

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

121 Seventh Place East, Suite 350  
St. Paul, Minnesota 55101-2147

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Application for a  
Certificate of Need for the Minnesota  
Pipe Line Reliability Project

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

**REPLY COMMENTS ON  
COMPLETENESS AND PROCESS**

Minnesota Pipe Line Company, LLC (“MPL” or “Company”) submits these Reply Comments to the August 19, 2014 Comments of the Minnesota Department of Commerce, Division of Energy Resources (“Department”) regarding the completeness of MPL’s Certificate of Need Application (“Application”) for the Minnesota Pipe Line Reliability Project (“Project”) and the Department’s procedural recommendations for processing the Application. The Department recommended that the Minnesota Public Utilities Commission (“Commission”) accept the Application as complete upon the submission of certain additional information and that the Commission refer the matter to the Office of Administrative Hearings for contested case proceedings in order to develop a full record and allow for public participation.

As MPL discusses below, while the Application was complete as filed, MPL provides additional information on the issues discussed in the Department comments. Regarding the process to be followed going forward, MPL fully agrees that the

Commission needs a full record and must provide the opportunity for public participation. However, MPL knows of no material facts in dispute at this time that would warrant a contested case proceeding. MPL believes a full record can be developed and public participation can be allowed through the use of an informal comment process should the Commission so desire.

**I. Department Recommendations for Additional Information**

The Department offers five recommendations for additional information from MPL before the Commission deems the Application complete. One of the identified items, the proposed in-service date, was included in the Application. The other four recommendations seek information not required for an Application to be deemed complete, but information that could be requested in discovery. Therefore, MPL provides that information below. MPL discusses each of these five items, in turn.

**A. In-Service Date.**

The Department recommends that MPL provide information regarding the expected in-service date of the Project. The Application states, at page 29:

With major work pending approval of the Certificate of Need process, a construction start date is dependent on the approval date. For planning purposes, January 1, 2016, is targeted as a start date with a full in-service date in the fourth quarter of 2017. Contingency plans may be employed to start construction sooner should the Certificate of Need be granted within the period of one year from application.

The fourth quarter of 2017 continues to be the expected in-service date for the Project.

**B. Historical Nomination Data for the MPL System.**

The Department notes that Minn. R. 7853.0510 “requires information regarding the dates and durations of the contracts with the 25 largest suppliers or shippers to the

pipeline over the past five calendar years.” Consistent with this Rule and with past Applications, *see, e.g.* MPUC Docket No. PL-5/CN-06-02, MPL stated in its Application:

Shippers on the MPL System nominate supply with Enbridge for the transportation of crude oil from Enbridge pipelines, originating from Canadian and North Dakota sources. There are not any contracts related to shipments between MPL and its shippers on the MPL System. Shippers on both systems make monthly nominations to each system according to the provisions in each company’s published tariff accepted by FERC.

The Department now requests that MPL provide “monthly shipper nomination forms for the most recent five years.” While not required by Commission Rule, MPL provides this information under a trade secret designation, as Attachment A to these Reply comments. The information provided in Attachment A properly qualifies for trade secret treatment, pursuant to the Minnesota Data Practices Act, Minn. Stat. § 13.37, as the information: (1) was supplied by MPL, (2) is the subject of efforts by MPL to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. Specifically, the disclosure of the shipper nomination information included in Attachment A could cause substantial economic harm to the shippers on the MPL System and could potentially expose MPL to claims from its shippers for violating § 15 (13) of the Interstate Commerce Act.

### **C. Discussion of State Regulatory Authority**

Regarding the Application's discussion of alternatives to the Project, the Department recommends that MPL "provide additional discussion highlighting what, if any, regulatory authority is available at the state level for the Wood River alternative discussed in Section 7853.0540 [of] the Applicant's Petition." With all due respect, such a discussion is not a completeness issue. Minn. R. 7853.0540 requires Applicants to address the following:

- A. A description of the alternative, including:
  - (1) A discussion of the design and the geographical area affected.
  - (2) An estimate of the in-service date.
  - (3) A discussion of the method of operation.
  - (4) Its cost.
  - (5) Its economic life.
  - (6) Its reliability.

MPL provided all of the required information. Nothing in the Commission's Rules contemplates discussion of "regulatory authority available at the state level" for each alternative identified and discussed. Indeed, alternatives such as the trucking alternative or rail alternative contain no such discussion, nor has any such discussion ever been required. Nonetheless, MPL offers the following additional discussion.

First, MPL notes that it is not the owner of the Wood River Pipeline ("WRPL") and the WRPL alternative is not a reasonable alternative to the Project for all of the reasons stated in the Application. As previously stated, WRPL is owned by Koch

Pipeline Company, L.P. (“KPL”). MPL understands that WRPL was de-inventoried of crude oil and taken out of crude oil service in 2013 because of insufficient shipper demand due primarily to the (a) longer transit time associated with sourcing crude oil on the pipeline and (b) inferior pricing of crude oil accessible to WRPL relative to crude oils accessible to MPL. For the Minnesota Refiners to now receive crude oil from WRPL, the shippers would have to nominate shipments on WRPL. Additionally, when WRPL was in operation, its capacity was 90,000 barrels per day, which does not provide the incremental pumping capacity provided by the Project.

As the Application stated at pages 40-41:

Aside from WRPL’s hydraulic constraints, several market conditions make utilizing WRPL for Minnesota Refineries supply unattractive.

- The crude oil and transportation is more costly than utilizing the MPL System, due largely to the fact that crude oil must travel a significantly longer distance if WRPL were utilized vs. MPL.
- Supplies are not as reliable or ratable due to declining availability of pipeline space to supply WRPL from crude oil sources in Western Canada and the Rocky Mountain Region.
- Higher supply costs have the potential to hurt Minnesota Refiners’ viability vs. other refiners in the region, discouraging future investment in the Minnesota facilities.

For all of those reasons, WRPL is not a practical alternative to the Project.

In asking for a discussion of “what, if any, regulatory authority is available at the state level for the Wood River alternative,” MPL assumes the Department is asking for a discussion of the state regulatory permitting requirements or approvals necessary for this alternative to become viable. As discussed above, the Wood River alternative is not a viable alternative due to economic reasons. Albeit uneconomic, if the WRPL were to be

reconfigured to be able to provide the equivalent of the incremental pumping capacity provided by the Project (185,000 barrels per day), at a minimum MPL believes additional pumping stations and upgrades to existing pump stations would be required, necessitating a Certificate of Need from the Commission. An increase in the pumping capacity of WRPL from 90,000 barrels per day to 185,000 barrels per day in Minnesota would trigger the Commission rule requirement of a Certificate of Need. Therefore, the regulatory process, approval and timing for an increase in pumping capacity on WRPL would be similar to that of the Project with a less viable and less economically appealing result. Further, since WRPL also transverses Iowa, Missouri and Illinois, other state regulatory approvals may be required.

#### **D. Noise Levels**

As the Department notes, MPL has already provided the necessary information regarding expected noise levels in its Application at page 61, as follows:

##### **a) Ongoing Operations**

Noise surveys performed by MPL staff have indicated that the typical pump station generates about 100 decibels of the A-weighted scale (“dBA”) immediately at the pump source. These surveys indicate a noise level of approximately 65 dBA, including surrounding ambient sources, at a distance approximately 100 feet from the pump source.

##### **b) Pump Station Construction**

The heavy equipment needed to construct the pump station facilities will have a short-term impact on noise levels in the vicinity of the construction area. Typical construction equipment (e.g., bulldozers, loaders and backhoes) generates between 80 to 90 dBA within 50 feet of the equipment. This equipment noise will be limited to the period of construction and typically will be limited to daylight hours. Because the pump stations are sited in predominantly rural and undeveloped areas, the general public should experience limited nuisance noise.

The Department stated that an anonymous public comment recently raised a concern regarding the noise levels at an existing MPL pump station and asked for clarification as to whether current and expected noise levels are within levels currently allowed by state and local laws, rules or ordinance. MPL endeavors to maintain good working relationships with all landowners along the MPL System, which includes making sure all noise levels fall within local, county, and state limits. MPL has hired outside subject matter experts to conduct noise surveys and monitor potential noise complaints.

MPL is committed to full compliance with all applicable regulatory requirements, including operating its pump stations in compliance with all applicable noise standards. Historically, noise has not been a common complaint along the MPL System or near its existing pump stations. In the few instances where a concern with noise levels has been raised, MPL has taken the appropriate steps to investigate the source and confirm compliance with local, county and state noise limits.

**E. Clarification of MPL’s Description of the Project**

The Department also recommends that MPL provide additional information regarding its “classification” of the Project as a “reliability project.” Specifically, at page 5 of its Comments, the Department seeks further discussion of how long and how often outages are experienced or may be expected on other pipelines and to elaborate on the Application’s statement the post-Project volume of crude oil reaching the two Minnesota refineries on the MPL System “is not expected to increase *significantly* as a result of the Project.” Application, page 8 (emphasis added by Department).

As noted in the Application, as pipelines age, they require more frequent inspections and maintenance to ensure they remain in good working condition. The duration of this type of work varies based on the inspection method and the extent to which any repair work may be necessary. Therefore, MPL cannot predict with certainty the length or frequency of outages that may be expected on the other pipelines in the MPL System. However, inspection and other maintenance will continue to be performed on the MPL System as it ages, and the reliability provided by this Project will be critical to maintaining the safest pipeline system possible without interruption of crude supplies to the Minnesota Refineries. As an example, a segment of the MPL System was recently out of service for more than 45 days for a hydrostatic test. These tests typically require six months to a year of planning and extensive preparation by refineries in order to minimize the risk of supply disruptions. In this case, the test was completed on schedule and under ideal circumstances with planned refinery maintenance taking place during the test, which reduced demand on the system, and helped allay a possible crude shortage. However, given the current capacity constraints on the MPL System, delays in planned restarts of a pipeline following an inspection, planned maintenance or an unplanned event that takes a pipeline segment out of service could result in a crude oil shortage.

The Department also asked MPL to elaborate on the statement that the actual annual volumes reaching the two Minnesota Refineries is not expected to increase significantly as a result of the Project. The Project as proposed is intended to help maintain reliable crude oil deliveries to Minnesota Refineries based on current and forecasted shipper demand. As stated in the Application, both refineries have become



more efficient and have improved their utilization in recent years, which has increased demand on the MPL System. However, the Project does not contemplate a change in either refinery's nameplate capacity. Therefore, annual volumes are not expected to increase beyond the forecast information presented in the Application.

## **II. Procedural Recommendation**

At page 6 of its comments, the Department notes that “at this juncture, the Department has not identified any disputes as to material facts.” The Department nonetheless suggests three reasons for referring this matter to the Office of Administrative Hearings: (1) issues raised in a different company's pipeline projects; (2) the need to investigate MPL's characterization of this as a reliability project; and (3) the need to investigate the Wood River Alternative. Certainly, the fact that another company may have had material fact issues in their proceedings cannot justify the use of scarce agency resources in a contested case proceeding for a different project proposed by a different Applicant. Regarding the two remaining issues raised by the Department, MPL respectfully suggests that those issues can be fully developed through discovery and an informal process, as has been used in past pumping capacity proceedings. *See, e.g.* PL-9/CN-12-590. Moreover, the public will have full ability to provide comments regardless of the process followed. At the end of this proceeding, the Commission, MPL and the public must have confidence that a full record has been developed and that public input has been provided for. MPL respectfully suggests that those goals can be most efficiently met through an informal process.

## CONCLUSION

For all of the reasons discussed above, MPL respectfully requests that the Commission accept its Application as complete as of the date filed. The Department requested certain additional information which does not go to completeness, but in this Reply MPL has provided the information requested.

Regarding the process to be followed going forward, MPL respectfully suggests that a full record can be developed and public participation can be provided through use of the Commission's informal process.

Dated: August 29, 2014

WINTHROP & WEINSTINE, P.A.

By: /s/ Eric F. Swanson  
Eric F. Swanson

225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota 55402

**ATTORNEYS FOR MINNESOTA PIPE  
LINE COMPANY, LLC**

9450474v1