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Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: September 30, 2014. Agenda Item # 1*

Company: Minnesota Pipe Line Company, LLC

Docket No. PL-5/CN-14-320

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 Line 4 Crude Oil Pipeline in Hubbard, Wadena, Morrison, Meeker, McLeod and Scott Counties Minnesota.

- Issue(s): 1. Should the Commission accept the application as complete? 2. Should the Commission direct the use of the informal review process or refer the matter to the Office of Administrative Hearings for a contested case proceeding? 3. What formal environmental review process, if any, would be appropriate for the certificate of need proceeding in this matter?

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Relevant Documents

- Minnesota Rules 7853.0010 to 7853.0800
Minnesota Pipeline Company’s Initial Filing July 25, 2014
Department Of Commerce Division of Energy Resources Comments August 19, 2014
Minnesota Pipe Line Company’s Reply Comments..... August 29, 2014
Department Of Commerce Division of Energy Resources Letter September 9, 2014

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

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I. Statement of the Issues

Should the Commission accept the applications as complete?

Should the Commission direct the use of the informal review process or refer the matter to the Office of Administrative Hearings for a contested case proceeding?

II. Background

On July 25, 2014, Minnesota Pipe Line Company, LLC (MPL) filed a Petition for a Certificate of Need for the Minnesota Pipe Line Reliability Project (Project).

On July 31, 2014, the Commission issued its Notice of Comment Period soliciting comments on the completeness of the Petition. Initial comments were due August 19, 2014, and reply comments were due on August 29, 2014.

On August 19, 2014, the Minnesota Department of Commerce Division of Energy Resources (Department) filed comments on the completeness of the application.

On August 29, 2014, MPL filed reply comments and additional supporting information to augment the application content.

On August 29, 2014, the Commission received comments from six members of the public.

On September 9, 2014, the Department filed a letter in response to the Applicant's reply comments.

III. Laws and Rules

MPL proposes to increase the capacity of its 305-mile long, 24-inch diameter Line 4 pipeline through construction of six new pump stations and upgrades at two existing pump stations in order to improve reliability of crude oil supply to Minnesota's two refineries located in the Twin Cities. The project would increase annual average capacity on the line from 165,000 barrels per day (bpd) to 350,000 bpd while the maximum operating pressure is not expected to change from its 1,470 pounds per square inch (psig). This project has been deemed a Large Energy Facility, increasing the pipeline capacity by 185,000 bpd (approximately 112 percent), and, therefore, a certificate of need is required as described in Minnesota Rules, part 7853.¹

For the immediate proceeding, the filing requirements for a Certificate of Need Petition are contained in Minnesota Rules Chapter 7853, notably Minnesota Rules 7853.0230 through 7853.0260 and 7853.0510 through 7853.0640.

The Commission is also asked to determine the appropriate review process of the application under Minnesota Rules, part 7829.1000. The Commission may elect to refer the matter to the Office of

¹ The Commission granted a Certification of Need for the construction of Line 4 on April 13, 2007 in Docket No. PL-5/CN-06-2 (also referred to as the MinnCan Project).

Administrative Hearings for a contested case proceeding, or the Commission may authorize the use of the informal or expedited review process described in Minnesota Rules part, 7829.1200.

IV. Party Positions

1. Initial Comments on Application Completeness

Minnesota Pipe Line Initial Filing

The Applicant requested a certificate of need to increase the capacity of its 305-mile long, 24-inch diameter Line 4 pipeline through construction of six new pump stations and upgrades at two existing pump stations in order to improve reliability of crude oil supply to Minnesota's two refineries located in the Twin Cities. As noted above, the proposed project will not require acquisition of new right-of-way or any pipeline construction—all work would be limited to pump stations. The project would increase annual average capacity on the line from 165,000 bpd to 350,000 bpd while the maximum operating pressure is not expected to change from its current 1,470 psig. The new pump stations would be located in rural areas of Hubbard, Wadena, Morrison, Meeker, McLeod, and Scott counties in Minnesota. Existing pump stations are located in Clearwater and Stearns counties in Minnesota.

MPL describes the project as a reliability project. The Company expects the project to provide excess capacity that will be utilized when MPL must remove one of its other lines from service for testing, maintenance, or other reasons. MPL believes that construction of this project will prevent disruption of the supply of crude oil to Minnesota refineries. There are no expected out-of-state recipients for the oil transported on MPL's system, which includes Line 4.

The existing MPL System that supplies the Minnesota Refineries operates close to its capacity of 465,000 bpd. As such, 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.

The project entails the installation of six new pumping stations that along with the two existing pump stations will result in a system with station spacing of approximately 38 miles.

No new right-of-way is required for the project and no new pipeline will be used for the project beyond that necessary to connect the pump stations to the existing MPL Line 4 infrastructure.

Three 4,000 horsepower centrifugal pumps will be required to achieve approximately 350,000 bpd pumping capacity with a maximum operating pressure of 1,470 psig. Final design, yet to be completed, will dictate the actual pump characteristic and pumping capacity; however, maximum pumping capacity is expected to be approximately 350,000 bpd with a total of 12,000 horsepower per station.

Pump motors will be controlled with a variable frequency drive ("VFD") to increase efficiencies (up to 97 percent). Pump station output pressure will be controlled by VFD rather than mechanically for further efficiencies. At full load, the energy requirement of a pump station will be 51 British thermal unit/barrel-mile based on 12,000 horsepower, 350,000 barrels per day transported and stations at approximate 38-mile intervals.

The expected electric power requirement of each new and upgraded pump station at peak demand would be 9,005 kilowatts (kW) at a delivery rate of 612,500 gallons per hour.

The estimated construction start date is January 1, 2016, with a full in-service date of fourth quarter of 2017.

Department of Commerce Division of Energy Resources Comments

In their August 19, 2014, comments, the Department reviewed the Petition for completeness under Minnesota Rules. The Department concluded that the Applicant met the completeness requirements with the exceptions noted below. Specifically, Minnesota Rules 7853.0230, subp. 1.D., 7853.0510, and 7853.0540 require the Applicant to provide additional information as discussed below.

1. Required Additional Information

- information regarding the expected in-service date of the project;
- historical nomination data for the MPL system; and
- more detailed discussion of the state's regulatory authority available to the state for the Wood River Pipeline alternative discussed in response to Minnesota Rules 7853.0540.

2. Areas of Clarification

- clarification as to the noise emitted by MPL's pump stations, including a discussion of whether current and expected noise levels are within the limits currently allowed by state and local laws, rules, or ordinance;
- additional information regarding MPL's basis for labeling this project as a reliability project; and
- clarification on the statement made in the application regarding the annual volume of crude oil reaching the two Minnesota refineries not expected to increase as a result of this project.

3. Process Review

The Department recommended that the Commission refer the Petition to the Office of Administrative Hearings for a contested case proceeding based on these facts:

- concerns of the public raised in other certificate of need cases involving capacity upgrades for other pipelines in Minnesota;
- characterization of this project as a reliability project;
- consideration of the system alternative of returning the Wood River Pipeline to service merits thorough investigation.

Public Comments

On May 27, 2014, the Commission received an anonymous public comment concerning noise levels on their property, which is near an existing MPL station. This citizen alleged that the Applicant's parent company has admitted to operating outside of the state's noise limits.

On August 29, 2014, the Commission also received comments from six members of the public that were focused on the merits of different pipeline projects. None of these comments addressed the completeness of this application or its procedural treatment.

V. Reply Comments

Minnesota Pipe Line Reply Comments

On August 29, 2014, MPL filed its Reply Comments Regarding Application Completeness and Process and also provided the requested historical nomination data for the MPL system under a trade secret designation.

In its Reply Comments, MPL addressed each of the five recommendations made by the Department by either pointing to the original application where the information was included or provided additional information as part of its comments. The Company asserted that its application was complete as originally filed and disputed some of the recommendations made by the Department.

Regarding the in-service date, the Company pointed to the section in the application that provided this information. Regarding the other four Department recommendations, the Company believes the questions seek information not required for an Application to be deemed complete, but information that could be requested in discovery. However, the Company did provide some of the additional information as suggested by the Department:

- Regarding the in-service date, the Company reaffirmed the fourth quarter of 2017 as the expected in-service date for the Project;
- Historical Nomination Data for the MPL System;

The Company provided this information under the trade secret designation;

- A discussion of State Regulatory Authority regarding system alternatives to the project, specifically the Wood River Pipeline (WRPL);

MPL protested that the information identified by the Department regarding the WRPL is not an issue of completeness, as addressed in Minn. R. 7853.0540, but did offer some remarks as to why this alternative is not a reasonable alternative to the Project. 1)WRPL is not owned by MPL, WRPL was decommissioned of crude oil service in 2013 because it became uneconomical, 2) requiring the WRPL to carry an additional 185,000 bpd of oil to satisfy the need of the Project would be a significant increase from its last known in-service capacity of 90,000 bpd, and 3) the major capacity increase on WRPL would also trigger the Commission's rule requirement of a Certificate of Need. Therefore, the regulatory process, approval and timing for an increase in pumping capacity on WRPL would be similar to that of the Project with a less viable and less economically appealing result. Further, since WRPL also transverses Iowa, Missouri and Illinois, other state regulatory approvals may be required.

- Noise Levels;

MPL pointed to page 61 of its Application that provides noise level information for both ongoing operations and during pump station construction. MPL stated they are committed to full compliance with all applicable regulatory requirements, including operating its pump stations in compliance with all applicable noise standards.

The Company indicated that noise has not been a common complaint along the MPL System or existing pump stations and that in a few instances where a concern about noise was raised, the company took appropriate steps to investigate the source and confirm compliance with local, county and state noise limits.

- Clarification of MPL's Description of the Project as a "reliability project".

The Company stated that as pipelines age, they require more frequent inspections and maintenance to ensure they remain in good working condition. The duration of this type of work varies based on the inspection method and the extent to which any repair work may be necessary. Therefore, MPL states they cannot predict with certainty the length or frequency of outages that may be expected on the other pipelines in the MPL System. However, inspection and other maintenance will continue to be performed on the MPL System as it ages, and the reliability provided by this Project will be critical to maintaining the safest pipeline system possible without interruption of crude supplies to the Minnesota Refineries.

Regarding the procedural recommendation made by the Department to refer this docket to the Office of Administrative Hearings for a contested case, the Company responded to this by providing arguments as to why they believe this case can be fully developed through discovery and an informal process, as has been used in past pumping capacity proceedings.

Department of Commerce Division of Energy Resources Letter

On September 9, 2014, the Department filed a letter providing its response and final recommendations on the application and review process. The Department stated that after reviewing the additional information and clarifications that the Applicant provided in response to the Department's August 19th Comments, the Department is satisfied that the application is now complete and recommended that the Commission deem the application complete as of the Company's August 29, 2014 Reply Comments and Attachment.

Regarding referral to OAH, the Department asserted that the informal process, as requested by the Applicant, will be inadequate to fully develop a record in this case for the reasons stated in Department's comments. Therefore, the Department continued to recommend that the Petition be referred to the Office of Administrative Hearings for a contested case proceeding.

While previous pipeline dockets that were referred to the OAH were sponsored by another company, many of the issues raised are universal to all crude oil pipelines (risk of spill and environmental concerns chief among them). The public has demonstrated increasing levels of concern and interest in pipeline upgrade projects in Minnesota and the Department anticipates heightened levels of public interest in this docket as well. The contested case process allows for greater opportunity for public comment and allows for the development of a more thorough record and should be used in this docket.

VI. Staff Comments

Completeness Review

The purpose of the completeness review is to ensure that the application contains the type and depth of information sufficient to begin the period for considering the merits of the filing, in accordance with rule and statute. Staff notes that the completeness phase is only the start of the review process. The completeness review is not intended as a substitute for normal discovery requests and the submission of testimony.

Minnesota Rules, parts 7853.0220 to 7853.0260 and 7853.0500 to 7853.0640, contain the operative filing requirements for a certificate of need application for a large petroleum pipeline facility. The Department reviewed MPL's certificate of need petition for completeness under those rules. The Department concluded that after reviewing the additional information and clarifications, that were provided by the Applicant in its Reply Comments, it found that the application is now complete and recommended that the Commission deem the application, in conjunction with the Company's August 29, 2014 Reply Comments and Attachment, to be complete.

Staff has reviewed the Certificate of Need Application, the Department DER's comments, the public comments and MPL's reply comments along with the additional information provided by the Applicant to supplement and clarify its application. Staff agrees the application, including the clarifications and additional data provided as part of the Applicant's reply comments is substantially complete.

Review process for Certificate of Need

In considering whether to use a contested case or an informal comment and reply review process for the development of the record, the Commission has, among other things, considered the following factors:

- Presence of an apparent need case;
- The amount of new land required;
- The number of potentially affected persons;
- The presence or absence of policy concerns; and
- The absence of reasons to expect significant local opposition.

Regarding an apparent need case, the application states that MPL is requesting to increase the oil carrying capacity of its Line 4 as part of an overall MPL Pipe Line System reliability upgrade.

Regarding the amount of new land needed for the project, the Applicant indicated that no new right-of-way is required for the Project and no new pipeline will be used for the Project beyond that necessary to connect the pump stations to the existing MPL Line 4 infrastructure.

The proposed six new pump stations and upgrades to the existing two pump stations will be completed on land that MPL owns, or will acquire in fee. From the information provided in the application, it appears the total amount of new land required for the project, as shown in application maps, Exhibit 2 through 9 appear to indicate that approximately 183 acres of additional land is required for the project.

Those living near the project pumping stations would be affected by construction during the project and potentially during the pipeline on-going operation. The project would provide economic benefit to those employed during the project, as well as indirect economic benefits to communities surrounding the project.

With respect to policy concerns, staff believes there may be concerns with the environmental effects of the use of petroleum products such as heavy crude oil because the potential of oil spills. There appears to be little concern regarding the specific construction of the project itself.

Finally, with respect to the presence or absence of local opposition, while it appears there is little opposition to the project at this time, the project review is in its initial stages and additional interest in this project may develop later in the permit review process.

It should be noted that disagreement exists between the applicant and the Department in relation to how this application should be reviewed by the Commission; through discovery and an informal process as requested by the Applicant, whereas the Department is recommending that the Petition be referred to the Office of Administrative Hearings for a contested case proceeding.

The Commission benefits from a robust record which includes the robust data and analysis in order to reach a proper decision. Therefore, staff recommends that the Commission refer the matter to the Office of Administrative Hearings (OAH) for a contested case hearing to more fully develop the record.

The Commission's Notice and Order for Hearing should identify how interested parties can participate in the process. Staff believes that the Commission should request parties to specifically address issues related to the identified areas of dispute. These include:

1. Are there contested issues of material fact?
2. Is the application and applicant's reply comments sufficient to proceed?
3. Was the applicant responsive to the Department's request for additional information and analysis?
4. Are more granular and accurate data available for the forecast and need analyses?
5. To what extent should operational impacts of Line 4 be considered in determining need?

Staff recommends that the Commission request additional clarification and evaluation by the applicant, Department and parties regarding the authority of state and local officials in relation to spill planning, monitoring and response, as this record is being developed.

Additionally, to facilitate the review process, staff recommends that the Commission delegate administrative authority to the Executive Secretary and adopt the following additional items:

- Designate Tracy Smetana (consumer.puc@state.mn.us or 651-296-0406) as the Commission employee designated to facilitate citizen participation in the process;
- request that the Department continue to study issues and indicate during the hearing process its position on the reasonableness of granting a certificate to the Applicant;

- a requirement that the applicant facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff;
- direct the applicant to place a CD and/or hard copy of the Application for review in a Government Center and/or Public Library in each of the counties traversed by the pipeline of the project;
- direct the applicant to place all materials submitted on a publicly-available website;
- Direct Commission staff to formally contact relevant state agencies to request their participation in the development of the record and public hearings under Minn. Stat. § 216B.243, subd. 7 (a) and request that state agencies submit comments prior to the last day of the public hearing.
- a directive that Commission staff work with the Administrative Law Judge and the staff of the Department in scheduling a prehearing conference and selecting suitable locations for a public hearing on the application; and
- a directive that the Applicant's work with staff of the Commission and the Department to arrange for publication of the notice of the hearings in newspapers of general circulation at least ten (10) days prior to the hearings, that such notice be in the form of visible display ads, and proofs of publication of such ads be obtained from the newspapers selected.

Environmental Review

Concerning the requirement for an environmental review process in the certificate of need proceeding, Minn. R. Chapter 7853 does not contemplate preparation of a separate environmental document. Rather, the rules contain specific requirements that the applicant submit certain environmental information into the certificate of need record.

Staff notes that the Company has complied with the requisite rules by providing the required environmental impact information for each of the alternatives it considered in its certificate of need application.

Staff believes there is still the question of the appropriate environmental review within the certificate of need docket for this project.

Minn. R. Ch. 7853, does not contemplate preparation of a separate environmental document within the certificate of need proceedings. However, under MEPA (Minn. Stat. Ch. 116D) departments and agencies are required to consider environmental impacts and alternatives in their

decision making. The requirements and goals of the act are designed to be supplementary to those set forth in an agencies' existing authorization.

Specifically, Minn. Stat. § 116D.04, subd. 1a(d), defines a Governmental Action as,

“[A]ctivities, including projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved by units of government including the federal government.” Staff believes that the Commission’s decision on a certificate of need for a pipeline falls under the definition of a government action.

Further, Minn. Stat. § 116D.04, subd. 2a, states,

“Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement shall be an analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated...”

Therefore, to satisfy environmental review requirements, if necessary, the Commission could consider authorizing the completion of an environmental document within the certificate of need proceeding that examines and evaluates the potential impacts of the proposed project with those of the alternative system configurations, the no-build alternative, and other alternative methods to satisfy the claimed need.

The preparation of an environmental document within the certificate of need process could be accomplished in a number of ways, for example:

- Preparation of an environmental report-like document.
- Preparation of an Environmental Assessment Worksheet (EAW),
- Environmental Impact Statement (EIS), or
- Comparative Environmental Analysis (CEA).

Staff encourages the Commission to request and consider the input of the Department of Commerce’s Energy Environmental Review and Analysis unit on the appropriate type of environmental review to be conducted.

VI. Decision Alternatives

A. Substantial Completeness of the Application

1. Accept the application as substantially complete as amended on August 29, 2014.
2. Decline to accept the application as substantially complete at this time, direct the Applicant to submit a supplemental filing addressing the specific issues identified.
3. Take some other action.

B. Procedural Treatment of the Application

1. Refer the matter to the Office of Administrative Hearings for a contested case hearing, and request that the issues identified in the staff review process above be considered by the Administrative Law Judge.
2. Direct the use of the informal process, and request that the Office of Administrative Hearings conduct public hearings and provide the Commission with a Summary of Public Testimony, Findings of Fact and Conclusions and Recommendations.
3. Take some other action.

C. Other Information, Requests and Directives

To ensure the efficient and thorough processing of the application, the Commission could incorporate the following items into the Notice and/or Order for this matter:

1. Include in its Order:
 - the name and telephone number of the Commission employee designated to facilitate citizen participation in the process;
 - a request that the Department of Commerce and Commission staff continue to study the issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need to the Company;
 - a requirement that the applicant facilitates in every reasonable way the continued examination of the issues by the Department of Commerce;
 - direct Commission staff to formally contact relevant state agencies to request their participation in the development of the record and public hearings under Minn. Stat. § 216E.10, subd. 3, and request that state agencies submit comments prior to the last day of the public hearing;
 - a directive that Commission staff work with the Administrative Law Judge in selecting suitable locations for hearings on the application; and
 - a directive that the applicants provide notice of the hearings in newspapers of general circulation at least ten days prior to the start of the hearings, that the applicant consult with Commission staff on the timing, text, and distribution of such ads prior to publication, and e-File confirmation of their publication ; or
2. Make some other decision deemed more appropriate.

D. Environmental Review Process for the Certificate of Need Proceeding

1. Authorize environmental review by EERA staff to be completed prior to commencement of the contested case hearings.
2. Require preparation of an EAW, EIS, or CEA.
3. Take some other action deemed appropriate.

Staff Recommendations: A.1, B.1 and C.1

Staff does not have a recommendation on **Item D.**