

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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Commissioner

In the Matter of the Application of North
Dakota Pipeline Company LLC for a Certificate
of Need for the Sandpiper Pipeline Project

ISSUE DATE: July 7, 2014

DOCKET NO. PL-6668/CN-13-473
PL-6668/PPL-13-474

In the Matter of the Application of North
Dakota Pipeline Company LLC for a Routing
Permit for the Sandpiper Pipeline Project

ORDER REAFFIRMING MAY 30,
2014 COMMENT DEADLINE AND
DENYING MOTION TO BIFURCATE
PROCEEDINGS

PROCEDURAL HISTORY

On November 8, 2013, North Dakota Pipeline Company LLC (NDPC or the Company) applied for a certificate of need and routing permit for the Sandpiper Pipeline—a proposed 612-mile pipeline to transport crude oil from Tioga, North Dakota, to terminals in Clearbrook, Minnesota, and Superior, Wisconsin.

On January 31, 2014, the Commission issued a notice scheduling public information meetings at locations along the proposed route and establishing April 4, 2014, as the deadline for proposing alternative routes.

On February 11, 2014, the Commission found NDPC's certificate-of-need and route-permit applications complete and referred both to the Office of Administrative Hearings (OAH) for joint contested-case proceedings before an administrative law judge.¹

On March 11, 2014, Honor the Earth, a nonprofit environmental organization focused on Native American issues, petitioned to intervene as a party in both proceedings.² Honor the Earth argued that the pipeline would impair Native usufructuary rights—the ability to hunt, fish, and gather food on lands ceded to the U.S. government.

¹ The Commission found that the certificate-of-need application would be complete upon submittal of certain information required by Minn. R. 7853.0510 and .0530. NDPC filed this information on March 19, 2014.

² The Administrative Law Judge granted the petition on April 8, 2014.

On March 16, 2014, Honor the Earth filed a Notice of Lis Pendens and Motion to Dismiss for Lack of Jurisdiction. The filing included requests to extend the comment period to propose alternative routes past Labor Day 2014 and to provide for additional public information meetings.

On April 4, 2014, Honor the Earth filed a Motion to Extend or Suspend the Current Deadlines for Alternative Routes and Add Community Public Hearings. This motion reiterated the group's earlier requests to extend the initial comment period and hold additional public meetings. It also included a request to separate the certificate-of-need and route-permit proceedings.

On April 14, 2014, the Commission extended the comment period on alternative routes from April 4 to May 30 but denied Honor the Earth's request for additional public information meetings. The Commission solicited comments on whether it should consider the motion to separate the proceedings and, if so, how it should address the motion.

On April 18, 2014, NDPC filed a memorandum opposing Honor the Earth's motions and asking the Commission to reconsider its decision to extend the April 4 comment deadline.

On April 23, 2014, Honor the Earth filed a response to NDPC's petition for reconsideration.

On April 28, 2014, the Commission received additional comments from NDPC, Honor the Earth, the White Earth Reservation Tribal Council, and Carlton County Land Stewards (CCLS).

On May 7, 2014, the Administrative Law Judge certified Honor the Earth's motions to the Commission.

On June 12, 2014, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Public Input on Alternative Routes

Minnesota Rules part 7852.1400 allows members of the public to propose routes for the Commission's consideration that differ from the routes proposed by a permit applicant. To facilitate alternative route proposals, the Commission must convene public information meetings in counties through which the proposed pipeline would pass, explaining the route-designation process and responding to questions raised by the public.³

The Commission held public information meetings in March 2014 and established a comment period for the public to propose alternative routes. The Commission initially set April 4 as the deadline for comments but later extended it to May 30, establishing a four-month period to identify alternative routes.

The Commission must next decide which alternative route proposals to accept for further consideration along with the applicant's proposed route.⁴ The Commission must prepare, or at

³ Minn. R. 7852.1300, subp. 1(A).

⁴ Minn. R. 7852.1400, subp. 1.

least review, an analysis comparing the environmental consequence of all pipeline routes accepted for consideration.⁵

After this analysis is made publicly available, the Commission will convene another round of public information meetings combined with contested-case hearings, providing an opportunity for the public to help develop the record on the remaining route alternatives.⁶

A. The Parties' Positions

Honor the Earth argued that the timing of NDPC's application, filed at the onset of winter, reduced the participation of seasonal residents. It also argued that holding the public meetings during the work week made it difficult for people with children and jobs to attend. Honor the Earth asked the Commission to extend the comment period until after Labor Day and hold additional public meetings at times and locations conducive to the broadest public participation, including on-reservation locations.

The White Earth Reservation Tribal Council argued that the public meetings in March 2014 did not sufficiently address tribal concerns and echoed Honor the Earth's request for on-reservation meetings.

NDPC initially argued that the Commission should reconsider its decision to extend the comment deadline to May 30. However, at the Commission meeting, the Company effectively withdrew its motion for reconsideration and argued that the Commission should not extend the deadline beyond May 30 or hold additional meetings.⁷

NDPC argued that further delay would leave the Company inadequate time to address alternative routes in its direct testimony and could result in costly delays. The Company pointed out that the public would have additional opportunities to participate in the process through future public meetings and public hearings to be held in communities along the alternative routes.

Carlton County Land Stewards also opposed further extensions, arguing that the May 30 deadline appropriately balanced the need for a fair opportunity to advance potential routes and the need to notify residents in a timely manner of what routes would receive serious consideration.

B. Commission Action

The Commission shares Honor the Earth's concern that those likely to be affected by the proposed pipeline have the opportunity to participate fully in these proceedings. However, public participation to date has been robust. The Commission held seven public information meetings in March, which were attended by approximately 600 people. In addition, some 400 public

⁵ Minn. R. 7852.1500.

⁶ See Minn. R. 7852.1300, subp. 1(B) (public information meetings); Minn. R. 7852.1700 (public hearings).

⁷ Specifically, NDPC requested that the Commission adopt a decision alternative that would deny its motion for reconsideration and reaffirm the May 30 deadline.

comments have been filed in the route-permit docket.

As the process moves forward, there will be additional opportunities for public participation, including combined public-information and contested-case hearings. The Commission will direct its staff to consider hearing locations that are convenient and promote public participation.

For the foregoing reasons, the Commission will deny Honor the Earth's request to extend the current comment period past Labor Day and deny NDPC's petition for reconsideration, thereby reaffirming the May 30, 2014 deadline. Similarly, the Commission will deny Honor the Earth's request for additional public information meetings at this time.

II. Separating the Need and Routing Proceedings

The statute directs the Commission to conduct joint hearings for a certificate of need and a routing permit for large energy facilities unless doing so would be infeasible, inefficient, or otherwise contrary to the public interest.⁸

A. The Parties' Positions

Honor the Earth argued that it would make more sense to require NDPC to demonstrate the need for the pipeline before discussing routes and that conducting simultaneous proceedings could confuse the public.

NDPC responded that Honor the Earth's request amounted to an untimely motion for reconsideration of the Commission's February 11, 2014 orders authorizing joint proceedings. The Company argued that no public interest would be served by separating the proceedings but that doing so would harm NDPC by causing further delay in the schedule.

B. Commission Action

In its February 11, 2014 orders, the Commission found that joint hearings would provide administrative efficiencies, a more convenient forum for members of the public to provide comments pertaining to both dockets, and a reduced chance for causing public confusion and frustration. The Commission therefore ordered that the public hearings in this docket and in the corresponding certificate-of-need docket be held jointly.

Honor the Earth has not persuaded the Commission that its previous decision was wrong. Separate proceedings would have at least as much potential to cause public confusion as joint proceedings. And joint proceedings will allow both need and routing to be dealt with efficiently in one set of proceedings. The Commission will therefore deny Honor the Earth's request to separate the certificate-of-need and route-permit proceedings, reaffirming the February 11, 2014 orders that authorized joint proceedings.

⁸ Minn. Stat. § 216B.243, subd. 4.

ORDER

1. The Commission hereby denies Honor the Earth's request to extend the current comment period to September 1, 2014 (Labor Day).
2. The Commission denies NDPC's Petition for Reconsideration of Amended Comment Period, thereby reaffirming the comment deadline of May 30, 2014.
3. The Commission denies Honor the Earth's request for additional public information meetings.
4. The Commission denies Honor the Earth's request to separate the current certificate-of-need and route-permit proceedings, reaffirming the February 11, 2014 orders that authorized joint proceedings.
5. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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