

REVISED
Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: June 5, 2015Agenda Item **7

Company: North Dakota Pipeline Company LLC

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

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

- Issues:
- Should the Commission authorize recommencement of the route permit application proceedings?
 - Should the Commission reconsider its decision to forward modified system alternative SA-03 to the administrative law judge as part of its August 25, 2014 Order?

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Relevant Documents

Application for a Route PermitNovember 8, 2013
Environmental Information Report.....November 8, 2013
Revised Application for a Route Permit January 31, 2014
Revised Environmental Information Report January 31, 2014
Commission Order – Route Permit Application Completeness February 11, 2014
Commission Order – Comment Deadlines and Separation of ProceedingsJuly 7, 2014
EERA Comments and RecommendationsJuly 17, 2014
Commission Order – Alternatives and Procedural Matters August 25, 2014
Commission Order – Separation of Proceedings and Environmental ReviewOctober 7, 2014
Administrative Law Judge Report (Certificate of Need Proceeding) April 13, 2015

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

I. STATEMENT OF THE ISSUES

- Should the Commission authorize recommencement of the route permit application proceedings?
- Should the Commission reconsider its decision to forward modified system alternative SA-03 to the administrative law judge as part of its August 25, 2014 Order?

II. PROJECT DESCRIPTION

On November 8, 2013, North Dakota Pipeline Company LLC (NDPC) filed an application for a route permit for a new 612-mile pipeline to transport crude oil from its Beaver Lodge Station south of Tioga, North Dakota to an NDPC affiliate terminal in Superior, Wisconsin (Sandpiper Pipeline). Approximately 299 miles of the new pipeline installation would be located in Minnesota. The purpose of the project is to transport crude oil from North Dakota to terminals in Clearbrook, Minnesota and Superior, Wisconsin.

The pipeline route proposed by NDPC begins at the Minnesota-North Dakota border approximately two miles south of Grand Forks, North Dakota and follows Enbridge Energy Partner's existing pipeline right-of-way to Clearbrook, Minnesota. From Clearbrook the route proceeds south and generally follows the existing Minnesota Pipe Line Company right-of-way to Hubbard, Minnesota. From Hubbard the route proceeds east traversing greenfield areas and follows portions of existing electric transmission line and railroad rights-of-way before crossing the Minnesota-Wisconsin border approximately five miles east-southeast of Wrenshall, Minnesota. NDPC's identified route would cross portions of Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin, and Carlton counties.

The route between North Dakota and Clearbrook, Minnesota would be comprised of 75 miles of 24-inch diameter pipeline with a capacity of 225,000 barrels per day (bpd). The route between Clearbrook, Minnesota and Superior, Wisconsin would be comprised of 224 miles of 30-inch diameter pipeline with a capacity of 375,000 bpd. The project also includes adding a new terminal with two 150,000 barrel tanks and a new pump station near the existing terminal at Clearbrook, Minnesota; mainline valves at major waterbody crossings and over the length of the route; a pipeline inspection gauge launcher and receiver traps along with a mainline valve at a site near Pine River, Minnesota.

III. PROCEDURAL HISTORY

On November 8, 2013, NDPC filed a route permit application and an environmental information report for the proposed Sandpiper Pipeline Project.

On January 31, 2014, NDPC filed a revised route permit application and environmental information report. The revised filings indicated that the company had changed its name from Enbridge Pipelines (North Dakota) LLC to NDPC and included information regarding modifications to the proposed route through Carlton County.

On February 11, 2014, the Commission issued an order accepting the route permit application as substantially complete and referred the application to the Office of Administrative Hearings for combined contested case proceeding with the certificate of need application.

Between March 3 and 13, 2014, staff from the Commission and the Minnesota Department of Commerce Energy Environmental Review and Analysis unit (EERA) conducted seven public information meetings in six different counties along NDPC's proposed route.¹ A comment period was open from January 31, 2014 to April 4, 2014, to provide the public an opportunity to comment on potential human and environmental impacts and to suggest alternative pipeline routes to be considered in the comparative environmental analysis to be prepared by EERA.²

On August 7, 2014, the Commission met to consider the selection of alternative routes and route segments for further development in the route permit proceedings.³ As part of its decision, the Commission verbally authorized a 14-day comment period following the August 7th meeting to receive comments concerning further review of eight system alternatives (SA-01 to SA-08) and the legal basis for including one or more system alternative in the certificate of need proceeding, the route proceeding, or both.⁴

On August 25, 2014, the Commission, among other procedural items, issued an order accepting 53 alternative route segments, seven expanded route widths, and modified system alternative SA-03 and forwarded them to the administrative law judge for consideration in the route permit proceedings.

On September 11, 2014, the Commission met to consider the comments received in response to its August 12th notice regarding further consideration of the eight system alternatives. The issues addressed included the appropriate procedural treatment of the system alternatives; the

¹ Public information meetings were held in the following cities: Crookston in Polk County (March 3, 2014); McIntosh in Polk County (March 4, 2014); Clearbrook in Clearwater County (March 4, 2014); Park Rapids in Hubbard County (March 12, 2014); Pine River in Cass County (March 12, 2014); McGregor in Aitkin County (March 13, 2014); and Carlton in Carlton County (March 13, 2014).

² The comment period was later extended to May 30, 2014.

³ EERA staff filed comments and recommendations that summarized the alternative route designation process and identified alternative routes and route segments that it recommended for further consideration in the route permit proceeding. As part of its comments, EERA also identified eight proposals that it classified as system alternatives or routes that were generally separate or independent of the pipeline route proposed by NDPC, and that did not connect to the necessary endpoints, thus resulting in an entirely different project than that proposed by NDPC. EERA did not recommend further evaluation of any of the eight system alternatives.

⁴ A Notice of Comment Period was issued on August 12, 2015.

appropriate environmental review process in the certificate of need proceeding; and the separation of the certificate of need and route permit proceedings.

On October 7, 2014, the Commission issued an order separating the certificate of need and route permit proceedings, postponing action on the route permit application, and authorizing environmental review of six system alternatives (SA-03 to SA-08) in the certificate of need proceedings.

On April 13, 2015, the administrative law judge (ALJ) filed his Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation in the certificate of need proceedings. One of the ALJ’s recommendations was that the Commission only refer the applicant’s proposed project for further proceedings in the routing docket.

IV. STATUTES AND RULES

Under Minn. R. 7852.1400, subp. 1, the Commission is required to accept for consideration at the hearings the routes and route segments proposed by the applicant and may accept for hearing any other route or route segment it considers appropriate for further consideration. Under the rule, no route or route segment will be considered at the hearings unless accepted by the Commission prior to the hearings.

Minn. R. 7852.1500, provides for a comparative environmental analysis of all pipeline routes accepted by the Commission for consideration at the public hearing. The analysis will be prepared by EERA staff. The comparative environmental analysis must be submitted as prefiled testimony under Minn. R. 1405.1900.

V. RECOMMENCING THE ROUTE APPLICATION PROCEEDINGS

In its October 7, 2014 Order, the Commission found good cause to postpone action on the route permit application until a decision on the associated certificate of need is made. Accordingly, the Commission also extended the deadline for its decision on the route permit. Thus, pending the decision on the certificate of need, staff finds that an order from the Commission authorizing recommencement of the route proceedings would benefit the record. If anything, it would provide a solid re-start date with which to manage the procedural schedule.

Following are the procedural milestones that have been completed and still remain in the route permit proceedings:

Application Accepted as Complete..... February 11, 2014
Information Meetings..... March 3-13, 2014

Acceptance of Route Alternatives August 25, 2014
 Postponement of Route Permit Application Proceedings October 7, 2014
 Prehearing Scheduling Conference Update TBD
 Preparation and Submission of Comparative Environmental Analysis TBD
 Public and Evidentiary Hearings TBD
 Commission Decision TBD

VI. RECONSIDERATION OF ROUTE ALTERNATIVE SA-03-AM

In its August 25, 2014 Order, the Commission referred 53 alternative route segments, seven expanded route widths, and modified system alternative SA-03 for development in the route permit proceedings in accordance with Minn. R. 7852.1400, subp. 1. However, during the certificate of need proceeding SA-03-AM was an alternative that was considered and analyzed with other alternatives. A substantial amount of information on SA-03-AM was assembled in that record. Subsequently, the administrative law judge in his Report on the certificate of need application made a recommendation that the Commission, “Refer only the proposed project, SA-Applicant, for further proceedings in the routing docket.”

In light of the ALJ’s recommendation, the information compiled, and the exceptions by parties in the certificate of need proceeding, staff found it appropriate for the Commission to reconsider its decision to refer SA-03-AM as an alternative route. Ultimately, the decision on the further analysis of SA-03-AM in the routing docket depends on the decision made by the Commission in the certificate of need docket. The following options were recommended to the Commission:

- Adopt the findings and conclusions of the ALJ in the certificate of need matter. If this decision was made the Commission essentially agreed with the ALJ’s conclusion and recommendations that SA-03-AM is not a more reasonable and prudent alternative than the proposed project. Consequently, there would be no reason to review the alternative in the routing docket. Thus, the Commission should reconsider its August 25th Order and remove SA-03-AM for further consideration.
- Adopt the findings related to SA-03-AM, reject Recommendation No. 2. and amend Conclusion No. 5 to remove mention of SA-03-AM. This option would require the Commission to make a decision on the further analysis of SA-03-AM in the routing docket considering the information compiled in the certificate of need docket. The Commission would, therefore, need to reconsider its August 25th Order with regard to SA-03-AM.
- Follow the recommendations of DER and EERA that would eliminate all findings and amend certain conclusions and recommendations related to SA-03-AM. This option

would remove mention of SA-03-AM as an alternative that is less reasonable and prudent than the proposed route. Thus, the Commission would not be required to reconsider its August 25th Order because the certificate of need findings, conclusions, and recommendations would not indicate such.

VII. PROCEDURAL CONSIDERATIONS

The Commission received letters from the Mille Lacs Band of Ojibwe⁵ and the White Earth Band of Ojibwe.⁶ The two letters were similar in content and requested the Commission postpone its decision on the certificate of need.⁷ The letters also indicated concerns related to the routing of the proposed pipeline such as the potential risks to surface and groundwater from leaks and spills; potential risks to wild rice lakes and streams; the proper identification of historic and culturally significant lands; and the need for public hearings on a reservation.

VIII. STAFF COMMENTS

The table below provides a comparison of the applicants proposed route with SA-03-AM using information from the certificate of need record. The available information shows that SA-03-AM compares less favorable to the proposed route in several categories. It is not clear to staff whether further analysis SA-03-AM would lead to any new information that would change its standing when compared to the applicants proposed. However, the routing process may benefit from a route comparison; and EERA, the Department of Natural Resources, and the Minnesota Pollution Control Agency believe further analysis is warranted.

TABLE 1
Feature Comparison Table – Proposed Route and SA-03-AM

			Proposed Route	SA-03-AM
Feature	State	Unit	Two-Mile-Wide Study Area	
Total Length	ND, MN, WI	miles	612	701
Total Counties Crossed	ND, MN, WI	number	21 (10 MN)	25 (14 MN)
Cities	ND, MN, WI	number	19	35
Population Density	ND, MN, WI	number	20,252	53,919
High Consequence Areas (HCA)	ND, MN, WI	number	214	330

⁵ Mille Lacs Band of Ojibwe Letter, May 27, 2014, Document ID 20155-110946-02.

⁶ White Earth Band of Ojibwe, June 1, 2015, Document ID 20156-111007-01.

⁷ The Commission considered a similar request made by Honor the Earth in the certificate of need docket.

			Proposed Route	SA-03-AM
Feature	State	Unit	Two-Mile-Wide Study Area	
Valves Required	ND, MN, WI	number	38	53
Cost	ND, MN, WI	number	\$2.6 billion	\$2.85 billion
Private Lands ^a	MN	acres	282,251	466,524
State Lands	MN	acres	38,314	20,728
Federal Lands ^b	ND, MN, WI	acres	2,039	3,839
Tribal Lands	ND, MN	acres	325	707
Farmland ^c	ND, MN, WI	acres	442,467	466,674
Karst Topography	ND, MN	acres	9,405	49,157
Active Mineral Leases	MN	acres	4,075	0
USGS Watershed Boundaries	ND, MN, WI	number	23	27
PWI Wetlands	MN	acres	1,899	3,380
NWI Wetlands	ND, MN, WI	acres	132,754	143,465
PWI Streams	MN	miles	251	432
Shallow Lakes	MN	acres	6,179	3,912
Drinking Water Supply Mgmt. Areas	MN	number	6	18
Public Water Supply Wells	MN	number	55	161
Wildlife Management Areas	MN	acres	4,817	2,463
Scientific and Natural Areas	MN	acres	0	1,138
Yearly Power Consumption	ND, MN, WI	MWh/yr	130,804	166,757
Annual Green House Gas Emissions	ND, MN, WI	Tons CO ₂ e/yr	85,770	109,344

Sources:

Office of Administrative Hearings, *Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation* (April 2015), Sandpiper Certificate of Need (Docket 13-473).

North Dakota Pipeline Company, *System Alternatives Analysis Report* (January 2015), Sandpiper Certificate of Need (Docket 13-473).

Notes:

a = Private, Conservancy, Industrial, and Non-Industrial

b = National Wildlife Refuge; Fish and Wildlife Service; Bureau of Land Management; National Park Service; and Department of Defense

c = Prime Farmland, Farmland of Local Importance, Farmland of State Importance, and Prime Farmland (if drained)
 HCA = High Consequence Areas are defined in 49 C.F.R. Part 195.450 as high population or other populated areas, commercially navigable waterways, as well as unusually sensitive areas.

COMMISSION DECISION ALTERNATIVES

A. Pipeline Route Permit Proceedings

1. Order the continuation of the pipeline route permit application proceedings.
2. Take some other action deemed appropriate.

B. Alternative Route SA-03-AM

1. Reaffirm the August 25, 2014 Order referring alternative route SA-03-AM to the administrative law judge for consideration at the contested case hearings.
2. Remove alternative route SA-03-AM from further consideration at the contested case hearings.
3. Take some other action deemed appropriate.

C. Procedural Considerations

1. Request that the administrative law judge consider holding one of the required public hearings in a location along the proposed route within or near an Indian reservation.
2. Request the Department of Commerce consider the concerns of Indian tribal governments when preparing the comparative environmental analysis.