

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
J. Dennis O'Brien
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: February 11, 2014

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

ORDER FINDING APPLICATION
SUBSTANTIALLY COMPLETE AND
VARYING TIMELINES; NOTICE OF
HEARING

PROCEDURAL HISTORY

On November 8, 2013, North Dakota Pipeline Company LLC (NDPC or the Company)¹ applied for a 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 December 5, 2013, the Commission received comments from Carlton County Land Stewards (CCLS), Kennecott Exploration Company (Kennecott), the Minnesota Department of Commerce (the Department), and some members of the public. While these commentors raised various concerns, none argued that NDPC's routing permit application was incomplete. However, the Department requested variances to some Commission rules.

On December 5, 2013, Kennecott also petitioned to intervene in these proceedings under Minn. R. 7829.8000. As a mine operator and lease holder of property in the path of the proposed pipeline, Kennecott argued that it has an interest in this case that differs from the interest of the public in general, and this interest justifies becoming a party to this case. As no parties objected, the petition was granted by operation of law.²

¹ Enbridge Pipelines (North Dakota) LLC made the initial filing, but later changed its name to North Dakota Pipeline Company LLC; see NDPC Reply Comments (December 16, 2013).

² Minn. R. 7829.8000, subp. 5.

On December 16, 2013, the Commission received reply comments from NDPC and the Laborers' District Council of Minnesota and North Dakota (the Laborers). NDPC and the Laborers argued that NDPC's filing, especially as supplemented by its reply, fulfilled the legal requirements for an application.

On December 27, 2013, the Commission received two letters from the Minnesota Department of Natural Resources addressed to NDPC. One letter summarized the agency's role in the routing permit docket and provided contact information. The other provided substantive recommendations regarding minimizing the environmental consequences of building a pipeline along the Company's preferred route.

On January 15, 2014, the Department filed comments clarifying aspects of the process for obtaining a routing permit.

On January 16, 2014, the Commission met to consider the matter. At that time, Kennecott acknowledged that its comments address the substance of NDPC's routing permit application, not its completeness. No party challenged the completeness of the application at that time.

FINDINGS AND CONCLUSIONS

I. Summary

In this Order the Commission finds that NDPC's application is substantially complete, triggering the next phase of review for its application.

As part of this next phase, the Commission will do the following:

- Approve the rule variances sought by the Department.
- Authorize the Department to facilitate the development of route proposals beyond those proposed by NDPC.
- Authorize the Department to prepare an analysis of alternative route proposals on the basis of their harm to the environment.
- Take other procedural steps to enable an evaluation of the Company's proposed pipeline route.
- Refer this matter for contested case proceedings.
- Assess an application fee.

II. The Proposed Project

As noted above, the proposed Sandpiper Pipeline would transport crude oil 612 miles from Beaver Lodge Station south of Tioga, North Dakota, to terminals in Clearbrook, Minnesota, and Superior, Wisconsin. Approximately 299 miles of the new pipeline would be located in Minnesota.

As proposed, a 24-inch diameter pipeline with a capacity of 225,000 barrels per day would enter Minnesota approximately two miles south of Grand Forks, North Dakota. It would follow Enbridge Energy Partners' existing pipeline right-of-way for 75 miles to Clearbrook, Minnesota. There, NDPC proposes to build a new terminal and other facilities.

After Clearbrook, the pipeline would expand to a diameter of 30 inches and a capacity of 375,000 barrels per day, and extend for another 224 miles. It would generally follow the existing Minnesota Pipe Line Company right-of-way south to Hubbard, Minnesota. From Hubbard the route would proceed east traversing undeveloped areas and follow portions of existing rights-of-way for electric transmission lines and railroads. Finally, the pipeline would cross the Minnesota-Wisconsin border approximately five miles east-southeast of Wrenshall, Minnesota.

This route would pass through Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin, and Carlton counties, and would require the acquisition of 25 to 50 feet of new right-of-way, plus an additional 40 to 70 feet of temporary right-of-way.

III. Commission Jurisdiction and Procedures

Anyone seeking to build a pipeline with a nominal diameter of more than six inches or more designed to transport hazardous liquids must first obtain a routing permit from the Commission under Minn. Stat. § 216G.02 and Minn. R. Chap. 7852. The criteria for granting a permit are set forth at Minn. R. 7852.1900. A party receiving a routing permit may then exercise the power of eminent domain under Minn. Stat. § 117.48 and becomes exempt from certain statutory requirements.³

Minn. R. 7852.2100 to 7852.3100 identifies the requirements for a routing permit application filed under the Commission's full pipeline route selection procedures. Minn. R. 7852.2000, subp. 4, provides for the Commission to act on the application at its first regularly scheduled meeting occurring at least 21 days after receiving the application; specifically, the Commission may either accept the application as substantially complete, accept the application with conditions, or reject the application.

The act of accepting an application as complete has various consequences. Minn. R. 7852.0800 states that the Commission will act on a routing permit application within nine months of finding the application substantially complete, although the Commission may extend this deadline for cause. And Minn. R. 7852.1400 provides for people to propose routes for the Commission's consideration that differ from the routes proposed by the applicant, but only within the first 70 days after the Commission finds the permit application complete.

The Commission takes several steps to help people develop alternative routing proposals. First, the Commission appoints a public advisor to help members of the public participate effectively in these route selection procedures – although the advisor may not offer legal advice nor act as an advocate.⁴

³ See Minn. R. 7852.3200.

⁴ Minn. R. 7825.1200.

Second, the Commission may convene a citizen advisory committee to review the routing permit application and look for viable alternatives.⁵

Third, the Commission convenes public information meetings. Minn. R. 7852.1300 provides for the Commission to convene meetings in each county through which the proposed pipeline would pass, answering questions and soliciting comments and alternative route proposals.

Finally, the Commission reviews timely alternative route proposals promptly to ensure that they meet the minimum standards for consideration. A new route proposal must not only be timely, it must set forth appropriate maps or aerial photos, and must include supporting data and analysis.⁶ By providing prompt review, the Commission maximizes the time available for people to correct any defects in their proposals.⁷

When the alternative route proposals are assembled, and the Commission selects the proposals to be presented at the public hearing, Minn. R. 7852.1500 requires that the Commission prepare, or at least review, an analysis comparing the environmental consequence of each proposal. When this analysis is made publicly available, the Commission convenes another round of public information meetings to identify the routes that remain under consideration, and to answer questions about them.⁸

Once the Commission has selected the routes that remain under consideration, an administrative law judge from the Office of Administrative Hearings will convene a contested case proceeding under Minn. Rules Chapter 1405.⁹ At the conclusion of the public hearings and briefings, the judge reports her findings, conclusions, and recommendations, and provides a copy to each party.¹⁰

The Commission then reviews the administrative law judge's report and any comments on it, and identifies the route that best meets the selection criteria.¹¹

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

⁵ Minn. R. 7852.1000.

⁶ Minn. R. 7852.1400, subp. 3.

⁷ *Id.*, subp. 4.

⁸ Minn. R. 7852.1300.

⁹ Minn. R. 7852.1700.

¹⁰ Minn. R. 1405.2400.

¹¹ Minn. R. 7852.1900.

IV. Completeness of Application

A. Timeline Varied

As previously noted, Minn. R. 7852.2000, subp. 4, provides for the Commission to accept the application as substantially complete, accept the application with conditions, or reject the application roughly 21 days after receiving it. But 21 days is not enough time in which to review a filing as large and complex as NDPC's, proposing a pipeline that traverses the entire state.

Under Minn.R. 7829.3200, the Commission is authorized to vary any of its rules upon making the following findings:

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

The Commission will vary the 21-day timeframe for evaluating the completeness of an application for a pipeline routing permit, making the following findings:

1. Attempting to determine whether NDPC has filed a complete application within 21 days would impose an excessive burden on parties to the proceeding, including regulatory agencies, and upon the public in general, because this timeframe would needlessly compress the time for scrutinizing the complex proposal.
2. Varying the 21-day timeframe would not harm the public interest, but would serve the public interest by permitting a more thorough analysis of the application.
3. Varying the 21-day timeframe would not conflict with any other legal standard since this timeframe is set by rule, not statute, and may be varied under Minn. R. 7829.3200.

B. Completeness

Having now reviewed the application and the comments, the Commission concurs with the parties that the application is substantially complete under Minn. R. 7852.2100 to 7852.3100.

While the Commission received many comments criticizing NDPC's proposal, these comments address the proposal's merits, not the application's completeness. Those concerns will be addressed as part of a contested case proceeding, discussed below. The Commission's finding of completeness is as to form only; it implies no judgment on the merits of the application.

V. Alternative Route Proposals and the Citizen Advisory Committee

In considering the appropriate framework for evaluating NDPC's proposed Sandpiper Pipeline route, the Department evaluated the merits of establishing a citizen advisory committee to develop route alternatives. Based on project characteristics such as length, complexity, sensitive resources,

and known or anticipated controversy, the Department concludes that members of the public are likely to focus on location-specific issues with the project. Because citizen advisory committees tend to be more useful for addressing project-wide issues rather than local issues, the Department does not recommend organizing a committee for this project.

Instead, the Department offers to take the initiative, along with NDPC, of contacting members of the public along the proposed pipeline routes to ask about the anticipated consequences of the proposed pipeline, and the need and opportunity for alternative routes.

The Department also argues that 70 days does not provide the public with sufficient time to analyze a proposal of the size of the Sandpiper Pipeline route and to develop a counterproposal. Because NDPC's proposed route goes through eight counties, the Department anticipates having to convene many informational meetings. The people who attend the final meeting will, through no fault of their own, have little time in which to develop alternative proposals. To remedy this, the Department asks that the Commission vary Minn. R. 7852.1400 to extend the 70-day deadline.

No party opposed these proposals.

Under these circumstances, the Commission finds that the Department's proposal for soliciting public input and developing alternatives would best serve the public interest, and the Commission will approve it. Consistent with the Department's recommendation, the Commission will decline to organize a citizen advisory committee at this time.

The Commission will also authorize the Department to administer the alternative route proposal development process under 7852.1400. When someone proposes an alternative route, the Commission authorizes the Department to provide feedback to the proposer regarding whether the alternative route is adequately described and justified, and whether it was timely filed. By exercising this authority, the Department can compile and analyze a list of routing alternatives for the Commission's consideration.

Finally, the Commission concludes that the public would be well served by granting the Department's request to vary Minn. R. 7852.1400, thereby allowing more than 70 days in which to complete alternative route proposals. Again, Minn. R. 7829.3200 allows the Commission to grant a variance to its rules when it determines that the following requirements are met:

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

Each of these requirements applies to the 70-day deadline in Minn. R. 7852.1400:

1. Enforcing the 70-day time limit would impose an excessive burden upon the public, upon parties, and upon regulators because it would not allow adequate time to schedule and conduct the required public meetings and then permit interested people to submit alternative route proposals after those meetings.

2. Varying the 70-day time limit would not adversely affect the public interest and would in fact serve the public interest by allowing more time for the submittal of alternative routes to possibly be considered for public hearing.
3. Varying the 70-day time limit would not conflict with any other legal standard since this timeframe is set by rule, not statute, and may be varied under Minn. R. 7829.3200.

VI. Public Information Meetings

The Department also requests a variance from Minn. R. 7852.1300, subp. 1. As noted above, this rule provides that public informational meetings would occur in each county through which the pipeline would be routed. Out of the 299 miles that the Sandpiper Pipeline would travel through Minnesota, NDPC's proposed route would pass through twelve sparsely-populated miles of Red Lake County and six sparsely-populated miles of Crow Wing County. The Department is not sure that there are appropriate facilities to convene a public meeting in these areas. While the Department aspires to convene more than the minimum number of informational meetings -- and may yet find a practical means to hold meetings in Red Lake and Crow Wing counties -- it asks that the Commission vary its rule requiring meetings in every county.

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

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

These requirements apply to 7852.1300's obligation to convene a public information meeting in each county along the proposed pipeline route:

1. Enforcing the duty to convene a hearing in every county would burden the agencies charged with the duty to organize such meetings, and may burden the parties charged with the duty to attend such meetings. If these efforts delay the task of convening all the necessary meetings and developing the appropriate list of alternative routes, enforcing this rule would burden NDPC as well.
2. Varying the requirement to convene meetings within every county would not adversely affect the public interest. The Department has committed to securing appropriate locations for informational meetings all along the length of the proposed route. Members of the public would benefit from attending meetings in convenient and appropriate facilities -- not merely from attending meetings within their own county.

3. Varying the requirement to convene public information meetings within every county would not conflict with any legal standard since this requirement is set by rule, not statute, and may be varied under Minn. R. 7829.3200.

For the foregoing reasons the Commission will vary the requirement of Minn. R. 7852.1300, subp. 1, and instead allow for meetings in areas near, and conveniently spaced along, the proposed route.

VII. Comparative Environmental Analysis

As previously noted, after the list of pipeline route alternatives has been appropriately documented, supported, and selected, Minn. R. 7852.1500 provides for the creation of a document analyzing the environmental consequences of each of these alternatives. In the interest of securing a fully developed and impartial analysis, the Commission will authorize the Department to prepare this comparative environmental analysis, along with an initial technical analysis of the record.

The technical analysis should include a discussion of the proposed project's compliance with applicable statutes and rules.

It should analyze how well each route meets the routing permit selection criteria set forth in statute and rule. This analysis should provide a tool to assist the public and agencies in understanding the environmental consequences of the various alternatives. Specifically, the analysis should identify routes with common or similar environmental consequences. And the analysis should identify 1) routes that require no environmental mitigation, 2) routes with negative environmental consequences that would need mitigation, together with alternative mitigation strategies, and 3) routes with negative environmental consequences that cannot be mitigated. The analysis should also identify routes with fatal flaws.

Finally, the Department should include recommendations for permit language, including language specifically drafted for certain routes.

VIII. Referral for Contested Case Proceedings

The Commission finds that it cannot satisfactorily resolve all questions regarding the proposed pipeline project on the basis of the current filings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings under Minn. Stat. § 14.57 *et seq.*

The administrative law judge assigned to this matter will conduct hearings as described in this Notice and submit a report to the Commission.¹² Following receipt of the administrative law judge's report, the Commission will proceed to make its final decision in accordance with Minn. Stat. Chapters 14 and 216G.

¹² Minn. Rules, Part 1405.2400.

IX. Issues to be Addressed

The ultimate issue in this case is whether NDPC's proposed pipeline meets the routing criteria set forth in Minn. Stat. Chapter 216G and Minn. Rules Chapter 7852. This issue turns on numerous factors that are best developed in formal evidentiary proceedings. The parties to this proceeding should address whether the proposed project meets these criteria and address these factors. The parties may also raise and address other issues relevant to the application.

X. Review Process

To facilitate the review of the application, and the public's participation in that review, the Commission will do the following:

- A. Direct NDPC to facilitate in every reasonable way the continued examination of the issues requested by the Department and Commission staff.
- B. Direct NDPC to place a copy of the application, printed or on a compact disc (CD), for review in a Government Center or public library in each of the counties traversed by the proposed pipeline.
- C. Direct NDPC to post its application and any required supplements to a publicly available website.
- D. Direct Commission staff to work with the administrative law judge in selecting suitable dates and locations for the public hearings on the application.
- E. Provide for the public to be notified of the public hearings and evidentiary hearings. In particular:
 - Commission staff shall work with the administrative law judge in developing a notice of public and evidentiary hearings in accordance with the requirements of Minn. R. 1405.0500.
 - NDPC shall send a notice of public and evidentiary hearings to the entities identified in Minn. Stat. § 216E.03, subd. 6, and Minn. R. 7829.2560, subp. 3, at least ten days before, but no earlier than 45 days before, the start of the hearing.
 - NDPC shall publish the notice of the public and evidentiary hearings in newspapers of general circulation in the areas likely to be affected by the proposed pipeline at least ten days before the start of the hearings.
 - NDPC shall demonstrate compliance within 20 days of the notice's issuance and publication by submitting a filing, such as proofs of publication and a list of the names and addresses of notice recipients.
- F. Delegate administrative authority, including timing issues, to the Commission's Executive Secretary.

XI. Public Adviser

Minn. R. 1405.0500, subp. 1.G., states that a notice of hearing should state the name, address, phone number, and function of a designated public adviser. The Commission will designate the following staff member to facilitate and coordinate public participation in the proceeding:

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

XII. Joint Hearings with Routing Permit Docket

In addition to securing a routing permit, anyone seeking to build more than 50 miles of pipeline in the state with a diameter of more than six inches must first obtain a certificate of need from the Commission.¹³ On November 8, 2013, NDPC applied for a certificate of need for its Sandpiper project.¹⁴

The Legislature favors conducting 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.¹⁵ The Department recommends convening public hearings for this docket jointly with the hearings for the certificate of need docket. No party objected.

In general, the Commission finds that joint hearings 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. Consequently the Commission will order the public hearings in this docket and in the corresponding certificate of need docket to be held jointly.

XIII. Procedural Outline

A. Administrative Law Judge

The administrative law judge assigned to the contested case is Chief Administrative Law Judge Tammy Pust. Her address and telephone number are as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101; (651) 361-7875. The mailing address of the Office of Administrative Hearings is P.O. Box 64620, St. Paul, Minnesota 55164-0620.

¹³ See Minn. Stat. §§ 216B.2421 and 216B.243, and Minn. R. Chap. 7853.

¹⁴ *In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota*, Docket No. PL-6668/CN-13-473.

¹⁵ Minn. Stat. § 216B.243, subd. 4, provides for joint hearings on the need for, and site or route for, a proposed *large energy facility* as defined at Minn. Stat. § 216B.2421. This includes “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....” Minn. Stat. § 216B.2421, subd. 2(4).

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57 to 14.62; the rules of the Office of Administrative Hearings, Minn. R. 1405.0200 to 1405.2800; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.3200.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association. Hearings may be recessed and reset by the administrative law judge pursuant to Minn. Rules, parts 1405.1400 to 1405.2300.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

Minn. R. 1405.0500, subp. 1.H. states that a notice of hearing must include the name, address, and telephone number of the member of the attorney general's staff who may be contacted for advice on matters dealing with procedures. The Commission designates Lisa Crum, Office of Minnesota Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2131, (651) 757-1291.

- *Availability of Materials*

People may review all filed materials, including all prefiled testimony, on the Department's web site.¹⁶ Alternatively, they may view documents at the Department's offices at 85 - 7th Place East, Suite 500, St. Paul, MN 55101-2198. To arrange a viewing of these materials, interested persons may contact Deborah Pile at the Minnesota Department of Commerce or by phone at (651) 539-1837.

- *Right to Counsel and to Present Evidence*

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

¹⁶ See

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showeDocketsSearch&showEdocket=true&userType=public>. Because documents related to this matter are filed in Docket No. 13-474, people may find these dockets by looking for the Docket Number line and entering 13 as the year and 474 as the number.

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

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. R. 1400.6700 to 1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Scott Ek, Energy Facilities Planner, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2255 (voice), (651) 297-7073 (fax), scott.ek@state.mn.us (email).

- *Protecting Not-Public Data*

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

- *Accommodations for Disabilities; Interpreter Services*

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

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the administrative law judge after consultation with the Commission and intervening parties. Hearings may be recessed and reset by the administrative law judge under Minn. R 1405.1400 to 1405.2300.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the administrative law judge within 20 days of the date of this Notice for Hearing.

- *Sanctions for Non-compliance*

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

C. Parties and Intervention

The current parties in this case are NDPC, the Department, and Kennecott. The names and addresses of the persons designated to receive all notices on behalf of the Applicants are included on the attached service list.

Those who wish to become parties in this proceeding may petition to intervene in accordance with Minn. R. 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition. Subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Minn. Rules Chapter 1405 is designed to facilitate public participation, and people need not intervene as parties to participate. Public participants have significant procedural rights, including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony orally or in writing, to question persons who testify, and to submit comments to the administrative law judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention, the rights to submit direct testimony and conduct cross-examination of other parties' witnesses in the first stage of any two-stage hearing conducted by the administrative law under Minn. R. 1405.1500, subp. 2, and the responsibilities to submit pre-filed testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. R. 1405.0500, subp. 1, and is not intended to be comprehensive. Interested persons are encouraged to review Minn. Rules Chapter 1405 to identify the scope of rights and authority to act given "persons" or restricted to "parties" under the various provisions of that chapter.

D. Prehearing Conference

A prehearing conference will be held at a date, time, and place to be set by the administrative law judge in consultation with Commission staff.

The purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations to foundation for testimony or exhibits, to discuss schedules for hearings and other procedural events, and to resolve other matters that may be necessary or appropriate. Potential interveners, and other interested persons, may attend the prehearing conference.¹⁷

The administrative law judge may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the administrative law judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the administrative law judge. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the administrative law judge.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

¹⁷ Minn. R. 1405.1100.

XIV. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, may apply to pipeline routing cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, or (800) 657-3889 with any questions.

XV. Ex Parte Communications

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

XVI. Budget and Application Fee

Finally, Minn. R. 7852.4000 directs an applicant for a routing permit to pay a fee to cover the actual costs necessarily and reasonably incurred in processing the application and reviewing permit compliance activities, as well as the cost of administrative overhead and legal expenses. Excess funds are to be returned to the applicant. An applicant will ultimately receive an accounting of all costs incurred in processing the application, and may present objections to the Commission.

Having analyzed the application, the Department prepared a budget of up to \$710,000. NDPC reviewed the budget and raised no objection.

The Commission finds the Department's analysis to be sound and consistent with the objectives of Minn. R. 7852.4000. Consequently the Commission will approve the budget and fee.

ORDER

1. The Commission varies Minn. R. 7852.2000, subp. 4, to extend the period for determining the completeness of the routing permit application of North Dakota Pipeline Company LLC.
2. The Commission accepts the application as substantially complete.
3. NDPC shall facilitate in every reasonable way the continued examination of the issues identified by Commission staff and the Department.
4. NDPC shall place a copy of its application, printed or on a compact disc (CD), for review in a government center or public library in each of the counties traversed by the proposed pipeline.
5. NDPC shall post its application and all required supplements to a publicly available website.

6. The Commission varies Minn. R. 7852.1300, subp. 1, to authorize meetings in areas near, and conveniently spaced along, the proposed pipeline route in lieu of meetings within every county along the route.
7. Regarding the development of alternative route proposals:
 - A. The Commission authorizes the Department to administer the alternative route proposal development process under Minn. R. 7852.1400.
 - B. The Commission varies Minn. R. 7852.1400, subp. 3(C) to extend the 70-day time limit for people to complete their alternative pipeline route proposals.
8. The Department is authorized to prepare a comparative environmental analysis and a technical analysis of the record in accordance with Minn. R. 7852.1500, as described herein.
9. The Commission refers this matter to the Office of Administrative Hearings for contested case proceedings under Minn. Stat. § 14.57 *et seq.* as described herein.
10. The Commission authorizes public hearings jointly addressing NDPC's application for a certificate of need and its application for a routing permit under Minn. Stat. § 216B.243 subd. 4.
11. Commission staff shall work with the administrative law judge in selecting suitable dates and locations for the public hearings on the application.
12. Regarding notice of the public and evidentiary hearings in this matter:
 - A. Commission staff shall work with the administrative law judge to develop a notice of the hearings complying with the requirements of Minn. R. 1405.0500.
 - B. Between 10 and 45 days before the start of public hearings on this matter, NDPC shall send the notice of public and evidentiary hearings to the entities identified in Minn. Stat. § 216E.03, subd. 6, and Minn. R. 7829.2560, subp. 3.
 - C. At least ten days before the start of public hearings on this matter, NDPC shall publish the notice of the public and evidentiary hearings in newspapers of general circulation in the areas likely to be affected by the proposed pipeline.
 - D. Within 20 days of the notice's issuance and publication, NDPC shall make a filing demonstrating compliance with these notice requirements – for example, by filing proofs of publication and a list of the names and addresses of notice recipients.
13. The Commission approves the Department's proposed budget and the application fee of \$710,000.

14. The Commission delegates administrative authority over this matter, including authority over timing issues, to its Executive Secretary.
15. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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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
North Dakota Pipeline Company LLC
for a Pipeline Routing Permit for the
Sandpiper Pipeline Project in
Minnesota

MPUC Docket No. PL-6668/PPL-13-474

OAH Docket No. 84-2500-31259

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge: Tammy Pust, Office of
Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101; Mailing Address:
Box 64620, St. Paul, Minnesota 55164-0620; Telephone Number: (651) 361-7875.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____