

Staff Briefing Papers

Meeting Date: January 7, 2025

Agenda Item 1**

Company: Magellan Pipeline Company, L.P.

Docket: IP-7109/PPL-23-109

In the Matter of the Application of Magellan Pipeline Company, L.P. for a Route Permit for the Pipestone Reroute Project in Pipestone County, Minnesota

Issues:

- Should the Commission reconsider its October 22, 2024 Order Adopting Administrative Law Judge Report as Modified, Issuing Routing Permit, and Requiring Cultural and Archaeological Survey?

Staff: Scott Ek scott.ek@state.mn.us 651-201-2255

✓ Relevant Documents	Date
Magellan Pipeline Company, L.P. Application for a Pipeline Route Permit for the Pipestone Reroute Project (15 parts, Appendix K filed as trade secret)	04/10/2023
Order Finding Application Complete and Granting Variance: Notice of and Order for Hearing	08/07/2023
Order Accepting Route Alternatives for Study in the Comparative Environmental Analysis	10/17/2023
Comparative Environmental Analysis (13 parts)	03/04/2024

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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 noted otherwise.

✓ Relevant Documents	Date
Department of Commerce Response to Comments on the Comparative Environmental Analysis	05/24/2024
Office of Administrative Hearings Findings of Fact, Conclusions of Law, and Recommendation	07/17/2024
Order Adopting Administrative Law Judge Report as Modified, Issuing Routing Permit, and Requiring Cultural and Archaeological Survey (6 parts)	10/22/2024
Standing Rock Sioux Tribe Letter	11/08/2024
Yankton Sioux Tribe First Letter (3 parts)	11/08/2024
Yankton Sioux Tribe Second Letter (2 parts) ¹	11/13/2024
Brave Heart Society Letter (2 parts)	11/12/2024
Cheyenne River Sioux Tribe Letter (2 parts)	11/12/2024
Lower Brule Sioux Tribe Letter	11/12/2024
Lower Sioux Indian Community Letter	11/12/2024
Otoe-Missouria Tribe Letter (2 parts)	11/12/2024
Prairie Island Indian Community Letter	11/12/2024
Rosebud Sioux Tribe Letter	11/12/2024
Santee Sioux Nation Letter	11/12/2024
Shakopee Mdewakanton Sioux Community Letter (2 parts)	11/12/2024
White Earth Nation Letter	11/12/2024
Flandreau Santee Sioux Tribe Letter (6 parts)	11/13/2024
Great Plains Tribal Chairmen’s Association, Inc. Letter	11/13/2024
United Tribes of North Dakota Letter	11/13/2024

¹ The letter included an Excel spreadsheet listing 23,195 names and mailing addresses.

✓ **Relevant Documents**

Date

Wakaj Tipi Awanyankapi Letter

11/19/2024

Magellan Pipeline Company, L.P. Answers to Petitions for Reconsideration

11/18/2024

Attachments

Attachment A – Comment Letters from Individuals

ISSUE

Should the Commission reconsider its October 22, 2024 Order Adopting Administrative Law Judge Report as Modified, Issuing Routing Permit, and Requiring Cultural and Archaeological Survey?

STATUTES AND RULES

Under Minn. Stat. § 216B.27 and Minn. R. 7829.3000:

- A party or a person aggrieved and directly affected by a Commission decision or order may file a petition for reconsideration within 20 days of the date the decision or order is issued. Other parties to the proceeding may file answers to the petition within 10 days of filing the petition. Replies to answers are not permitted unless specifically authorized by the Commission.
- A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon, or errors claimed on which the Commission’s decision is unlawful or unreasonable.
- The Commission has the authority to decide a petition for reconsideration with or without a hearing or oral argument. The Commission may reverse, change, modify, or suspend its original decision if it finds its decision unlawful or unreasonable.
- Any application for rehearing or reconsideration not granted within 60 days from the date of filing shall be deemed denied.

- A second petition for rehearing of a Commission decision or order by the same party or parties and upon the same grounds as a former petition that has been considered and denied will not be entertained.

Minn. Stat. § 216B.25 provides that:

The Commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the public utility and after opportunity to be heard, rescind, alter, or amend any order fixing rates, tolls, charges, or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order therein, for the taking of further evidence or for any other reason. Any order rescinding, altering, amending, or reopening a prior order shall have the same effect as an original order.

When it reviews petitions for reconsideration, the Commission typically reviews whether the petition (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its decision.

PROCEDURAL HISTORY

On April 10, 2023, Magellan Pipeline Company, L.P. (Magellan) filed a pipeline route permit application for the Pipestone Reroute Project (Project). The Commission accepted the application as substantially complete on August 7, 2023, and the application review process began.

Between April 2023 and August 2024, the route permit application was reviewed pursuant to the procedural requirements set forth in Minn. Stat. ch. 216 and Minn. R. ch. 7852. These requirements included: public information and comparative environmental analysis (CEA) scoping meetings that included a written comment period; the preparation of a CEA; separate public information meetings to receive comments on the CEA including a written comment period; preparation of a separate document responding to comments received on the CEA; public and evidentiary hearings conducted by an administrative law judge from the Office of Administrative Hearings in accordance with Minn. R. ch. 1405, including a written comment period; findings of fact, conclusions of law, and recommendation prepared by an administrative law judge (ALJ Report), and an exception period on the ALJ Report.

As ordered by the Commission, the CEA analyzed Magellan's proposed route that was included in its route permit application along with three alternative routes proposed during the review process. The routes were identified as follows:

- APR – Applicant’s preferred route included in the route permit application (1.3 miles long).
- RA-01 – Route alternative proposed by the Mille Lacs Band of Ojibwe² (13.1 miles long).
- RA-02 – Route alternative proposed by the Applicant (3.4 miles long).
- RA-03 – Route alternative proposed by the Upper Sioux Community Tribal Historic Preservation Office (18.7 miles long).

Map Showing Alternative Routes Evaluated

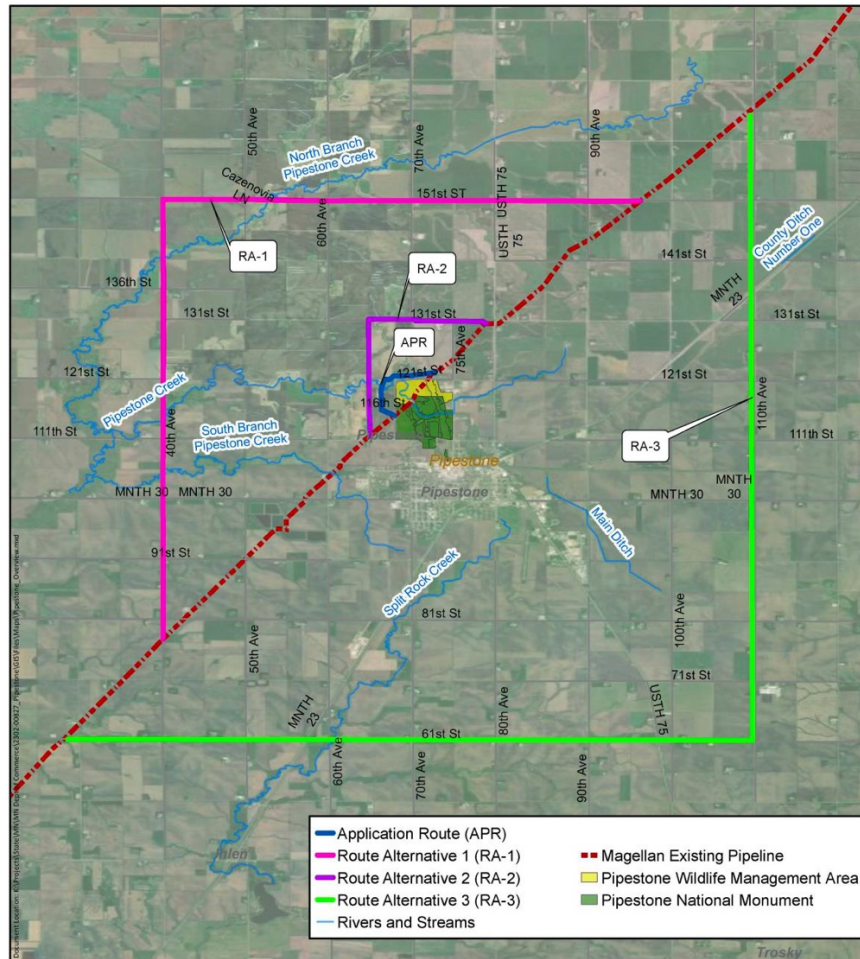


Figure ES 1-1: Overview Map of Route Alternatives from CEA.

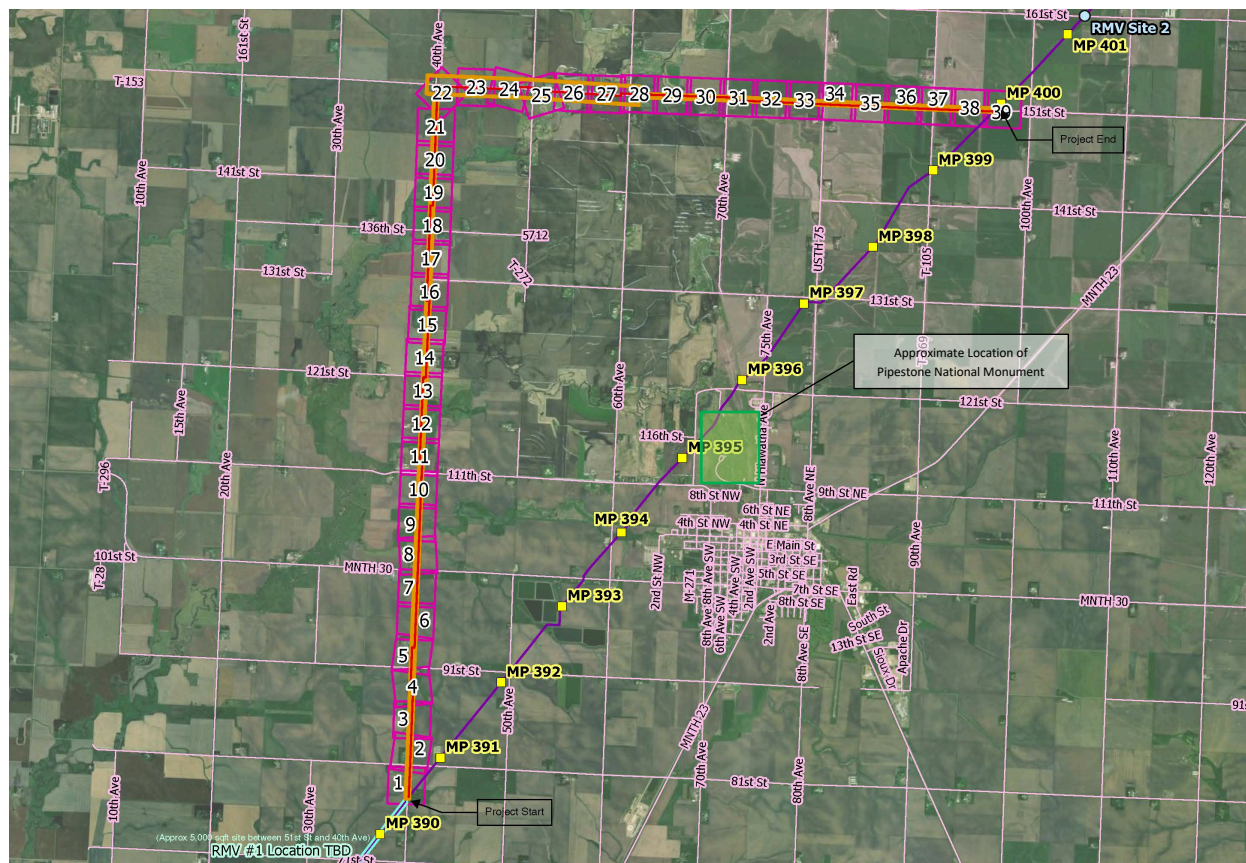
On October 22, 2024, the Commission issued its Order Adopting Administrative Law Judge Report as Modified, Issuing Routing Permit, and Requiring Cultural and Archaeological Survey.³

² During the September 12, 2024 Agenda Meeting, the Mille Lacs Band of Ojibwe stated that it no longer supports the route.

³ The Commission met on September 12, 2024, to decide this matter. The motion passed 3-2. Commission Meeting Minutes (November 26, 2024) (Document ID 202411-212306-01).

In its Order, the Commission adopted the ALJ Report and identified certain corrections and clarifications to ensure consistency with the decision; issued a route permit for the Project along route RA-01; and, prior to construction, required Magellan to conduct a full cultural and archaeological survey on route RA-01 for Commission approval.

Map Showing Commission-Permitted Route RA-01



Route Overview Map from Magellan Pipeline Reroute Permit (October 22, 2024)

Between October 22 and November 19, 2024, the Commission received letters either opposing the Commission’s decision, requesting reconsideration, or both from 16 Tribal governments and Tribal-affiliated organizations.⁴ The Commission also received letters expressing disapproval or concern with the Project, the Commission’s decision, or both from approximately 184 individuals and organizations. Additionally, a petition was filed with several thousand signatories opposing the Commission’s decision.

On November 18, 2024, Magellan filed its Answer to Petitions for Reconsideration.

⁴ Staff notes that the 20-day period to file reconsiderations as set forth in rule and statute ended on November 12, 2024.

RECONSIDERATION

As noted above, the 16 Tribal governments and Tribal-affiliated organizations listed below filed letters with the Commission which either opposed the Commission's decision, requested reconsideration, or both.

- Brave Heart Society
- Cheyenne River Sioux Tribe
- Flandreau Santee Sioux Tribe
- Great Plains Tribal Chairmen's Association, Inc.⁵
- Lower Brule Sioux Tribe
- Lower Sioux Indian Community
- Otoe-Missouria Tribe
- Prairie Island Indian Community
- Rosebud Sioux Tribe
- Santee Sioux Nation
- Shakopee Mdewakanton Sioux Community
- Standing Rock Sioux Tribe
- United Tribes of North Dakota
- Wakanj Tipi Awanyankapi
- White Earth Band of Minnesota Chippewa Tribe
- Yankton Sioux Tribe

In general, the letters from the Tribal government and Tribal-affiliated organizations contain a shared conclusion or resolution that urges the Commission to reverse its decision to approve a route permit for Route RA-01. Furthermore, they express their opposition to rerouting of the Magellan pipeline using any of the four routes that the Commission has considered in these proceedings, as the routes all pose unacceptable risks. The Commission also received letters from approximately 184 individuals and organizations expressing their disapproval or concern regarding the Project, the Commission's decision, or both (See Attachment A).

Staff notes the significant increase in number and geographic representation of Tribal participation in the docket. The record which the Commission based its permitting decision on included the participation of the Brave Heart Society, the Mille Lacs Band of Ojibwe, the Upper Sioux Community, and the Flandreau Santee Sioux Tribe. However, the number of Tribal

⁵ The Great Plains Tribal Chairmen's Association, Inc. is comprised of the 16 Tribal Chairmen, Presidents, and Chairpersons from the Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Lower Brule Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Yankton Sioux Tribe, Sisseton Wahpeton Tribe, Flandreau Santee Sioux Tribe, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes, Turtle Mountain Band of Chippewa, Omaha Tribe, and Santee Sioux Nation.

Governments and Tribal Organizations participating in the docket has increased significantly as a result of the reconsideration petitions. This is especially true for Tribes from the Midwest who have historical and contemporary cultural and spiritual connections to the catlinite resource, both within the Pipestone National Monument and in the surrounding area where catlinite may be present and through which the proposed pipeline routes pass.

Magellan provided answers to the letters and requests for reconsideration, as afforded by statute and rule. Magellan maintained that the Commission has satisfactorily addressed the concerns expressed by the Tribal government and Tribal-affiliated organizations, and that they have not presented any new evidence or issues, exposed any errors, or provided any justification for reconsideration. Magellan requested that the Commission deny any requests for reconsideration.

A summary of the reconsideration requests and concerns raised, organized by subject, and including relevant comments from Magellan as well as a staff discussion, is presented below. Staff recommends the commissioners review the specific letters for more detailed information.

I. Federal Agency Review

A common request or argument made by the Tribal governments and Tribal-affiliated organizations for reconsideration is that there has been no review at the federal level concerning the Project.

For example, Brave Heart Society argued that there are federal requirements that have not been considered or initiated, such as:

- protections contemplated under Executive Order 13007 on Indian Sacred Sites;
- a National Historic Preservation Act (NHPA), Section 106 review by the National Park Service (NPS) or U.S. Fish and Wildlife Service (USFWS);
- preparation of an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA); or
- approvals contemplated under Section 4(f) of the Department of Transportation Act, Section 404 of the Clean Water Act (CWA), and Section 10 of the Rivers and Harbors Act.⁶

Following those same assumptions, the Great Plains Tribal Chairman's Association claimed that NEPA and the NHPA apply to the Project, and that federal law and policies necessitate extensive rounds of consultation. Great Plains Tribal Chairman's Association claimed that only Minnesota Tribes were consulted, with the exception of a single attempt at consultation, which does not

⁶ Brave Heart Society Letter at 2 (November 12, 2024) (Document ID [202411-211797-02](#)).

qualify as a "good faith" effort.⁷ Similarly, the Standing Rock Sioux Tribe asserted that the state review process and the Commission's decision foreclosed NPS ability to comply with the Section 106 process.⁸

Magellan Answer

Magellan maintained that the arguments concerning federal requirements are not new and were raised during the review process and were considered by the Commission. Magellan stated that if federal permits or approvals are necessary for any Project component affecting federal lands, waters, wetlands, or the Endangered Species Act, such permits will be subject to federal review. Magellan asserted that the Commission lacks the jurisdiction to mandate or conduct NEPA reviews.⁹

Staff Discussion

The Commission has previously considered the issues related to federal agency review and its decision is supported by substantial evidence in the record. In making its decision to issue a route permit the Commission considered the impact the pipeline would have on the relevant applicable policies, rules, and regulations of other state and federal agencies. According to the Commission's October 22 Order:

The ALJ noted that the U.S. Fish and Wildlife Service raised a concern about the need for a federal environmental review under the National Environmental Policy Act (NEPA). The ALJ found that "the draft route permit requires Magellan to obtain all necessary permits and comply with the conditions of those permits. Accordingly, if one of those permits establishes a federal nexus and a review under NEPA is required, Magellan's permit will require it to undergo such a review."¹⁰

II. Pipeline Need

The commenting Tribal governments and Tribal-affiliated organizations all agreed that the Commission should reverse its decision to grant a permit for Route RA-01 and refrain from issuing permits for any of the four routes previously considered for the pipeline due to the

⁷ Great Plains Tribal Chairman's Association Letter at 2 (November 13, 2024) (Document ID [202411-211867-01](#)).

⁸ Standing Rock Sioux Tribe Letter at 3 (November 8, 2024) (Document ID [202411-211727-01](#)).

⁹ Magellan Pipeline Company, L.P. Answers to Petitions for Reconsideration at Section II (November 18, 2024) (Document ID [202411-212094-01](#)).

¹⁰ Order Adopting Administrative Law Judge Report as Modified, Issuing Routing Permit, and Requiring Cultural and Archaeological Survey at 16, Section III.J. (October 22, 2024) (Document ID [202410-211172-01](#))

overall potential risk to the Pipestone National Monument and pipestone quarries and because of the important cultural and spiritual significance of the surrounding region to many Tribal nations across the United States.

The Yankton Sioux Tribe specifically argued that the pipeline is not needed or should not be constructed because they do not believe a mandate for specialty fuel grades has been adopted as was indicated in the CEA and record of the case. They believe these “newer fuels can be shipped using the current pipeline structure and the project will have no effect on gas prices for consumers if running or not running.”¹¹

Magellan Answer

Magellan asserted that the “statutes and rules governing route permits do not provide a basis for the Commission to deny a route permit,” and so the Commission is obligated to pick a route within a specific time period and issue a permit for the route.¹² Because the Commission determined that all four route alternatives, including Route RA-01, are supported by the record and meet the requirements of Minn. Stat. §§ 216G.01-216G.12, and the Minnesota Environmental Rights Act, and because the Project does not require a certificate of need, the Commission does not have the authority to refuse to issue a pipeline route permit.

Concerning the Yankton Sioux Tribe’s claim regarding specialty fuel grade requirements, Magellan pointed to the Commission’s October 22, 2024 Order which states:

recent rulemaking by the U.S. Environmental Protection Agency (EPA) has mandated the availability of two special grades of gasoline that are not currently available for use in Minnesota. If the pipeline is not restored to service, it could exacerbate fuel shortages and increase gasoline and diesel prices in this region. The pipeline has an average annual capacity of 22,500 barrels per day and would deliver refined petroleum products including diesel, gasoline, and jet fuel to communities in eastern North Dakota, eastern South Dakota, and western Minnesota.¹³

Staff Discussion

The Commission’s previous decision considered Magellan’s stated need for the pipeline and is supported by substantial evidence in the record. The Commission adopted the ALJ Report which concluded that all four route alternatives meet the requirements of Minn. Stat. §§ 216G.01-

¹¹ Yankton Sioux Tribe Letter at 3, No. 1 (November 8, 2024) (Document ID [202411-211767-03](#)).

¹² [Magellan Answers](#) at 3, Section I.

¹³ [Magellan Answers](#) at 5, Footnote 12; and [October 22 Order](#) at 3, Section I.B.

216G.12, that there is no feasible and prudent alternative, and that the Project is consistent with and reasonably required for the promotion of public health and welfare in light of the State's concern for the protection of its air, water, land, and other natural resources as expressed in the Minnesota Environmental Rights Act.¹⁴ Staff does not believe any new evidence has been presented to the contrary.

III. Tribal Cultural and Spiritual Resources

The commenting Tribal governments and Tribal-affiliated organizations all agreed that the pipestone quarries within the Pipestone National Monument and the surrounding region contain cultural and spiritual sites and resources of historical and future significance and are considered sacred by no fewer than 23 Tribal Nations. Moreover, the U.S. government established the Pipestone National Monument in 1937 to protect the sacred pipestone quarries. The Yankton Sioux stated that “any new ground disturbance in the region is likely to disturb or destroy our cultural sites, cultural resources, and burials.”¹⁵

As it concerns Tribal cultural resources, the primary and general argument common to many commenting Tribal governments and Tribal-affiliated organizations requesting reconsideration is that the Commission granted a route permit for Route RA-01 without a comprehensive understanding of the Tribal Nation interest and without a completed cultural resource survey that would detail the presence of any such resource. Specifically, arguments made by the United Tribes of North Dakota and others asserted that:

- only two of the four routes have been partially surveyed for cultural resources;
- none of the four routes has been surveyed by Tribal cultural and spiritual resource experts; and
- surveys lacked adequate consultation with Tribal Nations and Traditional Ecological Knowledge.¹⁶

Magellan Answer

Magellan maintained that the subject of Tribal archaeological and cultural resources was consistently addressed throughout the review process, and that the Commission prioritized these resources when making its route permit decision. Magellan pointed out that the Commission, by approving Route RA-01 instead of Route RA-02, as recommended by the administrative law judge, prioritized the potential impacts on the Pipestone National

¹⁴ Office of Administrative Hearings Findings of Fact, Conclusions of Law, and Recommendation at 66-67, Conclusions of Law (ALJ Report) (July 17, 2024) (Document ID [20247-208705-01](#)).

¹⁵ Yankton Sioux Tribe Letter at 3 (Document ID [202411-211767-01](#)).

¹⁶ United Tribes of North Dakota Letter at 3 (November 13, 2024) (Document ID [202411-211876-01](#)).

Monument and resources of significant importance to American Indians, including catlinite, over alternative routing considerations. For example, Magellan pointed out that by choosing Route RA-01 instead of Route RA-02, the Commission placed the pipeline more than 2.5 miles from the Monument thereby quadrupling its overall length, tripling the acres of land crossed, and tripling the total cost.¹⁷

Lastly, Magellan referenced the 2023 survey performed by Tribal cultural resource specialists on portions of routes APR and RA-02 and maintained its commitment to ongoing coordination with the affected Tribal Nations to complete a cultural and archaeological survey prior to the pipeline's construction, as well as in the event of unanticipated discoveries during construction, and in compliance with permit conditions.¹⁸

Staff Discussion

The Commission considered the issue of archaeological and cultural resources when making its decision, and in recognition, modified the permit language recommended by the Brave Heart Society. The Commission included ordering point 6 in the October 22 Order, which directed the route permit to include the following language:

Magellan shall complete a full cultural and archaeological survey for route RA-01 in coordination with the following tribal historic preservation offices (THPOs): 1) Mille Lacs Band of Ojibwe; 2) Upper Sioux Community; 3) Yankton Sioux Tribe; and 4) Flandreau Santee Sioux Tribe. Magellan shall prepare a cultural and archaeological resources inventory of the route including any additional workspaces, such as temporary workspace, laydown/pipe yards, access roads, valve sites, and bore holes, to identify and avoid impacts to cultural, archaeological, and historic resources including pipestone/catlinite deposits. The inventory shall be developed in accordance with standards established by relevant THPOs, Minnesota State Historic Preservation Office (MnSHPO), Minnesota Office of the State Archaeologist (MnOSA), and Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation. The inventory shall include specific mitigation and avoidance procedures for archaeological, cultural, and historic resources identified and must be filed with the Commission upon completion including comments from MnSHPO, MnOSA, and the Secretary of Interior.

After completion of the survey, the permittee shall send the results of the survey to the affiliated Tribes and engage in additional consultation with the following

¹⁷ Magellan Answers at 9-10, Section III.

¹⁸ Magellan Answers at 8-9, Section III.

tribal nations: 1) Mille Lacs Band of Ojibwe; 2) Upper Sioux Community; 3) Yankton Sioux Tribe and 4) Flandreau Santee Sioux Tribe. At a minimum, this consultation shall consist of at least one in-person meeting with tribal representatives to occur no later than 30 days after completion of the full cultural and archaeological survey. The permittee shall provide the opportunity for feedback to affiliated tribal nations on the survey. The permittee shall also confer with MnSHPO, the relevant THPO representatives, and MnOSA regarding the results of the survey. The permittee shall file a compliance filing providing the results of the full survey, any feedback received and certifying that consultation with the above tribal nations has been attempted and/or completed. In the compliance filing, the permittee will recommend the appropriate number and names of tribal construction monitors informed by the results of the survey and in consultation with the affiliated Tribes. After receipt of the compliance filing the Commission shall schedule the matter for approval of the compliance filing prior to construction.

The above-mentioned language reflects an attempt to address the issues raised by the Tribal governments and Tribal-affiliated organizations that have requested reconsideration. Specifically, the order requires:

- completion of a full cultural and archaeological survey for Route RA-01 in consultation with select representative Tribal governments to ensure incorporation of Traditional Ecological Knowledge;
- review opportunities for the 23 affiliated Tribes;
- additional consultation and a minimum in-person meeting requirement with select representative Tribal governments;
- review by the MnSHPO, MnOSHA, and relevant THPOs;
- assigned Tribal construction monitors informed by the results of the survey and in consultation with the affiliated Tribes; and
- commission review before any construction is authorized.

Concerning archaeological and cultural resource surveys that have been conducted, staff notes that Magellan sponsored cultural resource inventories, geotechnical bore monitoring, and remote sensing surveys of portions of the APR in 2022 and Route RA-02 in 2023. Tribal cultural resource specialists, offering Traditional Ecological Knowledge, also undertook an inventory of select portions of the APR and Route RA-02 in the fall of 2023. In addition, Appendix B of the CEA contains a literature and background review of the APR and routes RA-01, RA-02, and RA-03; summarizes the results of the October 2023 archaeological survey of 1.9 miles of Route RA-02; and assesses the archaeological potential of routes RA-01 and RA-02. A remote sensing survey of Route RA-02 was also performed in areas where it is known or believed to cross pipestone or catlinite beds. The approved permit language requires the Commission to review the completed archaeological and cultural resource surveys before authorizing construction.

Should resources be encountered along the route that cannot be avoided, the Commission will have the opportunity to decline to authorize construction along Route RA-01.

As noted above, the approved ordering point 6 language requires consultation with listed Tribal Nations and review of the survey results without consultation by the 23 affiliated Tribes. The formal resolutions adopted by multiple federally-recognized Tribal Nations located outside of Minnesota and included in the requests for reconsideration request consultation equivalent to that provided to Minnesota Tribal Nations.

IV. Environmental Review (Comparative Environmental Analysis)

Several commenting Tribal governments and Tribal-affiliated groups asserted that the CEA failed to include or evaluate certain information. For instance, correspondence from the Brave Heart Society, Cheyenne River Sioux Tribe, Great Plains Tribal Chairmen's Association, White Earth Nation, Yankton Sioux Tribe, and others indicated that the CEA:

- failed to adequately and transparently address the risk of spills from the pipeline;
- failed to consider Native Americans and Native communities in the environmental justice section;
- did not include a complete Phase IA archaeological and cultural resources literature review for Route RA-01;
- did not acknowledge the significance of the Pipestone National Monument as a genesis site for at least 23 affiliated Tribes; and
- failed to consider all threatened and endangered species' critical habits, such as the western harvest mouse and others.¹⁹

Magellan Answer

Magellan maintained that the concerns related to leaks and spills were addressed in the proceeding, were thoroughly reviewed, including in the CEA, and were further mitigated by the Commission's October 22, 2024 Order. Therefore, Magellan believes they do not require further consideration.

Magellan referenced its District Operation Safety Response Plan and spill response plan, which, as stated in the CEA, include strict preventative and monitoring protocols, sophisticated leak detection technology, human aerial flight patrol, and decontamination and clean-up plans.

¹⁹ [Brave Heart Society Letter](#); [Cheyenne River Sioux Tribe Letter](#) (November 12, 2024) (Document ID 202411-211773-01); [Great Plains Tribal Chairmen's Association Letter](#); [White Earth Nation Letter](#) (November 12, 2024) (Document ID 202411-211796-01); and [Yankton Sioux Tribe Letter](#).

Notably, Magellan pointed to the ALJ's determination that it had, "presented credible evidence that the Monument and the catlinite resources will not be at risk from a potential spill."²⁰

Lastly, Magellan emphasized that the Commission considered evidence from the Mille Lacs Band of Ojibwe and the NPS when selecting Route RA-01, which indicated that Route RA-01 avoided areas with known catlinite resources. In addition, other evidence in the record indicated that a route to the east, such as Route RA-03, may have a greater potential for a spill to flow toward the Pipestone National Monument through the county ditch system.

Regarding environmental justice, Magellan referred to the Department of Commerce Energy Environmental Review and Analysis (EERA) response to comments on the CEA, which acknowledged and revised the analysis to state that "impacts to tribal members visiting the catlinite quarries could be considered impacts to a minority community."²¹ Magellan also noted that the administrative law judge determined that environmental justice considerations "[do] not significantly favor or disfavor any of the route alternatives with respect to each other."²²

Staff Discussion

Staff agrees that concerns about pipeline spills and environmental justice issues were thoroughly reviewed during the review process, incorporated into the CEA, and were considered by the Commission. This consideration resulted in the inclusion of several special conditions in the route permit, such as a required cultural and archaeological resource inventory and review process, unanticipated discovery plan update requirements, Pipestone Nation Monument coordination, horizontal directional drill requirements, emergency preparedness drills, and a spill response plan for accidents and spills.

Regarding archeological and cultural resources literature reviews, genesis site considerations, and threatened and endangered species evaluation, staff provides the following:

- As previously referenced in these briefing papers, Appendix B of the CEA, the 2023 Archaeological Investigation, contains a literature and background review of the APR and routes RA-01, RA-02, and RA-03.
- EERA's response to comments on the CEA address the question concerning the Pipestone National Monument as a genesis site and directs readers to Chapter 6.8 of the CEA.

²⁰ [Magellan Answers](#) at 13, Section IV.

²¹ Department of Commerce Response to Comments on the Comparative Environmental Analysis at 79, Response 38 (May 24, 2024) (Document ID 20245-207101-01).

²² [ALJ Report](#), Finding 198.

- Potential project impacts on certain threatened and endangered species are discussed in chapters 6.9.8, 7.4.3, and 9.2.4, and Appendix D of the CEA, along with EERA's CEA Responses to Comments. In addition, the route permit includes special conditions for pre-construction consultation with the DNR and USFWS regarding threatened and endangered species, Minnesota Biological survey sites, and Topeka shiner habitats.

Concerning the claim that the Commission failed to sufficiently consult with Tribes, staff provides that the Commission engaged with Tribes in accordance with its Tribal Engagement/Consultation Policy and sent direct mailings to 30 Tribal governments, both within and beyond Minnesota. These mailings included notifications issued on June 30, 2023, regarding application acceptance and public information meetings; on March 4, 2024, concerning CEA availability and public information meetings; and on April 8, 2024, concerning public and evidentiary hearings. Also, on April 4, 2024, EERA and Commission staff conducted a separate online meeting with the Yankton Sioux Tribe, at their request.

DISCUSSION

Staff believes that the Commission proactively addressed concerns regarding the Pipestone National Monument and American Indian cultural resources in the region, including catlinite, or pipestone, resulting in a well-supported order. The letters from Tribal Governments, Tribal-affiliated organizations, individuals, and other organizations do not raise new issues, identify new evidence, or otherwise demonstrate that the Commission's October 22 Order is unlawful or unreasonable, as previously discussed in these briefing papers.

COMMISSION DECISION OPTIONS

1. Deny the requests for reconsideration of the October 22, 2024 Order.

Or

2. Reconsider the October 22, 2024 Order.

And, if the Commission chooses to reconsider the Order, it may select decision option 3 or 4:

3. Rescind the issuance of the route permit and defer a final permitting decision until a future Commission meeting, to be scheduled after completion of the additional record development identified below.

- A. Require Magellan to complete full cultural and archaeological surveys for the alternative routes RA-01, RA-02, and RA-03, according to the procedures and requirements set forth in ordering paragraph 6 of the October 22, 2024 Order.

And/or

- B. Request that the Minnesota Department of Commerce Energy Environmental Review and Analysis conduct additional environmental review and file a revised CEA within 60 days of the order.

Or

4. Deny a route permit for the Pipestone Reroute Project. Delegate authority to the Executive Secretary to modify the ALJ Report consistent with the Commission's decisions.

Comments Letters from Individuals

Name	Document ID	Date
Elliot Dutcher	202411-211722-01	11/07/2024
Heather Gion	202411-211722-01	11/07/2024
Katie Fritz	202411-211722-01	11/07/2024
Misty Blue	202411-211722-01	11/07/2024
Deanna Durbin	202411-211719-01	11/07/2024
Hannah Mendoza	202411-211715-01	11/07/2024
Kate Anthony	202411-211807-01	11/12/2024
Vanessa Bartley	202411-211807-01	11/12/2024
Christopher Dion	202411-211807-01 202411-211842-09	11/12/2024
Anissa Martin	202411-211807-01	11/12/2024
Russell Dick	202411-211807-01	11/12/2024
Abbey	202411-211820-01	11/12/2024
Amy Brallier	202411-211820-01	11/12/2024
Anya Klepacki	202411-211820-01	11/12/2024
Chelsea Atkins	202411-211820-01	11/12/2024
Jessica Jasso	202411-211820-01	11/12/2024
Jeremiah Taylor	202411-211820-01	11/12/2024
Kayla Mehojah	202411-211820-01	11/12/2024
Mira Cleamey	202411-211820-01	11/12/2024
Peter Pawlowski	202411-211820-01	11/12/2024
Riley Downing	202411-211820-01	11/12/2024
Ashley Wirth-Petrik	202411-211842-01	11/12/2024
Crystal Gogleye	202411-211842-01	11/12/2024
Heather Smith	202411-211842-01	11/12/2024
Kristina Flakowitz	202411-211842-01	11/12/2024
Marissa Galan	202411-211842-01	11/12/2024
Meghan Markson	202411-211842-01	11/12/2024
Ohiyashaw	202411-211842-01	11/12/2024
Rob Beauvais	202411-211842-01	11/12/2024
Shelley Buck	202411-211842-01	11/12/2024
Tallouri	202411-211842-01	11/12/2024
Allison Saum	202411-211820-02	11/12/2024
Breana Jenesse	202411-211820-02	11/12/2024
Chauncy Hinshaw	202411-211820-02	11/12/2024
Emi Lyman	202411-211820-02	11/12/2024
Humberto Martin	202411-211820-02	11/12/2024
Ismar Kadric	202411-211820-02	11/12/2024
Lauren Rynders	202411-211820-02	11/12/2024

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Name	Document ID	Date
Nora Helf	202411-211820-02	11/12/2024
Rosa Vasquez	202411-211820-02	11/12/2024
Tina Nguyen	202411-211820-02	11/12/2024
Amanda Provost	202411-211842-02	11/12/2024
Brittney Wirth-Petrik	202411-211842-02	11/12/2024
Darcy Lopez	202411-211842-02	11/12/2024
George W. Shurr, PhD	202411-211842-02	11/12/2024
Geralynn Ryckman	202411-211842-02	11/12/2024
Jasmine Kaur Gill	202411-211842-02	11/12/2024
Julie Macuga	202411-211842-02	11/12/2024
Kimimila Locke	202411-211842-02	11/12/2024
Korina Barry	202411-211842-02	11/12/2024
Nikki Enersen	202411-211842-02	11/12/2024
Asher Wright	202411-211820-03	11/12/2024
Celeste	202411-211820-03	11/12/2024
Claire Warren	202411-211820-03	11/12/2024
Danielle Fritch	202411-211820-03	11/12/2024
Erick Boustead	202411-211820-03	11/12/2024
Fred Keller	202411-211820-03	11/12/2024
Maria M.	202411-211820-03	11/12/2024
Meg Elaine O'Sheaheimer	202411-211820-03	11/12/2024
Mike Davis	202411-211820-03	11/12/2024
Savana Cate	202411-211820-03	11/12/2024
Adam Rousar	202411-211842-03	11/12/2024
G. Manape LaMere	202411-211842-03	11/12/2024
Juno Kimyo	202411-211842-03	11/12/2024
Mahmud Fitol	202411-211842-03	11/12/2024
Ota Walking Elk	202411-211842-03	11/12/2024
Rob Thomas	202411-211842-03	11/12/2024
Sage Chief	202411-211842-03	11/12/2024
Sigrid Arnott	202411-211842-03	11/12/2024
Sunshine Rose Claymore	202411-211842-03	11/12/2024
August Yellow Bird	202411-211820-04	11/12/2024
Christen McCreavy	202411-211820-04	11/12/2024
Corey Cook	202411-211820-04	11/12/2024
Ilene Christensen	202411-211820-04	11/12/2024
James McCrary	202411-211820-04	11/12/2024
Keeli Siyaka	202411-211820-04	11/12/2024
Lea Foushee	202411-211820-04	11/12/2024
Maggie Daniels	202411-211820-04	11/12/2024
Matthew St. Germain	202411-211820-04	11/12/2024

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Name	Document ID	Date
Reyna Vasquez	202411-211820-04	11/12/2024
Chelsea Crawford	202411-211842-04	11/12/2024
Dr. S. Golenberg	202411-211842-04	11/12/2024
Elizabeth McLister	202411-211842-04	11/12/2024
Jennifer Hart Pappan	202411-211842-04	11/12/2024
Joanne Garlich	202411-211842-04	11/12/2024
Lisa Warbritton	202411-211842-04	11/12/2024
Margaret R. Beegle	202411-211842-04	11/12/2024
Nicole Lewandowski	202411-211842-04	11/12/2024
Wendy Darst	202411-211842-04	11/12/2024
Winona LaDuke	202411-211842-04	11/12/2024
Seeley Bjorkstein	202411-211820-05	11/12/2024
Taylor McCrary	202411-211820-05	11/12/2024
Abigail Ginzburg	202411-211842-05	11/12/2024
Ashley Lane	202411-211842-05	11/12/2024
Deacon DeBoer	202411-211842-05	11/12/2024
Jiselle Renville	202411-211842-05	11/12/2024
Joshua Spitzer	202411-211842-05	11/12/2024
Kylee Warren	202411-211842-05	11/12/2024
Lauren Feden	202411-211842-05	11/12/2024
Leidy Rogers	202411-211842-05	11/12/2024
Paula Antoine	202411-211842-05	11/12/2024
Salvador Valli	202411-211842-05	11/12/2024
Dominique Duenes-Anderson	202411-211842-06	11/12/2024
Elizabeth J. Sandell	202411-211842-06	11/12/2024
Kelly Wolf	202411-211842-06	11/12/2024
Krista Lopnow	202411-211842-06	11/12/2024
Lisa Thul	202411-211842-06	11/12/2024
Maia Bowman	202411-211842-06	11/12/2024
Paula Horne-Mullen	202411-211842-06	11/12/2024
Susan M. Power	202411-211842-06	11/12/2024
Travis Matthew DiFonzo	202411-211842-06	11/12/2024
Angela Weise	202411-211842-08	11/12/2024
Britt Malec	202411-211842-08	11/12/2024
Dawn Rossbach	202411-211842-08	11/12/2024
Julea Renville	202411-211842-08	11/12/2024
Lori Marquardt	202411-211842-08	11/12/2024
Misha LaPlante	202411-211842-08	11/12/2024
Tracy Hauff	202411-211842-08	11/12/2024
Vanessa Polmateer	202411-211842-08	11/12/2024
Wakinyan Wanbli	202411-211842-08	11/12/2024

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Name	Document ID	Date
Warren Giago Jr.	202411-211842-08	11/12/2024
Ashley Harris	202411-211842-07	11/12/2024
Beth Van Dam	202411-211842-07	11/12/2024
Clayton Knight	202411-211842-07	11/12/2024
Ellen Mueller	202411-211842-07	11/12/2024
H. Haynes	202411-211842-07	11/12/2024
Mary Wellington	202411-211842-07	11/12/2024
Pamela Edson	202411-211842-07	11/12/2024
Paula Kostman	202411-211842-07	11/12/2024
Rebecca Ross	202411-211842-07	11/12/2024
Tala Tootosis	202411-211842-07	11/12/2024
The Rev. Holly Halie Thompson	202411-211842-07	11/12/2024
Alexander Good Cane Milk	202411-211842-09	11/12/2024
Bryne Harris	202411-211842-09	11/12/2024
Ellen Z. Sims	202411-211842-09	11/12/2024
Gayatri Narayanan	202411-211842-09	11/12/2024
Holly T. Bird	202411-211842-09	11/12/2024
Jenna Esslinger	202411-211842-09	11/12/2024
Jennifer Weston	202411-211842-09	11/12/2024
Maggie Riegel	202411-211842-09	11/12/2024
Michael Pipestone, MD	202411-211842-09	11/12/2024
Bayard Taylor	202411-211842-10	11/12/2024
Dawn Goodwin	202411-211842-10	11/12/2024
Hannah Obenaus	202411-211842-10	11/12/2024
Kathryne LeMieux	202411-211842-10	11/12/2024
Kody Thul	202411-211842-10	11/12/2024
Laura Mann Hill	202411-211842-10	11/12/2024
Marlena Myles	202411-211842-10	11/12/2024
Marsha A. Weaver	202411-211842-10	11/12/2024
Patricia A Darling	202411-211842-10	11/12/2024
Roberta Haskin	202411-211842-10	11/12/2024
Su Love	202411-211843-01	11/12/2024
Sue Foley	202411-211843-01	11/12/2024
SunRose IronShell	202411-211843-01	11/12/2024
Via Saaverdra	202411-211843-01	11/12/2024
Karen W	202411-211971-01	11/12/2024
Toni Lattimer	202411-211971-01	11/12/2024
Tylor Veldhuizen	202411-211971-01	11/12/2024
Bagone Giizhig	202411-211969-01	11/12/2024
Camille Cournoyer	202411-211969-01	11/12/2024
Cherolyn Fischer	202411-211969-01	11/12/2024

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Name	Document ID	Date
Elyse Coleman	202411-211969-01	11/12/2024
Emily Provost	202411-211969-01	11/12/2024
Hannah Spaid	202411-211969-01	11/12/2024
Jaidyn Rose	202411-211969-01	11/12/2024
James Arpan	202411-211969-01	11/12/2024
Joseph Naytowhow	202411-211969-01	11/12/2024
K J	202411-211969-02	11/12/2024
Karen Locke	202411-211969-02	11/12/2024
Leanna Goose	202411-211969-02	11/12/2024
Leif Taranta	202411-211969-02	11/12/2024
Leonna Kier	202411-211969-02	11/12/2024
Linda L. Marshall	202411-211969-02	11/12/2024
Lisa Skjefte	202411-211969-02	11/12/2024
Madison Beaulieu	202411-211969-02	11/12/2024
Michelle Neubauer	202411-211969-02	11/12/2024
Mishaila Bowman	202411-211969-02	11/12/2024
Pamela Johnson	202411-211969-03	11/12/2024
Rebekah Crisanta de Ybarra	202411-211969-03	11/12/2024
SarahJane Teetzel	202411-211969-03	11/12/2024
Sean Gosiewski	202411-211969-03	11/12/2024
Tee McClenty	202411-211969-03	11/12/2024
Zaniwin Little	202411-211969-03	11/12/2024
Sierra Club North Star Chapter from Members	202411-211869-01	11/13/2024
Natashja de Wolfe	202411-212099-01	11/18/2024