

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
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Chair
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In the Matter of the Application of
North Dakota Pipeline Company
LLC, for a Certificate of Need for the
Sandpiper Pipeline Project In
Minnesota

OAH Dkt No. 8-2500-31260
PUC Dkt No. PL-6668/CN-13-473

**EXCEPTIONS OF HONOR THE EARTH
TO FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION
OF THE ADMINISTRATIVE LAW JUDGE**

To: The Public Utilities Commission (PUC)

Honor the Earth opposes the application by Enbridge n/k/a NDPC for a Certificate of Need for the Sandpiper crude oil pipeline because there is no direct benefit for Minnesota, great uncertainty as to market forces for the actual need for Bakken crude to be viable and most importantly, certain environmental degradation

and damage will inevitably occur, repeatedly, based on past history, then resulting corridor developments, further expansions and Murphy's Law. Thus, there is not a Need by Minnesotans or Minnesota for the pipeline, but instead *the Need* is for the oil producers and refiners in other states the proposed pipeline will serve.

I. INTRODUCTION

Pursuant to Minn. Stat. § 14.61 and Minn. R. part 7829.2700, Honor *the Earth* ("HTE") respectfully files these Exceptions to the Findings of Fact, Conclusions, and Recommendation ("Report") of the Administrative Law Judge ("ALJ"), dated April 13, 2015, with regard to the application by Enbridge n/k/a NDPC for a Certificate of Need for the Sandpiper crude oil pipeline project. ("Project").

II. EXCEPTIONS

In the following exceptions, *Honor the Earth* identifies some of the findings and recommendations in the ALJ's Report that were either not supported by the record or do not sufficiently or accurately reference the evidence in the record. Due to our very substantial disagreement with the ALJ Report over the outcome of this proceeding and limited time, *Honor the Earth* not attempted to identify every statement in the ALJ Report with which we disagree.

Instead, we have prioritized our exceptions on key issues. *Honor the Earth*

takes exception to all statements in the ALJ Report that are in conflict with statements in our Post-Hearing and Reply Briefs, and those of other environmental intervenors. In particular, *Honor the Earth* takes exception with a series of findings which are NIMBY (Not In My Back Yard) based metro-serving criteria, instead of consideration of environmental and social justice for the clean water every single living creature NEEDS and Anishinabe or Chippewa treaty rights, values, customs and traditions protected by federal laws. Instead the Report asserts that

(d) Effect of the No-Build alternative on the social economic environment

485. Under the No-Build Alternative, Minnesota and the surrounding region would not realize the economic benefits of the project, as detailed in section V.B.1(d).

(e) Reliability of the no build alternative.

486. The No Action Alternative is less reliable than the Project because producers and shippers would be required to utilize transportation methods that have lower capacity, higher costs, and greater risks. The alternatives for shippers delivering into the NDPC system would be to: (1) send the increased Bakken production to refineries outside North Dakota by truck or rail; (2) transport crude oil aboard non-NDPC Pipeline systems that are also at capacity and subject to apportionment; and (3) hope that new pipelines are constructed. These options do not improve the reliability of transportation.

487. Additionally, without the Project, Minnesota refineries would lose the benefits of redundant capacity adjacent line 81.

12. Relative risks and benefits among alternatives

488. NDPC developed the project application after consultations with shippers and refiners and through careful evaluation of alternatives and regional infrastructure. The proposed project meets its shippers near-term transportation requirements.

489. The project also provides scalable capacity expansions to address future demand for Bakken crude oil.

490. The project will make efficient use of resources, including existing pipeline infrastructure.

491. The project will result in significant economic benefits to Minnesota, generally, and financially-distressed counties in greater Minnesota, in particular.

492. In general, the longer the pipeline route, the more power that is required to transport the crude oil on the pipeline. Therefore, the length of the pipeline is directly related to the production of emissions by that route.

493. Because the preferred route is the shortest, it has fewer associated facilities, smaller power consumption and lower greenhouse gas and air emissions than the alternatives.

494. The preferred route carefully balances applicable environmental, engineering and construction standards.

495. The proposed project provides a mode of transporting Bakken crude oil to refineries in Pad 2 that is safer, more cost-effective, and with fewer environmental impacts.

496. The rail alternative is not a reasonable alternative to the project.

497. The truck alternative is not a reasonable alternative to the project.

498. Each system alternative obliges greater capital cost, operational cost, and delay before being placed into service in comparison to the project.

499. Each system alternative study area contains more cities, counties, populated areas, residences, structures, schools, churches, cemeteries, wind turbines, railroads, roads, and communication towers in the preferred route study area. The system alternatives are more likely to impact privately owned, federal and tribal land. Each system Alternative contains more conservation easements than the preferred route study area.

500. Each pipeline alternative presents the potential for impact to lakes and groundwater. . .

(See ALJ Report to the PUC, dated April 13, 2015, pp. 73-77, footnotes omitted).

Here in the northland of Minnesota, clean water and clean air are not considered alternatives but the actual NEED, for life, eco-tourism and often the cure for what ails folks from excessive civilization. Out of sight is out of mind, until your senses are shocked by unconscionable and unstoppable crude oil destruction, and can never forget the images now forever iconic: Exxon Valdez, Kalamazoo River, Gulf of Mexico BP spill, etc.

Item 485 suggests *anything is better than nothing* as “Minnesota and the surrounding region would not realize the economic benefits of the project?” DOC,

EERC witness Adam Heinen testified that there were “no direct benefits to Minnesota”, aside from construction for the Project, few if any new, permanent jobs. The future is today, and Line 3 is abandonment and new route for 60 some years? Cumulative impacts must be considered in the real world.

Item 486 or the “No Action Alternative is less reliable . . . because producers and shippers would be required to utilize transportation methods that have lower capacity, higher costs, and greater risks.” Or in other words, without a free ride through Minnesota’s lakes and rivers, wild rice and aquifers, Enbridge might lose profits and business to competitors or discover the Bakken crude is not worth all the extreme extraction costs, much less transportation costs.

Item 487 is a back-up benefit to producers and refiners suggesting that “without the Project, Minnesota refineries would lose the benefits of redundant capacity adjacent line 81.” In the benefit cost world, this is where the ALJ should identify and consider the redundant pollution/spill capacity of Line 3 and Kalamazoo-like tar sands environmental risks, as well. Unless this is just a one-sided, need analysis for producers and refiners?

Item 489 clearly reveals the expected development of a new, expandable crude oil pipeline corridor to address future demand for Bakken crude oil. Again, no direct benefits to Minnesota, only increased environmental risks.

Item 490 is only true if Minnesota, the PUC and all of the Creator's living creatures ignore future corridor development and expansion and Line 3 abandonment, as the ALJ found reasonable.

Item 491 suggests that in the absence of direct benefits like permanent jobs, *the project will result in significant economic benefits to Minnesota, generally, and financially-distressed counties in greater Minnesota, in particular.* Translated locally to mean that many current county commissioners will accept free cash compensation now for certain on-going risks and future damages they hope will be solved and paid for after they leave office.

Item 492 and 493 is the Pipeline Axiom "the longer the pipeline route, the more power that is required to transport the crude oil on the pipeline. Therefore, the length of the pipeline is directly related to the production of emissions by that route . . . [the shortest route] has fewer associated facilities, smaller power consumption and lower greenhouse gas any air emissions than the alternatives.

Here, protecting the clean fresh water lakes, rivers, wetlands, wild rice areas and aquifers are second to clean(er) air and bad emissions, because all living things need air with lower emissions. Again, *Honor the Earth* argues NO pipeline means less power, no less emissions AND clean, fresh water resources. And later no spills, leaks and destroyed ecosystems or pipelines to abandon. Forethought

versus after-thought.

Item 494 is just Enbridge saying “the preferred route carefully balances applicable environmental, engineering and construction standards” and does not make it any truer or certain than Kalamazoo, etc.

Item 495 *et seq* are more of the same, shorter is best environmentally, especially the no-build alternative.

Item 499 states “The system alternatives are more likely to impact privately owned, federal and tribal land. Each system Alternative contains more conservation easements than the preferred route study area.” This is true if you ignore the **I-29/94 Alternative** which *Honor the Earth* proposed a year ago. Using the I-94 Interstate corridor completely avoids privately owned, federal and tribal lands and avoids all of the threatened lakes, rivers, wetlands and aquifers north of I-94, all the way down to the Twin Cities. Wisconsin has more interest in Enbridge reaching Superior and can accommodate if it desires. Put another way, a smart corridor for ultra-dangerous activities to avoid three (3) of the most significant watersheds of the North American continent where millions of Americans get their drinking water every day.

The I-29 and I-94 Alternative Sandpiper Route mostly skirts the western and southern Chippewa ceded territories in Minnesota and keeps potential oil spills

away from 1) the Red River to Hudson Bay, 2) the Mississippi River to the Gulf of Mexico and 3) the St Louis River and other tributaries to Lake Superior to the Atlantic Ocean. Avoiding these areas provides the best safety for the tremendous fresh water resources, wild rice, fisheries and tourism we all rely upon in Minnesota and downstream currently.

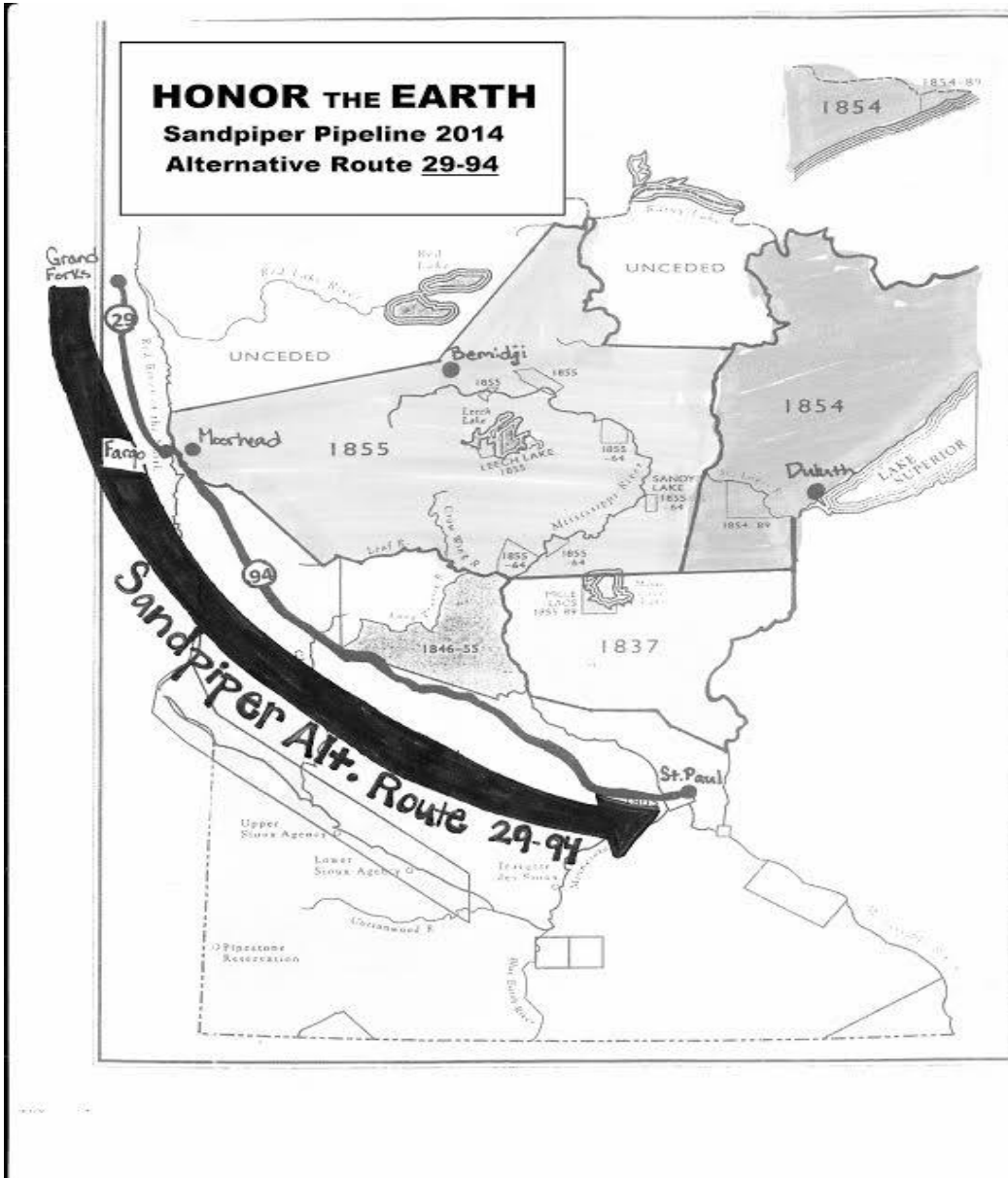
Honor the Earth opposes the proposed Sandpiper Route and System Alternatives (except I-29/94 see map next page) because

Perhaps the most problematic aspect of the design of this proposed route is the continued expansion of terminal capacity at the Clearbrook location. Any pipelines that are built to transport material out of the Clearbrook terminal are forced to enter the largest concentration of lakes, streams, and open-water wetlands in the state. Any route proposed out of Clearbrook, either south or east will cross dense expanses of open waters. A northern to eastern route from Clearbrook would cross massive wetland complexes and areas with stands of wild rice. If future, new terminals, were to be constructed in western Polk (could collect from Canada or North Dakota), Kittson (could collect from Canada or North Dakota) or even Clay counties (North Dakota) the creation a route proposal that avoids the greatest concentration of surface waters becomes feasible.

(See MPCA Comments—Supplemental Comments Replacing MPCA Letter dated May 30, 2014, at p. 15, filed with PUC as Doc 20146-100780-01. Emphasis added).

Minnesota Rule 7852.0100, subpart 3, defines “Route” as the proposed

location of a pipeline between two end points. *Honor the Earth* understands that the proposed route wants to pass through Minnesota, and NDPC or Enbridge is requiring a pump-station (that can easily be placed somewhere else along the pipeline) in Clearbrook, Minnesota as part of “The Project”.



Honor the Earth, 13-473 Sandpiper
Exceptions to ALJ Report to PUC dated April 13, 2015.
April 28, 2015, p. 10.

III. ALTERNATIVES?

Beyond all of the logical, solar, wind and water renewable energy Minnesota should be encouraging, there are presently four projects impacting aquatic natural resources and the environment of northern Minnesota. Sandpiper and Line 3 are just the beginning of what Enbridge wants to be their next established pipeline corridor. Enbridge has made it clear that if Clearbrook is not included, that is not “the Project” they are trying to create.

The sandpiper pipeline project will only pose long-term environmental and economic threats for Minnesota with no direct benefits. So what would be the good reason for granting a permit when we can see in our lifetime already the spills and damages from the pipelines that already are old and according to Enbridge need replacement (with abandonment?)

What is the reason that both pipeline projects and potential for maximum barrels per day are not considered in an environmental impact statement or what 6-8 pipelines might do over the course of the next 50 years? This is the very problem the applicant Enbridge or NDPC has with its present U.S. Highway 2 mainline corridor and the Enbridge solution seems to be new pipe with no direct benefits to Minnesota?

No parts of this arrangement make any sense and we have other choices and

applications presently before the Public Utilities Commission that accomplish essentially the same incremental transmission of oil per day. Let us not rush to a hasty decision that is certain to compound the present oil pipeline problems we have now. For these logical reasons *Honor the Earth* takes great exception the Report and verily believes that the certificate of need should be denied.

CONCLUSION

Based upon the ALJ Report to the PUC, files, records, exhibits and testimony, and for the foregoing reasons, *Honor the Earth* respectfully takes exception and requests that the Report be deemed incomplete, overbroad and vague and therefore an unreliable basis for granting Enbridge's Application for a Certificate of Need for the Project which must therefore be denied.

Respectfully submitted April 28, 2015.

/s/ Frank Bibeau

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