from its current 1,470 psig as a result of the Project. Rather the pump stations will allow

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[1] Exhibit ("Ex.") 2, p. 2; Ex. 25, pp. 5-6 (O'Hair Direct); Ex. 100, p. 2 (Otis Direct).
[2] *In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline*, MPUC Docket No. PL-5/CN-06-02, Findings Of Fact, Conclusions and Recommendation, Finding 49, November 17, 2006.
[3] Ex. 2, pp. 2, 29; Ex. 25, p. 6 (O'Hair Direct); Ex. 100, pp. 2-3 (Otis Direct).
[4] Ex. 2, p. 2; Ex. 25, p. 6 (O'Hair Direct); Ex. 100, p. 3 (Otis Direct).
[5] *Id.*

the pipeline to maintain a more consistent pressure, increasing the pipeline's throughput capability.[6]

7. The estimated capital cost for the Project is $125 million. Operating and maintenance costs for the MPL System will increase by $1 to 2 million after the Project's completion due to the personnel and material costs associated with maintaining six additional pump stations.[7]

8. The Project will bring increased property tax benefits to the counties where construction will occur and create about 40 to 50 new construction jobs. MPL also anticipates some permanent jobs will be created.[8]

9. For planning purposes, MPL targeted January 1, 2016 as a start date for construction with a full in-service date in the fourth quarter of 2017. The Company indicated that contingency plans may be employed to start construction sooner if the Certificate of Need is granted earlier in 2015.[9]

II. THE MPL SYSTEM

10. MPL owns a pipeline system ("MPL System") located wholly in the State of Minnesota that transports crude oil from Clearbrook, Minnesota to the Flint Hills Resources ("FHR") Pine Bend Refinery in Rosemount, Minnesota and the Northern Tier Energy ("NTE") St. Paul Park Refinery ("SPPR") in St. Paul Park, Minnesota (collectively, the "Minnesota Refineries" or "Refineries").[10]

11. The MPL System is comprised of four pipelines, each of which originates at a crude oil terminal in Clearbrook, Minnesota. The first pipeline in the MPL System was installed in 1954. A second pipeline was built in the 1970s, and the third in the 1980s. Finally, MPL Line 4 was added to the system in 2008.[11]

12. The MPL System receives crude oil for transport from Canadian and North Dakota sources through connections to the Clearbrook crude oil terminal. MPL is a common carrier pipeline and therefore offers transportation services from Clearbrook to shippers of crude oil who request such service and comply with the terms in the applicable tariffs filed with the Federal Energy Regulatory Commission ("FERC").[12]

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[6] Ex. 2, p. 7.
[7] Ex. 2, p. 27.
[8] *Id.*, p. 3.
[9] *Id.*, p. 30.
[10] *Id.*, pp. 1-2; Ex. 25, p. 4 (O'Hair Direct).
[11] Ex. 2, p. 6; Ex. 25, p. 4 (O'Hair Direct).
[12] Ex. 2, p. 2; Ex. 25, p. 4 (O'Hair Direct).

13. Currently, FHR and NTE are the only two shippers on the MPL System and the MPL System is the only pipeline system that supplies the Minnesota Refineries.[13]

14. The Minnesota Refineries use crude oil supplied by MPL to produce most of the transportation fuels used in the State. These Refineries also contribute to fuel supplies used throughout the Upper Midwest.[14]

15. MPL's assets are operated by Koch Pipeline Company, L.P. ("KPL"), with its regional northern operations headquartered in Rosemount, Minnesota. KPL operates more than 4,000 miles of pipelines in Texas, Wisconsin, Minnesota, Missouri, Iowa and Illinois transporting crude oil, refined products, ethanol, natural gas liquids, and chemicals.[15]

III. PARTIES

16. MPL and DOC-DER ("Parties") are the two parties in this proceeding.

17. MPL owns the MPL System and is the Applicant in this proceeding.

18. The DOC-DER represents the public interest in Certificate of Need proceedings. DOC-DER, among other things, reviews the Applicant's filing to assure its completeness and reviews the testimony and schedules, conducts discovery and otherwise investigates the relevant issues and files testimony and argument addressing whether the Applicant has met the necessary criteria for the granting of a Certificate of Need.

19. The DOC-EERA is not a party to the proceeding but, at the request of the Commission, provided an environmental report analyzing the environmental impact of the Project and alternatives.

IV. PROCEDURAL BACKGROUND

20. On July 25, 2014, MPL filed a Certificate of Need Application ("Application") for the Minnesota Pipeline Reliability Project under Minn. R. Ch. 7853.

21. On July 31, 2014, the Commission issued a notice requesting comments on the Application.

22. On August 19, 2014, DOC-DER filed comments recommending that the Commission find the Application complete pending the filing of additional information by the Company. The Department also recommended that the Commission refer the case to the Office of Administrative Hearings for contested case proceedings.

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[13] Ex. 2, pp. 2, 6-7; Ex. 25, p. 5 (O'Hair Direct); Ex. 100, pp. 7, 11 (Otis Direct).
[14] Ex. 2, p. 1.
[15] Ex. 2, p. 2; Ex. 25, p. 5 (O'Hair Direct).

23. On August 29, 2014, MPL filed supplemental information in response to the Department's request for additional information but stated that the Company believed the Application was substantially complete as initially filed. Additionally, the Company requested that the Commission use informal proceedings to develop the record.

24. On September 9, 2014, the Department filed reply comments, stating that the Company had sufficiently responded to the Department's request for additional information and recommending that the Commission find the Application complete as of August 29, 2014.

25. On September 30, 2014, the matter came before the Commission and on October 17, 2014 the Commission issued its Order Finding Application Complete; Notice and Order For Hearing ("October Order") referring this matter to the Office of Administrative Hearings for contested case proceedings.

26. The October Order also requested the DOC-EERA staff to conduct an environmental review of the potential effects of the Applicant's proposed Project, and the alternatives identified in the Application, on the natural and socioeconomic environment and to submit a report of its analysis into the record prior to the contested case hearings.

27. A Prehearing Conference was held on October 27, 2014 in the Large hearing Room at the Commission offices, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101.

28. On October 29, 2014, the ALJ issued the First Prehearing Order in this matter, setting the procedural schedule for this matter.

29. MPL filed the Direct Testimony of Bob O'Hair, Terry Baker, Luther Ottaway and Daniel Jones on November 17, 2014.

30. DOC-DER filed the Direct Testimony of Laura Otis on January 9, 2015.

31. The Commission issued its Notice of Public Hearing on January 26, 2015.[16]

32. On January 29, 2015, the Commission served the Letter to State Agency Representatives re. State Agency Participation In Record Development And Public Hearings on the appropriate government officials and agencies.[17]

33. The Notice of Public Hearing was published in local newspapers and in the Pioneer Press between February 4, 2015 and February 16, 2015.[18]

[16] e-Dockets Document ID 20151-106656-01 and 20151-106656-02.
[17] e-Dockets Document ID 20151-106911-01 and 20151-106911-02.
[18] e-Dockets Document ID 20154-108991-01 and 20154-108991-02.

34. On February 6, 2015, MPL filed the Rebuttal Testimony of Bob O'Hair and Terry Baker. Also on February 6, 2015, DOC-EERA filed its Environmental Report.

35. Public hearings were held February 24 and 25, 2015 in Park Rapids, Motley, Litchfield and New Prague Minnesota.

36. On February 27, 2015 DOC-DER filed the Surrebuttal Testimony of Laura Otis.

37. On March 10, 2015, the contested case hearing was held at the Commission offices in St. Paul.

38. The Parties filed Initial Briefs and MPL filed its Proposed Findings of Fact, Conclusions of Law and Recommendation on April 9, 2015.

39. The Parties filed Reply Briefs and DOC-DER filed its Proposed Findings of Fact, Conclusions of Law and Recommendation on April 23, 2015.

V. SUMMARY OF PUBLIC COMMENTS

40. The record of this proceeding includes ~~a number of~~ oral and written public comments by 24 people or entities provided prior to the deadline of March 20, 2014 and 1 comment received after that date~~discussing other pipeline projects, pursued by other applicants~~. ~~Any such comments have also been provided to the record of those other proceedings and will not be addressed here~~.

41. ~~In comparison to recent pipeline proceedings, the instant docket has generated few public comments.~~ A total of 31~~30~~ persons spoke at the four public hearings in this matter, with commenters both supporting and opposing the Project. A number of public commenters spoke to or asked questions related to other pipeline projects or past spills on other pipeline systems.[19] Commenters also discussed or raised questions regarding conservation, safety and reliability issues, spill response, and visual and noise impacts.

42. Supporters of the Project commented on the continued need for reliable crude oil, the safety of pipeline transportation compared to truck or rail, the stimulus to the local economy from new jobs, and the additional tax revenues the Project will provide to local communities. Opponents noted concerns about environmental impacts, particularly on waterways.

43. Along with oral comments provided or questions asked by the public at the four public hearings, written public comments were filed by: (1) MPL's shippers and the Minnesota Chamber of Commerce ("Chamber"), supporting the Project; (2) four

[19] *See, e. g.,* Public Hearing Transcripts, Tab 1, pp. 26-30; 53-54.

members of the public (one of whom also testified at the public hearings), raising ~~certain~~ issues about environmental and human impacts and asking ~~certain~~ questions about land easements and emergency response (discussed below)~~, including issues or questions related to other pipeline projects~~; and (3) the Minnesota Pollution Control Agency ("MPCA") and the Minnesota Department of Natural Resources ("DNR"), related to the Project and the Comparative Environmental Report ("CER") prepared by the DOC-EERA, as discussed below.

44. The Chamber supported the Project noting the importance of the Project to the Minnesota Refineries, who invest millions of dollars annually in Minnesota and create significant jobs and tax revenues.[20] The Chamber further noted the importance of sufficient and reliable access to crude oil and refined products to the State economy and to the public.[21] Finally, the Chamber stated that pipelines are the safest, most cost-effective and most environmentally friendly method of transporting crude oil.[22]

45. FHR supported the Project, noting that it relies exclusively on the MPL System for supplying the crude oil it needs to produce transportation fuels and other essential products. FHR noted that the Pine Bend Refinery is responsible for producing approximately 50 percent of the motor fuel used in Minnesota, contributes a significant portion of the fuels used in the surrounding states, and is the primary supplier of jet fuel to Minneapolis-St. Paul International Airport and a leading producer of asphalt used to pave roadways.[23]

46. FHR stated that the reliability and efficiency of the MPL System are also important factors in the Refinery's ability to remain competitive in the marketplace and to continue serving as a source of major investment and local economic growth. In Minnesota, FHR employs approximately 1,000 full-time employees, including more than 500 members of the United Steelworkers Local 662 Union. The Pine Bend Refinery is Minnesota's largest continuous construction site, with an average of 2,500 contractors working onsite on any given day. Scott Lindemann, Vice President of Operations Flint Hills Resources Pine Bend Refinery, stated that a 2012 study estimates that FHR annually creates more than 5,300 indirect jobs in Minnesota and supports more than $153 million in direct compensation and $339 million in indirect compensation in Minnesota.[24]

47. Mr. Lindemann further noted that FHR is implementing approximately $400 million in projects aimed at improving reliability, reducing key emissions, and improving the Refinery's ability to convert crude oil into transportation fuel. The ongoing investment at the Refinery and its ability to remain competitive with other

[20] Chamber Public Comments, p. 3.
[21] *Id.*, p. 4.
[22] *Id.*, pp. 5-7.
[23] FHR Public Comments, e-Dockets File No. 20153-108457-01, p. 2.
[24] *Id.*

refiners depends in large part on maintaining the Refinery's access to reliable and cost-efficient crude oil. FHR believes the MPL Reliability Project is the safest and most economical alternative for maintaining system reliability and supplying the Refinery with the crude oil volumes required to continue meeting demand.[25]

48. SPPR also supported the need for this Project. SPPR noted that it relies on the MPL System for a stable supply of the crude oil that the Refinery converts into gasoline and diesel fuel and sells to a network of approximately 165 gas stations owned by SPPR's affiliate, Northern Tier Retail LLC, and approximately 95 franchised gas stations, all under the SuperAmerica brand, as well as to other third-party gas stations and wholesale customers across Minnesota and the surrounding areas.[26]

49. SPPR stated that the Project is needed to ensure ongoing reliable supplies of crude oil to enable SPPR to provide the transportation fuels that Minnesotans demand and that a reliable supply of crude oil is important to the recent optimization improvements it has made at the Refinery.[27]

50. The MPCA comments, filed on March 20, 2015, suggest that the Project may impact Clean Water Act Section 401 waters and wetlands, stating that "the mitigation of these wetlands/waters should take place, preferably in the same watershed at a replacement ratio equivalent to or greater than the quality of the wetland impacted."[28]

51. MPL had already explained in the record that the pump stations will be located on only a portion of the parcels described in the record and that none of the proposed pump stations will directly affect major lakes or streams. In addition, MPL testified that pump stations will be located on each parcel so as to avoid impacts to wetlands.[29]

52. Table 7853.0610-G of the Application identifies the nearby wetlands and waterbodies for each of the pump station locations, none of which will be directly impacted by the Project. [30]

53. The record also contains significant discussion of the measures that will be taken to protect nearby waterbodies and wetlands, in Sections 7853.0620 and 7853.0630 of the Application[31] and the Company's Oil Spill Response Plan, Integrated Contingency

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[25] *Id*.
[26] SPPR Public Comments, e-Dockets File No. 20153-108457-01, pp. 2-3.
[27] *Id*.
[28] MPCA Public Comments, March 20, 2015, p. 2.
[29] *See* Ex. 2, pp. 43, 55-56.
[30] *Id*., p. 56.
[31] *Id*., pp. 60-65.

Plan and Pipeline and Hazardous Materials Safety Administration ("PHMSA") Response Plan.[32]

54. The MPCA Comments also suggest that MPL "must evaluate the need for coverage under the National Pollutant Discharge Elimination System/State Disposal System ("NPDES/SDS") Construction Stormwater Permit; evaluate the types of erosion and sediment control Best Management Practices (BMPs) that may be needed; and evaluate the need for permanent stormwater treatment BMPs at the pumping stations."[33]

55. The record has already addressed each of these points. MPL identified an NPDES/SDS in Table 7853.0230-A – List of Government Authorities of the Application and further discussed potential impacts associated with stormwater discharges for the proposed Project and the need for an NPDES/SDS Construction Stormwater Permit in Sections 7853.0620 and 7853.0630.[34]

56. As the issues raised by the MPCA have already been addressed in the record, the MPCA Comments require no further action.

57. The DNR Comments, also filed on March 20, 2015, suggested that topics such as spill prevention and spill response plans "should have been addressed."[35] As stated above, the record contains significant discussion of the measures that will be taken to protect waterbodies and wetlands, including in Sections 7853.0620 and 7853.0630 of the Application[36] and in the Company's Oil Spill Response Plan, Integrated Contingency Plan and Pipeline and Hazardous Materials Safety Administration ("PHMSA") Response Plan.[37]

58. The DNR Comments also discuss two specific pump stations and suggest that new locations should be considered for these pump stations, given their proximity to certain features, land uses or habitat.[38]

59. At each site, only a portion of the parcel will be used for the placement of the pump stations. For example, the St. Patrick pump station will be located on a 74 acre parcel of land owned by MPL, yet the pump station itself will only occupy approximately

[32] *See* Exs. 103-105.
[33] MPCA Public Comments, March 20, 2015, p. 2.
[34] Ex. 2, pp. 4, 60-65.
[35] DNR Public comments, p. 1.
[36] *Id.*, pp. 60-65.
[37] *See* Exs. 103-105.
[38] DNR Public Comments, March 20, 2015, pp. 1-2.

five acres.[39] The unused land will provide a buffer between the pump stations themselves and the surrounding land uses and habitat.

60. Moving the pump stations to as yet unidentified locations would create unknown human and environmental impacts, would adversely impact the efficiency of the overall operation of MPL Line 4, and would necessitate new routing for the associated transmission lines, again creating unknown impacts.

61. The record demonstrates that the Project minimizes adverse impacts on the human and natural environments compared to the alternatives, in part by locating the pump stations on land owned by MPL and situated along MPL Line 4 in order to increase the efficiency of the overall operation of the MPL System.

62. Based on the record developed in this proceeding, the ALJ does not recommend that the Commission pursue exploration of new pump station locations.

63. Among the comments received from the general public, Ms. Florence Mowan provided a number of comments questioning the need for the Project and questioning the safety of pipeline transportation of crude oil.[40]

64. As set forth below, the record demonstrates both the need for the Project and that pipelines provide a safer method of transportation of crude oil than either truck or rail transport.

65. Mr. Maurice Spangler filed comments asking if the "extra oil" going through MPL Line 4 is indeed going to the Twin Cities Refineries and not being shipped elsewhere for eventual sale overseas. Mr. Spangler further asked questions regarding pipeline maintenance and regarding spill and emergency response.[41]

66. The record demonstrates that the Minnesota Refineries are the only shippers on the MPL System. The record further contains substantial discussion of the Company's integrity management efforts and spill and emergency response plans.

67. Ms. Sharon Natzel also provided comments regarding the alleged environmental and human impacts of the Project and raising concerns regarding spill prevention and response.[42]

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[39] *See* Ex. 2, p. 28.
[40] Mowan Public Comments, e-Dockets File No. 20153-108457-01, pp. 1, 3-6, and 9. (Ms. Mowan also provided oral comments at the Motley public hearing, *see* Public Hearing Transcripts, Tab 2, pp. 21-30, 69-74.)
[41] Spangler Public Comments, e-Dockets File No. 20153-108457-01, p. 5.
[42] Natzel Public Comments, e-Dockets File No. 20153-108457-01, pp. 7-8.

68. As set forth in the findings below, the record demonstrates that the Project is superior to alternatives with respect to natural and socioeconomic impacts and contains substantial discussion of the Company's integrity management efforts and spill and emergency response plans.

69. Mr. Russell Martin filed comments raising questions regarding an easement that he states the Company filed related to his property in 2010.[43]

70. The question of any easements MPL may have related to its installation of MPL Line 4 is beyond the scope of the current proceeding.

VI. CRITERIA FOR GRANTING A CERTIFICATE OF NEED

71. Minnesota Statutes Section 216B.243 ("CON Statute") governs the granting of a CON for a large energy facility. Under a separate statute, a "large energy facility" is defined to include "any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of coal, crude petroleum or petroleum fuels or oil, or their derivatives."[44] ~~As such, Minnesota Statutes do not require and do not contemplate a CON for a project merely increasing the pumping capacity on a pipeline already fully permitted and approved.~~

72. In its Rules, the Commission has required a CON for "any project that, within a period of two years, would expand an existing large petroleum pipeline in excess of either 20 percent of its rated capacity or 10,000 barrels per day, whichever is greater."[45] ~~The Project meets that Rule threshold and, rather than raising objection to this Rule as exceeding the statutory requirements, MPL filed for a CON for the Project.~~

73. The Commission has also adopted rules setting forth the criteria to be used in its determination of the need for petroleum pipeline projects, in Minnesota Rules Part 7853.0130 ("CON Rules"). Those Rules provide:

> A certificate of need must be granted to the applicant on determining that:
>
> A. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering:
>
> (1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

[43] Martin Public Comments, e-Dockets File No. 20153-108457-01, p. 9.
[44] Minn. Stat. § 216B.2421, subd. 2 (4).
[45] Minn. R. 7853.0030~~0300~~ (D).

(2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

(3) the effects of the applicant's promotional practices that may have given rise to the increase in the energy demand, particularly promotional practices that have occurred since 1974;

(4) the ability of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access, to meet the future demand; and

(5) the effect of the proposed facility, or a suitable modification of it, in making efficient use of resources;

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, considering:

(1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

(2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(3) the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

(4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering:

(1) the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;

(2) the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility;

(3) the effects of the proposed facility or a suitable modification of it, in inducing future development; and

(4) socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality; 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.

74. As the Applicant, MPL bears the burden of demonstrating the need for the Project,[46] with the specific burden being proof by a preponderance of the evidence.[47]

VII. APPLICATION OF CERTIFICATE OF NEED CRITERIA

A. The Future Adequacy, Reliability, Or Efficiency Of Energy Supply

75. The first of the four criteria established by the Commission for the granting of a CON calls for an examination of whether:

> 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.[48]

76. Under this criterion, the Commission considers: (1) an applicant's forecast of demand for energy; (2) its conservation programs; (3) its promotional practices; (4) the ability of current or planned facilities to meet the future demand; and (5) the facility's ability to make an efficient use of resources.[49] Given full consideration to these factors, the record ~~conclusively~~ demonstrates the adverse impact that denial of the CON would have on the future adequacy, reliability and efficiency of energy supply to MPL's shippers, the State and the region.

1. Accuracy Of Forecast For Demand

77. MPL presented both historical crude oil demand data and forecast data in support of its Application.[50] Regarding the historical data, the Company explained that it has no contracts with the Minnesota Refineries.[51] Rather, the Refineries make monthly nominations under the application provisions of MPL's FERC tariff.[52] MPL provided a

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[46] *See* Minn. Stat. § 216B.243, subd. 3.
[47] *See* Minn. R. 1400.7300, subp. 5.
[48] *Id.*, subp. (A).
[49] *Id.*
[50] Ex. 2, pp. 19-25.
[51] Ex. 22, p. 3 (Ottaway Direct).
[52] *Id.*

history of the shipments pursuant to those nominations, which shows an increase in total volumes shipped on the MPL System from 110 million barrels per year and a per day peak of 395,000 barrels per day in 2009, to nearly 126 million barrels per year with a per day peak of 413,000 barrels per day in 2013.[53]

78. At the request of the DOC-DER, MPL also provided monthly nomination data from October 2009 through September 2014, corroborating this increased level of demand on the MPL System.[54]

79. This increased level of demand has occurred due to the Minnesota Refineries' efforts to improve the efficiencies and utilization of their capacity, with the end result of the MPL System operating close to its current capacity.[55]

80. Without the additional pumping capacity provided by the Project, MPL cannot take segments of the MPL System out of service for planned or unplanned maintenance without potentially disrupting crude oil supplies.[56]

81. To forecast its demand, MPL contacted its shippers to request the level of their anticipated demand and reviewed forecasts provided by the Canadian Association of Petroleum Producers ("CAPP") and the North Dakota Pipeline Authority ("NDPA") regarding the availability of crude oil supply.[57]

82. Based on the information provided by its shippers, MPL forecasts modestly increasing demand for crude oil on the MPL System.[58] Moreover, forecasts provided by CAPP and NDPA indicate no supply constraints that would impact MPL's ability to meet this level of demand.[59]

83. MPL acknowledged that forecasts can be impacted by multiple events and that it does not project significant growth in demand necessitating further projects at this time.[60] However, the best information available indicates a clear need for the MPL System to continue operating at close to its existing capacity, necessitating this Project.

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[53] *Id.*; Ex. 2, p. 19.
[54] *See* Ex. 20; and TRADE SECRET Ex. 21.
[55] Ex. 25, p. 9 (O'Hair Direct).
[56] *Id.*
[57] Ex. 2, p. 24.
[58] *Id.*; Ex. 22, p. 4 (Ottaway Direct).
[59] Ex. 22, p. 4 (Ottaway Direct).
[60] *Id.*, pp. 4-5.

84. The DOC-DER reviewed the historical and forecast information provided by MPL and testified that the Company's forecasted levels of demand track the historical trend and appear reasonable.[61]

85. The DOC-DER also discussed planned improvements in utilization at the Minnesota Refineries, supporting MPL's forecast of modest growth in refinery demand from current levels.[62]

86. Finally, DOC-DER compared MPL's forecasts to forecasts available from the Energy Information Administration ("EIA")[63] as another means of corroborating the reasonableness of MPL's forecasts. Based on the entirety of this review, the DOC-DER determined that MPL's forecast of demand is reasonable.[64]

87. No party presented evidence contesting MPL's forecasts.

88. Based upon the evidence presented, MPL has established, by a preponderance of the evidence, that there is a need for additional energy and capacity in the 2020 - 2035 timeframe, and that a denial of the CON Application would likely adversely affect the future adequacy of the energy supply to MPL's shippers, to the people of Minnesota and to neighboring states.

2. Effect Of Conservation Programs

89. Energy costs form a substantial component of MPL's overall cost structure.[65] For that reason, MPL continually explores ways to improve the energy efficiency of its system, including through energy conservation efforts.[66] Those conservation and efficiency efforts, while providing overall societal benefits, do not eliminate the need for this Project itself.

90. Conservation can only eliminate the need for the Project if that conservation eliminates a need for crude oil deliveries to the Minnesota Refineries. Moreover, given the fact that this Project is necessitated by the current MPL System operating at close to capacity, conservation could only eliminate the need for this Project if that conservation led to a significant *decrease* in MPL's shippers' current levels of demand. Nothing in the record can support such a conclusion.

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[61] Ex. ~~200~~100, pp. 7-10 (Otis Direct).
[62] *Id*. at pp. 10-11 and Schedules LBO-1 and 2.
[63] Transcript Volume ("Tr. Vol.") 1, p. 52 (Otis).
[64] Ex. ~~200~~100, p. 11 (Otis Direct).
[65] Ex. 2, pp. 12-13; Ex. 28, p. 4 (Baker Direct).
[66] *Id*.

91. MPL acknowledged that it is possible that future advances in efficiency, technology or renewable fuels may impact future levels of demand for crude oil and the refined products developed from that crude oil.[67] However, MPL's shippers considered State and federal conservation efforts when providing their forecasts of demand.[68]

92. Outside sources forecasting demand for crude oil, such as the EIA forecasts reviewed by the DOC-DER, specifically state that they take into account the effect of conservation programs and increased efficiencies when developing their forecasts.[69]

93. The preponderance of the evidence in the record demonstrates that conservation efforts are already embedded in the forecasts presented in this proceeding and such efforts cannot eliminate the need for the Project.[70]

3. Effect Of Promotional Activities

94. The record contains no evidence suggesting that promotional activities have given rise to the need for the Project.[71]

95. The Project is supported by MPL's shippers, the Minnesota Refineries, given their need to have continued access to stable and reliable crude oil supply.[72]

4. Ability Of Current Facilities To Meet State And Regional Energy Needs

96. MPL is the only pipeline system currently supplying crude oil to the Minnesota Refineries.

97. The record demonstrates that the existing MPL System that supplies the Minnesota Refineries operates at close to its current capacity.[73] Given this fact, any temporary planned or unplanned outage on any part of the MPL System threatens the supply of crude oil to the Minnesota Refineries, in turn threatening the supply of transportation fuels and other refined products to businesses and citizens of Minnesota and the region.[74]

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[67] Tr. Vol. 1, p. 17 (O'Hair).
[68] *Id.*, p. 22 (Ottaway).
[69] *Id.*, p. 52 (Otis).
[70] *See*, *id.,* pp. 17 (O'Hair), 22 (Ottaway) and 52 (Otis).
[71] Ex. 2, p. 11.
[72] *Id.*; SPPR Public Comments, e-Dockets File No. 20153-108457-01, pp. 2-3.
[73] *See* Ex. 2, p. 2 and pp. 19-22 (Historical Energy Data); Ex. 25, p. 7 (O'Hair Direct).
[74] Ex. 2, p. 2; Ex. 25, p. 7 (O'Hair Direct).

98. As pipelines age, they require more frequent inspections and maintenance to ensure they remain in good working condition.[75] This work necessarily requires temporary outages,[76] and occasionally requires taking pipelines out of service for extended periods of time.[77]

99. MPL explained that the duration of the work necessary varies based on the inspection method and the extent to which any repair work is required.[78] Therefore, MPL cannot predict with certainty the length or frequency of outages that may be expected on MPL Lines 1, 2 and 3 (the "Legacy System"). However, to provide historical perspective, DOC-DER examined the history of planned and unplanned outages on the MPL System and found that over the past five years, planned and unplanned outages on the MPL System have resulted in an average of 216 hours of outages per year on Lines 1, 2, and 3, and 127 hours of outages per year on Line 4.~~the Legacy System experienced an average of 216 hours of outages per year in the last five years~~. Outages over the past five years have interrupted 2.5% of yearly throughput capacity on Lines 1, 2, and 3, and 1.5% of capacity on Line 4. [79]

100. The MPL System also experiences unplanned events that cause slowdowns, if not outages.[80] For the twelve months ended November 2014, the MPL System experienced an average of 13.7 slowdowns per month, lasting an average of 17.2 hours and leading to significant loss of throughput.[81]

101. Delays in planned restarts of a pipeline following an inspection, planned maintenance or an unplanned event that takes a pipeline segment out of service could result in a crude oil shortage.[82] Such a crude shortage, in turn, can impact the supply of transportation fuels and other refined products to the State and the region, seriously impacting local economies and people's daily lives.[83]

102. The DOC-DER agreed that outages or delay in restarts on the current MPL System would adversely impact energy supplies and the people of Minnesota.[84]

103. No minor modifications to the current MPL System can provide close to the additional pumping capacity provided by the Project.

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[75] Ex. 25, p. 7 (O'Hair Direct); Ex. ~~200~~100, p. 12 (Otis Direct).
[76] Ex. ~~200~~100, p. 12 (Otis Direct).
[77] Ex. 2, p. 6.
[78] Ex. 25, p. 7 (O'Hair Direct).
[79] Ex. ~~200~~100, p. 12 (Otis Direct); Ex. 101 at LBO-3, LBO-4 (Otis Direct Attachments).
[80] *Id.*
[81] *Id.*, pp. 12-13 and Schedule LBO-3.
[82] Ex. 25, p. 8 (O'Hair Direct).
[83] Ex. 2, p. 7.
[84] Ex. ~~200~~100, pp. 14-15 (Otis Direct).

104. Any new pipeline providing the incremental capacity of the Project would qualify as a new "large energy facility," triggering the need for a CON. In addition, the current MPL System is operating at close to capacity.

105. The record contains no evidence of any other current or planned facility that can meet the need for increased pumping capacity on the MPL System.

5. Effect Of The Project In Making An Efficient Use Of Resources

106. The Project makes use of available capacity on MPL's newest pipeline – MPL Line 4 – to maintain the overall reliability of the MPL System.[85]

107. MPL Line 4 was originally designed to accommodate the Project.[86]

108. Increasing the capability of MPL Line 4 to its originally designed capacity at this time will provide the flexibility to shift capacity as necessary to maintain reliable crude oil supplies to Minnesota Refineries, without adding unnecessary additional infrastructure such as a new pipeline.

109. The Project will improve the overall efficiency of the MPL System and of crude oil supply to the Minnesota Refineries by making better use of MPL's existing pipeline assets and providing a shorter, more direct and less costly route to the Refineries than the alternatives.[87]

110. One of the goals of the Project is energy optimization of the entire MPL System relative to the Company's throughput.[88] The record demonstrates that barrels shipped on MPL Line 4 use significantly less energy on a per barrel basis than barrels shipped on the Legacy System, due to the larger diameter pipes and more efficient motors on MPL Line 4.[89] Given this, the Project is anticipated to reduce power consumption on a per barrel basis by approximately 37 percent.[90]

111. The record establishes by a preponderance of the evidence that the Project will make an efficient use of resources, particularly when compared to the alternatives.

112. The record establishes the benefits of the Project with respect to the future adequacy, reliability and efficiency of energy supply to Minnesota and the region.

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[85] Ex. 2, p. 9.
[86] *In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline*, MPUC Docket No. PL-5/CN-06-02, Findings Of Fact, Conclusions and Recommendation, Finding 49, November 17, 2006.
[87] Ex. 2, p. 9.
[88] Ex. 24, p. 4 (Baker).
[89] Ex. 2, p. 9; Ex. 24, pp. 4-5 (Baker Direct); Tr. Vol. 1, pp. 29-30 (Baker).
[90] *Id*.

Moreover, there is *no* evidence in this record to support a conclusion that the CON can be denied without adversely impacting the Minnesota Refineries and the people of Minnesota and surrounding states. Therefore, MPL has satisfied the first criterion for the granting of a CON.

B. Analysis Of Alternatives

113. The second criterion used by the Commission in assessing need calls for the Commission to grant a CON if "a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record."[91]

114. To determine whether such a preferred alternative has been established, the Commission examines: (1) the size, type, and timing of the proposed facility compared to those of reasonable alternatives; (2) the cost of the proposed facility compared to the costs of reasonable alternatives; (3) the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and (4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives.[92]

115. In its Application and testimony, MPL examined the following alternatives: (1) a "no action" alternative; (2) trucking; (3) rail transport; (4) a new pipeline; and (5) the Wood River pipeline. In addition, the DOC-DER explored and examined the possibility that construction of storage tanks could provide an alternative to the Project.

116. Both MPL and DOC-DER agreed that no alternative discussed in the record more reasonably and prudently satisfies the needs met by the Project, as each alternative fails under one or more of the factors set forth in the CON Rules and no other party or person presented any other alternative to the Project.

1. Size, Type, And Timing Of Facility

117. The Project will increase the pumping capacity on MPL Line 4 by 185,000 barrels per day. As such, the Project allows MPL to continue meeting the demands of the Minnesota Refineries in an uninterrupted manner, even when it needs to temporarily take a pipeline out of service for maintenance or repair activities.[93]

118. Moreover, while MPL does not anticipate a significant near-term increase in crude oil demand, it expects that both Minnesota Refineries will continue to become

[91] Minn. R. 7853.0130 (B).
[92] *Id.*
[93] Ex. 2, p. 32.

more efficient and improve their utilization rates, which will ultimately drive higher peak daily demand requirements, which can also be supported by the Project.[94]

119. By enabling an increase in capability of 185,000 barrels per day, the Project better enables MPL to meet any "sprint capacity" needs of its shippers due to outages or slowdowns. As such, the Project is appropriately sized to meet the need.

120. By utilizing the newest pipeline assets on the MPL System, the Project enables continued reliable shipment of crude oil in the safest manner available.

121. Assuming issuance of a CON, MPL anticipates commencing construction with a start date of no later than January 1, 2016, and a full in-service date no later than the fourth quarter of 2017, with the potential to compress the construction schedule by up to nine months.[95] Therefore, the Project meets the identified need in a timely manner.

122. Both truck and rail transport present significantly greater risk of accidents than does pipeline transport.[96] The truck and rail alternatives also provide unknown capacity and have unknown timeline for completion.[97] For the trucking alternative, a fleet of over 1,000 trucks would be required and those trucks may not be available. For rail, over 2,000 rail cars would be required at a time when the area already experiences rail car shortages.[98] Moreover, both truck and rail alternatives require the construction of new loading and unloading facilities, again with an unknown timeframe.[99]

123. A new pipeline alternative would not efficiently utilize existing pipeline assets and would create greater impact on the natural environment than the Project. Moreover, a new pipeline could not likely be constructed on the same timeline as the Project, given the permitting requirements associated with such a facility.[100]

124. The Wood River alternative also fails to provide to meet MPL's size, type and timing needs more reasonably than the Project. The Wood River Pipeline ("WRPL") is a 580 mile pipeline originating in Illinois and terminating in the Twin Cities.[101] WRPL has a capacity of just 90,000 barrels per day and has been inactive since 2013 due to lack of shipper demand.[102] As such, WRPL cannot provide increased transport capability

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[94] *Id.*
[95] Ex. 2, p. 29.
[96] Ex. 2, pp. 36, 38; Ex. 22, pp. 6-7 (Ottaway Direct); Ex. ~~200~~100, p. 22 (Otis Direct).
[97] *See* Ex. 2, pp. 34-38; Ex. 22, pp. 6-7 (Ottaway Direct); Ex. ~~200~~100, pp. 20-21 (Otis Direct).
[98] *Id.*
[99] *Id.*
[100] Ex. 2, p. 39.
[101] Ex. 22, p. 9 (Ottaway Direct); Ex. ~~200~~100, p. 23 (Otis Direct).
[102] *Id.*

comparable to the Project nor can it satisfy the system reliability needs or sprint capacity needs met by the Project.[103]

125. In addition, WRPL does not provide economic transport of crude oil, given the significantly longer distance that crude oil must travel before it reaches the Minnesota Refineries and due to inferior pricing of the crude oil accessible to WRPL.[104]

2. Cost

126. MPL estimates the Project will cost approximately $125 million to complete and will require an incremental tariff of no more the $0.25/barrel, keeping the total tariff rate between Clearbrook and the Minnesota Refineries below $2.00/barrel.[105] The Project yields this result by making use of existing infrastructure that was designed and constructed to handle the Project's increased pumping capacity, thereby limiting the new investment necessary.

127. Both the truck and rail alternatives would require substantial new infrastructure and infrastructure improvements, including construction of new loading and unloading facilities, and road and rail upgrades.[106] Additionally, the truck and rail alternatives would add new variable costs, including maintenance and labor costs.[107] Given these costs, the record demonstrates that the trucking alternative would cost MPL's shippers between $7.50/barrel and $9.25/barrel and the rail alternative would cost them approximately $8.00/barrel.[108]

128. The WRPL alternative also would add significant costs to the Minnesota Refineries, both because of the longer distance traveled by crude oil when it is transported over WRPL and because of the higher cost of crude oil accessible to that pipeline.[109] MPL estimated that transporting crude oil over WRPL could double or triple the costs to the Minnesota Refineries compared to the Project and the DOC-DER confirmed that the WRPL alternative would impose significantly higher costs.[110]

129. A new pipeline adds substantial costs to the MPL System when compared to the Project. While the Project will cost an estimated $125 million, a new pipeline is conservatively estimated to cost $600 million.[111] These additional costs, of course,

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[103] Ex. 22, p. 9 (Ottaway Direct); Ex. ~~200~~100, p. 30 (Otis Direct).
[104] *Id.*
[105] Ex. 2, p. 35.
[106] Ex. 2, pp. 34-38; Ex. 22, pp. 8-9 (Ottaway Direct); Ex. ~~200~~100, p. 20 (Otis Direct).
[107] *Id.*
[108] Ex. 2, pp. 35, 38; Ex. ~~200~~100, p. 22 (Otis Direct).
[109] Ex. 22, p. 9 (Ottaway Direct).
[110] Ex. 2, pp. 41-42; Ex. ~~200~~100, p. 29-30 (Otis Direct).
[111] Ex. 2, p. 39; Ex. 22, p. 8 (Ottaway Direct).

would impact the ultimate costs to the Minnesota Refineries and to consumers of the refined products they produce.

130. The preponderance of the evidence demonstrates that the Project meets MPL's, the Minnesota Refineries' and State and regional needs more cost effectively than the alternatives.

3. Impacts On The Natural And Socioeconomic Environments

131. The Comparative Environmental Review ("CER"), prepared by the DOC-EERA at the direction of the Commission, found that the Project was "clearly superior to any of the alternatives presented by MPL in their CN Application."[112]

132. The potential environmental impacts of the Project are generally restricted to the areas within and surrounding the pump station locations themselves, on land owned in fee by MPL.[113] The construction and operation of these stations are the only changes necessary to the existing line.[114] No new pipeline would be installed, and the pump stations would be constructed directly adjacent the existing line, minimizing the amount of land impacted by the Project.[115]

133. All of the pump station properties are located in rural areas, meaning the Project impacts a limited number of local residents.

134. The pump stations will be located on parcels as large as 74 acres, yet will occupy only a few acres at each site.[116]

135. MPL stated that ~~T~~the proposed pump station sites will not directly impact major lakes, streams or wetlands of five acres or more and the pump stations will be designed to avoid impacts to wetlands.[117] The CER prepared by DOC-EERA concluded that "[a]ll natural environmental impacts . . . will occur on MPL-owned land. The record also demonstrates that these pump station sites: will not result in direct impacts to trunk highways, railroads, or airports; will not directly impact any national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails, or national waterfowl production areas; will not directly impact State critical areas, State wildlife management areas, State scientific and natural areas, State wild, scenic, and recreational rivers, State parks, State scenic wayside parks, State recreational areas, State forests, State trails, State canoe and

[112] Ex. 200, p. 22 ~~(emphasis added)~~.
[113] *Id.*, p. 5.; Ex. 2, p. 52.
[114] *Id.*
[115] *Id.*
[116] *See* Ex. 2, p. 28.
[117] Ex. 2, pp. 44, 51-60.

boating rivers, State zoo, or designated trout lakes; and will not directly impact any national historic sites and landmarks, national monuments, national register historic districts, registered State historic or archaeological sites, State historical districts, sites listed on the National Register of Historic Places, and any other cultural resources through which the route passes, as indicated by the Minnesota Historical Society.[118]

136. The Project will have minimal impact on water or air resources and will not present significant noise issues given the rural location of the pump stations. MPL also committed to address any localized noise concerns, if they arise.[119]

137. The Project is expected to have positive~~ly~~ impacts on the socioeconomic environment, such as the.[120] ~~T~~the $125 million infrastructure investment in of this Project will directly result in~~on~~ increased property tax benefits to the counties where the stations will be located. The Project will also create approximately 40 to 50 new construction jobs, creating work for local workers and providing additional input into the local economy from outside workers. MPL also anticipates adding a minimum of two new permanent positions at the existing station offices. These workers would be employed to observe and operate the system and to assist in emergency preparedness and response drills, and to oversee contractors performing maintenance work on the system.

138. The Project also provides benefits to the State and regional economies by better ensuring a continued stable, reliable and efficient source of crude oil supply to the Minnesota Refineries. Given that MPL is the sole pipeline source for crude oil to the Refineries, and that the Refineries in turn are the source for most of the fuel and other refined products used in Minnesota, disruptions of delivery to the Refineries have a direct negative impact on end users due to fuel shortages and potential cost increases. The Project alleviates those concerns by providing MPL the flexibility to shift volumes off of its Legacy System in order to perform maintenance, in the event of unplanned outages or slowdowns, and to increase efficiencies, all benefitting the State and the region.

139. In comparison to the Project, the trucking alternative would impose substantial impacts to the natural environment, including impacts associated with the construction of loading and unloading facilities, the increased risk of accident and substantial air emissions. Trucking also reduces the reliability of supply and would create significant traffic levels, imposing negative socioeconomic impacts.

140. The rail alternative would also require substantial construction of loading and unloading facilities and new rail lines. Moreover, rail transport also increases air emissions compared to the Project. As for socioeconomic impacts, the CER stated that:

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[118] *Id.*; Ex. 200, p. 7-8.
[119] Ex. 2, pp. 47, 61-62; Public Hearing Transcripts, Tab 4, pp. 30-31.
[120] ~~Ex. 200~~100, p. 7.

> It is beyond the scope of this review to determine the extent of necessary rail build-out or the extensive human, economic and environmental impacts of significantly increasing the rail infrastructure in Minnesota. Considering the existing burden of transporting Bakken crude, the Minnesota Department of Transportation already anticipates the need to spend $244 million to make at-grade safety improvements at rail-highway crossings. Their recent study describes the problems of traffic delays, including emergency responder delays, and collision dangers from inadequate signaling and alerts. In some cases, these problems can only be solved by the high cost "grade separation" solution of building overpasses/underpasses to separate vehicle and train traffic on site.[121]

141. The new pipeline alternative would involve over 300 miles of new pipeline and new right-of-way acquisition, none of which is required by the Project. Obviously, such a major new construction effort would impose far greater impacts to the natural environment than the Project.

142. The WRPL alternative cannot provide the additional transport capability provided by the Project. Therefore, the WRPL alternative would either require supplemental truck or rail transport, creating the negative environmental and socioeconomic impacts discussed above or it would create greater risk of supply disruptions than the Project due to the lack of sufficient capacity. In either event, the WRPL alternative cannot meet the identified need in a manner more compatible with the natural and socioeconomic environments than does the Project.

143. The evidence in the record evidence supports DOC-EERA's conclusion that the project is "clearly superior to any of the alternatives." In fact, no record evidence suggests a contrary conclusion.

4. Reliability

144. The last factor the Commission examines regarding alternatives is "the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives."[122]

145. Both MPL and DOC-EERA testified that a variety of factors call the reliability of truck or rail transport into question, including the lack of necessary infrastructure, questionable equipment availability, increased risk of accident, weather,

[121] Ex. 200, p. 20 (emphasis added).
[122] Minn. R. 7853.0130 (B) (4).

and traffic congestion. The Department agreed that these issues would be more pronounced under the alternatives than with the proposed Project.[123]

146. In contrast, the Project utilizes the newest asset on the MPL System and increases the pumping capacity on that asset in order to allow for increased efficiencies and to enable MPL to meet the demands of the Minnesota Refineries, even when some assets are taken out of service for planned or unplanned reasons.

147. The preponderance of the evidence demonstrates that no alternative provides comparable reliability benefits more efficiently or cost-effectively than the Project.

148. Compared to the alternatives, the record demonstrates that the Project will better ensure the safe and reliable delivery of crude oil to the only two Refineries in Minnesota. Moreover, it will do so economically and in a manner more compatible with the natural and socioeconomic environment than the alternatives.[124] The DOC-DER agreed, with Ms. Otis testifying that "none of the alternatives are superior to the Project."[125]

C. Environmental And Socioeconomic Impacts Of The Project

149. For its third criterion, the Commission states that it will grant a CON when "the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate."[126]

150. In analyzing this question, the Commission considers: (1) the relationship of the proposed facility to overall state energy needs; (2) the effect of the proposed facility upon the natural and socioeconomic environments compared to the effect of not building the facility; (3) the effects of the proposed facility in inducing future development; and (4) socially beneficial uses of the output of the proposed facility.[127]

1. Overall State Energy Needs

151. The Project meets Minnesota's and the region's overall energy needs by assuring the continued adequacy, efficiency and reliability of crude oil supply to the Minnesota Refineries. The Project will increase the pumping capacity on the MPL System's newest pipeline – MPL Line 4 – enabling MPL to shift volumes to that pipeline

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[123] Ex. 100 at 23 (Otis Direct); Ex. 101 at LBO-14 (Otis Direct Attachments).
[124] Ex. 25, p. 11 (O'Hair Direct).
[125] Ex. ~~200~~100, p. 49 (Otis Direct).
[126] Minn. R. 7853.0130 (C).
[127] *Id.*

from its Legacy System to perform maintenance and inspections, at times of unplanned outages or slowdowns and to improve the overall efficiency of the MPL System.

152. MPL is currently the only pipeline system supplying crude oil directly to the Minnesota Refineries. These Refineries produce the vast majority of transportation fuels and other refined products on which Minnesotans rely, such as heating fuels and asphalt. The Refineries also help meet regional demand, supplying refined products to surrounding states. However, the MPL System currently operates at close to capacity, meaning any planned or unplanned outages on the MPL System threaten the supply of crude oil to the Refineries.

153. Such shortages in crude oil supply have the potential to impose severe negative impacts on the State and regional economies and on the people of Minnesota.

154. Given the Minnesota Refineries' continued and modestly increasing demand for crude oil, as established in this record, the Project plays a key role in Minnesota's energy future. The DOC-DER agreed, stating that "denial of the [CON] would adversely affect the supply of refined petroleum products available to the people of Minnesota and surrounding states."[128]

155. No party provided any evidence that the Project was not important to meeting State and regional energy needs.

2. Effect On The Natural And Socioeconomic Environments

156. The record establishes an ongoing and modestly increasing demand for crude oil from MPL's shippers, the Minnesota Refineries. The record also establishes that the current MPL System operates at close to capacity. Without the additional pumping capacity made possible by the Project, MPL cannot shift capacity to MPL Line 4 when needed to address planned or unplanned outages and the MPL System will lack sprint capacity when needed to address prior shortfalls due to outages or slowdowns.

157. This lack of current capacity has potentially severe consequences for the continued adequacy, reliability and efficiency of energy supply to the State and region. Both MPL and DOC-DER agree that "no action" is not an option as shortages of crude oil and, in turn, shortages of refined products, can cause substantial harm to the State and regional economies and to consumers of those refined products.[129]

158. The record also demonstrates that if the Project does not move forward oil transportation alternatives will be required to meet the need.[130] As the CER states:

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[128] Ex. ~~200~~100, p. 48 (Otis Direct).
[129] *Id.* at 19.
[130] ~~*Id.*~~Ex. 200 at 10 (Environmental Report).

> [S]ince the status quo does nothing to address the stated need, the no action alternative would require MPL to identify other transportation systems to deliver product to the refineries. Any of these other alternatives may result in environmental impacts that are equal to or greater than those of the currently proposed Project. So, the no action alternative would not necessarily reduce or eliminate impacts to the natural environment.[131]

159. The record demonstrates that the alternatives to the Project (truck, rail, a new pipeline or re-activating the Wood River Pipeline) all impose greater environmental and socioeconomic costs that the Project.[132]

160. If MPL completes the proposed Project, the MPL System may increase its electricity use, as well as increase the amount of crude oil that MPL ships from Clearbrook to the Twin Cities. While MPL states that transferring crude oil transport from older lines on the MPL System to Line 4 will make the system more efficient as a whole—at least in the short term—whether the MPL System actually reduces its total energy ~~footprint~~use will depend on both efficiency of the system and shipper activity. It is possible that total energy use will decrease from current levels, but because the proposed Project will increase crude oil throughput capability on the MPL System by 185,000 bpd, a scenario where shipper activity causes the MPL System to use more energy than it does today is not unlikely.[133]

161. The Department recommended that, to the extent that energy use on the MPL System increases, the Commission should condition its approval on requiring MPL to generate a kWh of renewable energy for every incremental kWh of energy consumed by the project. MPL could meet this requirement by purchasing either green power or renewable energy credits ("RECs") that are tracked by and retired through the Midwest Renewable Energy Tracking System ("MRETS"),[134] or participating in other programs to offset the incremental energy it consumes at the Project's pump stations. In addition, the Commission should require MPL to conserve an acre for every acre of natural habitat protected and plant a tree for every tree that must be removed to build new facilities.

162. The Commission is familiar with this recommendation, as it ordered a similar condition in a recent docket. In granting a CN for a similar pipeline proposal to

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[131] *Id.*
[132] *Id.*, p. 22.
[133] Ex. 2 at 8 (Application) ("Both Minnesota Refineries have improved their utilization and increased their crude oil rates to meet market demand, which has increased demand on the MPL System.") ("The MPL System also currently has insufficient pumping capacity to send surplus volumes to refineries when needed to respond to sudden increases in demand or to make up for supply disruptions."); Ex. 100 at 7 (Otis Direct); Ex. 102 at 4-5 (Otis Surrebuttal); Tr. Vol. 1 at 16 (O'Hair).
[134] Ex. 102 at 11 (Otis Surrebuttal); Tr. Vol. 1 at 41, 46–47 (Otis).

add pump stations to an existing pipeline, the Commission required the applicant there to conserve an acre for every acre of natural habitat protected, plant a tree for every tree that must be removed to build new facilities, and generate a kWh of renewable energy for every kWh of energy consumed by the project.[135]

163. The instant case is similar to the 13-153 Docket in that both upgrades are designed to allow a crude oil pipeline to operate at its maximum-designed capacity. While MPL frames this matter as a reliability project, the fact remains that the MPL System throughput capacity will increase by 185,000 bpd and be able to handle an increase in demand. As in the 13-153 Docket, this condition will directly benefit the natural and socioeconomic environments in this case, too. The Department encourages the Commission to adopt its recommendation in this case.[136]

164. The ALJ agrees that the Department's recommended condition is reasonable, and recommends that the Commission adopt it.

165. In order to ensure that its employees and contractors abide by all environmental and permit provisions, MPL uses a combination of training, ongoing education, and certification programs to ensure that its employees and contractors are able to fully comply with environmental and safety permit provisions. KPL provides its employees with yearly trainings that equip them to comply with permit provisions in situations that may be encountered while working on the MPL system. KPL contractors must certify that they have undergone training, including training on the contents of KPL technical manuals and guidelines. KPL verifies the certification status and safety record of all contractors it hires through a contractor website database.[137]

166. In addition to training and certification of employees and contractors, KPL stations an inspector charged with overseeing work and ensuring regulatory compliance at every jobsite. KPL also conducts field audits to ascertain whether overall compliance, performance, and safety standards are being upheld by its employees and contractors.[138]

167. When non-compliance is identified, inspectors, or site supervisors, have the authority to halt work until acceptable standards can be satisfied. Individual employees are incentivized to meet safety and environmental standards through a system that

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[135] *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project – Phase 2 – in Marshall, Clearwater, Itasca, Kittson, Red Lake, Cass, and St. Louis Counties*, Order Granting Certificate of Need at 32, Docket No. PL-9/CN-13-153 (Nov. 7, 2014) (the "13-153 Docket").

[136] Tr. Vol. 1 at 33 (Baker); Ex. 2 at 8 (Application); Ex. 100 at 7 (Otis Direct).

[137] Ex. 102 at 6-7 (Otis Surrebuttal); *see* ISN, https://www.isnetworld.com (last visited Apr. 3, 2015).

[138] Ex. 102 at 7 (Otis Surrebuttal).

rewards compliance with additional responsibilities and decision-making rights, which are lost when expectations are not met. In addition, continued employment and compensation for employees are contingent on their ability to meet performance expectations, which include complying with environmental standards.[139]

168. Contractors are subject to similar consequences—if a contractor's performance is not up to KPL or MPL's standards, he or she will be removed from a job until he or she can prove that his or her performance is no longer deficient.[140]

169. Regarding minimizing the probability of spills, KPL/MPL has an integrity management program and uses industry benchmarking and partnerships with pipeline inspection companies. In his Rebuttal Testimony, Mr. O'Hair provided a list of several safety and environmental protection awards that KPL has received in recent years.[141]

170. KPL has several practices in place that allow for rapid response to spill events, which include shutting down an entire pipeline if an abnormal event or release is detected. Another practice is the retainer agreements KPL has entered into with oil spill response organizations in the area surrounding its pipelines. KPL also provides training for its employees and local first responders as well as organizing and participating in emergency response trainings. In addition to these resources, KPL maintains an Incident Management Team ("IMT") and Incident Command System tasked with managing and coordinating emergency response. The IMT receives regular training for emergency response.[142]

171. In response to a DOC information request, MPL provided copies of its Integrated Contingency Plan and Emergency Response Action Plan, which are required by and submitted to the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). In addition, PHMSA has approved KPL's Minnesota Zone Oil Spill Response Plan. The PHMSA letter, while noting one area of improvement, grants approval of the emergency response plans for the five-year period beginning July 9, 2013. The Department has no reason to dispute PHMSA's finding that MPL's response plans are adequate.[143]

~~159.~~172. Mr. O'Hair's testimony, coupled with PHMSA required plans, provide an adequate record of MPL's spill prevention and response plans.[144]

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[139] *Id.*
[140] *Id.*
[141] Ex. 32 at 6–7 (O'Hair Rebuttal).
[142] *Id.* at 7–9.
[143] Ex. 103, 104 at LBO-S1, LBO-S2 (Otis Surrebuttal Attachments); Ex. 105 at LBO-S3, LBO-S4 (Otis Surrebuttal Attachments).
[144] Ex. 102 at 9 (Otis Surrebuttal).

3. Induced Future Developments

~~160.~~173. The Project creates a number of positive socioeconomic impacts. Among those benefits, the Project will build local tax bases by approximately $125 million, create 40 to 50 construction jobs as well as some permanent jobs, and contribute to the State and regional economies by maintaining a safe, adequate, reliable and efficient source of crude oil to the Minnesota Refineries.

~~161.~~174. The need for new pump stations also drives a parallel need for electric power lines to the six remote pump station sites. The shortest distance that power lines will be constructed from is 3/4 of a mile, and the longest is approximately 18 miles and will be constructed in accordance with local or State permitting requirements, as appropriate.[145]

~~162.~~175. No other new or expanded utilities or public services are required as a result of the Project and any other induced development impacts are expected to be minimal.[146] For example, water will be needed for hydrostatic testing of the piping at each pump station prior to placing it into service. MPL estimates that an approximately 50,000 gallon one-time appropriation of water will be needed at each station and the appropriation will be conducted in accordance with all applicable regulations. In addition, it is possible that small quantities of water may be needed for dust suppression purposes within the construction areas.[147]

~~163.~~176. Over the course of construction, daily local vehicular traffic will increase but any increase is not expected to appreciably impact peak-hour traffic. Subsequent to construction, vehicular traffic at new sites resulting from this work is estimated to be approximately four visits per week by pickup truck type service vehicles.[148]

~~164.~~177. No farms will be affected by pipeline construction and no persons will have to relocate as a result of construction, as MPL Line 4 is already in place.[149]

~~165.~~178. The DOC-D~~C~~ER concluded that the effect of the proposed Project on inducing development would be minimal with the exception of the electric utility infrastructure that may be required to connect the new pump stations to the grid.[150]

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[145] Ex. 2, p. 67.
[146] *Id.*
[147] *Id.*
[148] *Id.*, p. 68.
[149] *Id.*
[150] Ex. ~~200~~100, p. 44 (Otis Direct).

4. Socially Beneficial Uses Of The Output Of The Facility

~~166.~~179. The Project assures that the Minnesota Refineries will continue to have sufficient and reliable crude oil supplies to meet demand for transportation fuels and other products.

~~167.~~180. These Refineries that depend on the MPL System are also responsible for thousands of jobs and are a major source of community investment and the fuels and other products these refineries – gasoline, diesel, jet fuel, asphalt and other petroleum-based products – remain essential to the economy and modern life.[151]

181. The record as a whole establishes that the Project can meet State and regional energy needs in a manner compatible with the natural and socioeconomic environments. The record specifically establishes that the Project provides greater socioeconomic benefits and imposes less impact on the natural environment than alternatives. Thus, MPL has met the third criterion of the CON Rules for the granting of a CON.

182. MPL did not show how the proposed Project's output would directly protect or enhance environmental quality, but MPL did show that the proposed Project would result in less damage to the environment than its alternatives. MPL also provided an analysis of the electric energy requirements that the Project would require as opposed to the older MPL lines. MPL estimates that the Project would improve the overall efficiency of the MPL System and that by shifting capacity to the more efficient Line 4, the Project would reduce power consumption on the MPL System on a per barrel basis by approximately 37%.[152]

~~168.~~183. The Department agreed that the proposed Project would provide a benefit to society (the people of Minnesota and surrounding states) by ensuring the adequacy of an essential feedstock to the Minnesota refineries to produce essential transportation fuels used by society. Further, use of renewable electricity at new pumping stations would provide additional benefits to Minnesota and surrounding states. Based on the information in the record, including the Environmental Report, the Department concluded that the proposed Project would provide an overall socioeconomic benefit to society, when conditioned as the Department recommended to the extent energy use on the MPL System increases.[153]

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[151] Ex. ~~200~~100, p. 46 (Otis Direct).
[152] Ex. 2 at 9, 43–49 (Application).
[153] Ex. 100 at 46 (Otis Direct); Ex. 102 at 11 (Otis Surrebuttal).

D. The Project Will Comply With Relevant Policies, Rules, And Regulations Of Other State And Federal Agencies And Local Governments

~~169.~~184. The final criterion used by the Commission in determining need states that a CON will be granted if:

> 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.[154]

~~170.~~185. The record presents a full list of the relevant regulatory authorities with respect to this Project and MPL has committed to pursue all necessary permits for the Project.[155]

~~171.~~186. In addition, KPL, as operator of the MPL System, explained that it strives for excellence in regulatory compliance and emphasizes the need for such compliance throughout its operations.[156] In its Application, MPL stated that it:

> has proven through its relationship with KPL that it is able to successfully build, operate and maintain pipelines and associated facilities in the State of Minnesota and elsewhere with a high degree of safety, reliability, efficiency and integrity. KPL and MPL partner with local, regional and federal governments and agencies to maintain safe and efficient operation and maintenance of their pipelines and associated facilities. The design, construction and operation of the proposed pump stations will comply with all applicable policies, rules and regulations of other state and federal agencies and local governments.[157]

~~172.~~187. The record includes a detailed discussion of safety and integrity management efforts, including KPL's Spill Response Plan, Contingency Plan and PHMSA Response Plan included in this record.[158]

~~173.~~188. DOC-DER examined the materials provided by the Company and concluded that:

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[154] Minn. R. 7853.0130 (D).
[155] Ex. 2, pp. 4-5.
[156] *See id.*, pp. 14, 18, and 63.
[157] *Id.*, p. 70.
[158] Exs. 103-105.

The record of this proceeding provides no information that the final design, construction or operation of the proposed Project will fail to comply with relevant policies, rules, and regulations of other local, state and federal governments.[159]

E. Summary On Need

~~174.~~189. The CON Rules provide as follows:

A certificate of need shall be granted to the applicant if it is determined that:

> A. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, . . .
>
> B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant, . . .
>
> C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, . . . and
>
> D. it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.[160]

~~175.~~190. MPL has demonstrated that the Project meets each of these criteria. The DOC-DER, the only other party to this proceeding, agrees. As Ms. Otis testified:

> I concluded in my Direct Testimony that MPL had generally satisfied the criteria for a CON under Minnesota Rules part 7853.0130(A), (B), and (D). . . . I reserved my final conclusion as to whether or not the Applicant had satisfied Minnesota Rules parts 7853.0130(B)(3) and 7853.0130(C) (whether the consequences to society of granting the CON are more favorable than the consequences of denial). After reviewing DOC-EERA's Environmental Analysis, I accept its conclusion that the proposed Project would have the least effect on the natural and socioeconomic environments compared to the alternatives in the record. Thus, I conclude that the

[159] Ex. ~~200~~100, p. 48.
[160] Minn. R. 7853.0130 ~~(emphasis added)~~.

proposed Project satisfies Minnesota Rules part 7853.0130(C). I therefore recommend that the Commission approve MPL's request for a CON in this matter.[161]

~~176.~~191. Given the uncontroverted record evidence that MPL has satisfied each of the criteria under the CON Rules, the ALJ finds that the Commission should grant a CON for the Project, and in addition, the ALJ recommends that to the extent energy use on the MPL System increases, the Commission should condition its approval on requiring MPL to generate a kWh of renewable energy for every incremental kWh of energy consumed by the project by purchasing green power or participating in other programs to offset the energy it consumes at the Project's pump stations, in addition to requiring MPL to conserve an acre for every acre of natural habitat protected, plant a tree for every tree that must be removed to build new facilities. One way for MPL to accomplish this condition would be to purchase RECs, which would be tracked by MRETS, and to retire the RECs through MRETS.

~~VIII. CONDITIONS~~

~~177. DOC DER witness Ms. Otis concluded that MPL met all of the necessary rule criteria and therefore recommended the granting of a CON. However, Ms. Otis recommended that the Commission condition the CON by requiring MPL to implement a "neutral footprint" action plan.~~

~~178. In her Surrebuttal Testimony, Ms. Otis recommended that the Commission:~~

> ~~condition its approval on requiring MPL to conserve an acre for every acre of natural habitat protected (sic), plant a tree for every tree that must be removed to build new facilities, and generate a kWh of renewable energy for every kWh of energy consumed by the project by purchasing green power or participating in other programs to offset the energy it consumes at the Project's pump stations.~~[162]

~~179. Ms. Otis subsequently refined her recommendation to state that her recommended "renewable kWh" requirement would apply only to any incremental electric usage on the entirety of the MPL System when comparing total usage pre-Project and post-Project.~~[163]

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[161] Ex. 202, p. 10 (Otis Surrebuttal).

~~[162] *Id.*, p. 11.~~

~~[163] Tr. Vol. 1, pp. 46-47, 49-50 (Otis).~~

180. Ms. Otis further modified her recommendation to state that rather than directly generating or purchasing renewable electricity, MPL could satisfy this recommended condition by purchasing renewable energy credits ("RECs").[164]

181. Ms. Otis stated that her recommendation "is consistent with the Commission's recent order for a similar project" the Enbridge Line 67 upgrade project, MPUC Docket No. PL-9/CN-13-153 ("Line 67 Docket").[165]

182. In the Line 67 Docket, Enbridge itself introduced the "neutral footprint" concept by declaring it to be a voluntary effort the company was pursuing as a goal for new projects.

183. Enbridge operates internationally and across multiple states.[166] Line 67 is a 999 mile pipeline that runs from Alberta, Canada, through North Dakota and Minnesota, to Superior Wisconsin.[167] Line 67 is a part of and connected with Enbridge's Mainline System, a system of pipelines extending throughout the United States and Canada, forming the largest pipeline system in the world.[168]

184. The Line 67 upgrade project proposed to increase the capacity on Line 67 by 230,000 barrels per day to meet increased shipper demands and "to relieve the bottleneck of capacity that shippers are currently experiencing on the Enbridge system."[169] That increased demand came from a large geographic region, stretching as far as Texas and the Gulf Coast.[170] Thus, the Line 67 upgrade project was designed to ship significantly more crude oil through the State of Minnesota, to unspecified out of state destinations.[171]

185. Shipping significantly more crude oil through the State requires consuming more electricity to move that crude oil. Moreover, since the project was designed to deliver significantly more crude oil to end users, and given the location of Line 67, the Commission specifically found that "if the Commission grants the Certificate of Need, then the production, transportation, and consumption of the Canadian oil sands crude oil will have environmental consequences."[172]

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[164] *Id.*, p. 41.
[165] *See id.* and Ex. 202, p. 5.
[166] *See* Line 67 Docket, Order Granting Certificate of Need, November 7, 2014 ("Line 67 Order"), p. 4.
[167] *Id.*
[168] *Id.*, p. 5.
[169] *Id.* pp. 5-6.
[170] *Id.*, p. 7.
[171] Tr. Vol. 1, p. 29 (Baker).
[172] Line 67 Order, p. 29.

186. The Line 67 project did not have the advantage of a CER prepared by the DOC EERA.[173]

187. During the course of the proceeding, Enbridge testified that it has adopted a voluntary 'neutral footprint' goal of offsetting any environmental costs associated with its new projects.[174]

188. Enbridge also acknowledged that its project would create certain negative environmental impacts, but the Commission stated that "Enbridge proposes to partially offset these environmental harms via its 'neutral footprint' program."[175]

189. Given Enbridge's declared goals and intentions, and given the Commission's finding that granting the CON to Enbridge would have environmental consequences, the Line 67 Order held Enbridge to its stated goals of implementing a "neutral footprint" program.

190. In contrast to the Enbridge and the Line 67 project, the current Project is designed to bolster the reliability and efficiency of the MPL System. The MPL System lies entirely within the State of Minnesota and provides the sole source of pipeline supply to Minnesota's two Refineries – the only two shippers on the MPL System. MPL is not pursuing the Project in order to ship significantly higher volumes. Rather, the record demonstrates steady to modestly increasing demand from MPL's two shippers.

191. Given its reliability and efficiency focus, the Project is expected to reduce MPL's total electric energy use.[176] As the record demonstrates, when MPL moves barrels from its Legacy System to MPL Line 4, it sees a reduction in electric use on a per barrel basis due to the larger diameter pipe on and more efficient motors on MPL Line 4.[177] In fact, MPL anticipates a 37 percent reduction in energy use on a per barrel basis when it transfers volumes from the Legacy System to MPL Line 4.[178] Combining this fact with the fact that MPL does not forecast a significant increase in total throughput on the MPL System, means that the Project is expected to result in a reduction in energy use on the MPL System from its current state.[179]

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[173] Tr. Vol. 1, p. 44 (Otis) (a review was done when Line 67 was originally constructed but no report was prepared for the Line 67 Docket).
[174] *Id.*, p. 6.
[175] *Id.*, p. 23.
[176] *Id.*
[177] *Id.*, pp. 29-30.
[178] *Id.*, p. 30.
[179] *Id.*

~~192. The current docket also benefits from the CER prepared by DOC EERA which concluded that as to impacts to the natural and socioeconomic environments, the Project was "clearly superior to the alternatives."~~

~~193. The record of this proceeding demonstrates that the Project is significantly different than the Line 67 project in scope, purpose and impact. As such, the record does not support applying Enbridge's "neutral footprint" policy to MPL or the Project.~~

~~194. A "neutral footprint" requirement, if imposed on all future large energy facilities seeking a CON, could chill development of necessary new infrastructure and create other adverse impacts. Imposing the neutral footprint policy on a major new transmission line, for example, could dramatically increase the cost of a new project by requiring "conservation" of hundreds of acres and planting of thousands or even tens of thousands of trees.~~

~~195. The proposer of such a project would need to first determine if it could even comply with such a requirement. For example, it is unclear how or where a proposer would acquire the necessary land to "conserve" an acre for every acre impacted or where it would plant the thousands of trees necessary for compliance.~~

~~196. Even if the proposer could comply, the cost of compliance would then then be borne by customers. If the proposer determined that compliance was either infeasible or prohibitively expensive, needed infrastructure (infrastructure meeting all of the CON Rules criteria for a Certificate of Need) would never be built, adversely impacting the State and the public.~~

~~197. Creating new requirements such as the "neutral footprint" requirement for projects requiring a CON could also encourage pursuit of alternatives not requiring a CON, but that impose far greater environmental costs on society.~~

~~198. In the current docket, the DOC EERA determined that the Project is "clearly superior," regarding environmental impacts, than either a trucking or rail alternative. However, no regulatory authority has jurisdiction over trucking or rail such that it could impose a "neutral footprint" requirement on those alternatives. Thus, if MPL or its shippers determined that they did not wish to bear the cost of a neutral footprint requirement, they could avoid that cost entirely by choosing an unregulated alternative that creates greater impact overall on the environment.~~

~~199. As set forth in the Findings above, MPL has met all four CON Rule criteria for the granting of a CON. As such, the Commission has no basis to impose a program voluntarily adopted and agreed to by another applicant in another proceeding.~~

~~200. Nothing in Minnesota law provides authority for the Commission to require additional actions by an applicant once that applicant has already established that its~~

~~project passes muster under the Commission's criteria for granting a CON. The CON Rules explicitly state that the Commission "shall grant" a CON upon determining that the criteria have been met.~~

CONCLUSIONS OF LAW

1. Minnesota Rules Part 7853.0130 (the "CON Rules") provide the criteria used by the Commission to determine the need for crude oil pipeline projects.

2. Under the CON Rules, the Commission grants a CON if the record demonstrates, by a preponderance of the evidence, that:

A. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering:

(1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

(2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

(3) the effects of the applicant's promotional practices that may have given rise to the increase in the energy demand, particularly promotional practices that have occurred since 1974;

(4) the ability of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access, to meet the future demand; and

(5) the effect of the proposed facility, or a suitable modification of it, in making efficient use of resources;

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, considering:

(1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

(2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(3) the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

(4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering:

(1) the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;

(2) the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility;

(3) the effects of the proposed facility or a suitable modification of it, in inducing future development; and

(4) socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality; 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.

3. The record demonstrates the reasonableness of MPL's forecasts of demand for crude oil.

4. Conservation efforts have been considered in those forecasts and conservation cannot replace the need for the Project.

5. No promotional activities have given rise to the need for the Project.

6. That are no current or planned facilities not requiring a CON that can meet the needs met by the Project.

7. The Project will enhance the future adequacy, reliability and efficiency of energy supply to Minnesota and the region.

8. No party demonstrated a more reasonable or prudent alternative than the Project, considering the Project size, type and timing, cost, human and environmental impacts and reliability.

9. The record demonstrates that with regard to the potential human and environmental impacts, the Project is superior to alternatives for meeting the needs met by the Project.

10. The Project provides significant societal benefits, including local tax revenues, jobs and the related economic impacts associated with those jobs, and better assuring continued safe, stable and cost-effective supply of crude oil to the Minnesota refineries.

11. The record demonstrates that the Project can be constructed and operated in compliance with all applicable federal, State and local rules and regulations.

12. Application of each of the factors listed in the CON Rules supports the granting of the requested CON.

~~12.~~13. The Commission has the authority to issue a CON that may be made contingent upon certain modifications.

~~13. The record does not support adding conditions to the granting of a CON, given that the Project meets each of the Commission's designated criteria.~~

RECOMMENDATION

The Minnesota Public Utilities Commission should GRANT **the requested Certificate of Need, conditioned as the Department recommends.**

Dated: _____

_____
JEANNE M. COCHRAN
Administrative Law Judge

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Minnesota Public Utilities Commission and the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed according to the schedule which the Commission will announce. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions, and Recommendations should be included, and copies thereof shall be served upon all parties. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the ALJ's recommendation who request such argument.

The Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the ALJ's recommendation and that said recommendation has no legal effect unless expressly adopted by the Commission as its final order.

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