

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 NORTH ROBERT STREET
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**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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Beverly Jones Heydinger
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John Tuma

Chair
Vice Chair
Commissioner
Commissioner
Commissioner

IN THE MATTER OF THE APPLICATION
OF MINNESOTA PIPE LINE COMPANY,
LLC FOR A CERTIFICATE OF NEED FOR
THE MINNESOTA PIPE LINE
RELIABILITY PROJECT TO INCREASE
PUMPING CAPACITY ON THE LINE 4
CRUDE OIL PIPELINE IN HUBBARD,
WADENA, MORRISON, MEEKER,
MCLEOD AND SCOTT COUNTIES

Docket No. PL5/CN-14-320

OAH Docket No. 68-2500-31889

**REPLY BRIEF OF THE MINNESOTA
DEPARTMENT OF COMMERCE**

April 23, 2015

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INTRODUCTION

The Minnesota Department of Commerce, Division of Energy Resources (“Department” or “DOC”) respectfully submits this Reply Brief to provide the Administrative Law Judge (“ALJ”) and the Minnesota Public Utilities Commission (“Commission”) with analysis of the facts and law pertaining to the request for a Certificate of Need (“CN”) for the Minnesota Pipe Line Reliability Project (the “Project”), filed by the Minnesota Pipe Line Company, LLC (“MPL” or “Applicant” or “Company”). While the Department continues to rely on the discussion and analysis provided in its Initial Brief, the Department provides limited additional response to arguments set forth in MPL’s Initial Brief.

In this case, the Department concludes, after analysis of the record under Minnesota Rules part 7853.0130 and Minnesota Statutes section 216B.243, subdivision 3, that the proposed Project is needed in Minnesota, neighboring states, and the region and that a more reasonable and prudent alternative has not been demonstrated. Therefore, the Department recommends that the Commission approve the proposed Project and grant MPL a CN. In addition, the Department recommends that, to the extent total energy use on the MPL System increases, the Commission should condition its approval on requiring MPL to generate a kWh of renewable energy for every incremental kWh of energy consumed by the project. MPL can do so by purchasing green power or Renewable Energy Credits (“RECs”) that are tracked and retired through the Midwest Renewable Energy Tracking System (“MRETS”), or participating in other programs to offset the incremental energy it consumes at the Project’s pump stations. In addition, the Commission should require MPL to conserve an acre for every acre of natural habitat protected, plant a tree for every tree that must be removed to build new facilities.

While MPL agrees that it has met its burden of proof under the CN criteria, it disagrees with the Department’s neutral footprint conditions.

ANALYSIS

I. THE DEPARTMENT'S RESPONSE TO MPL'S ARGUMENT THAT THE COMMISSION DOES NOT HAVE AUTHORITY TO CONDITION THE GRANTING OF A CERTIFICATE OF NEED

The Department concluded that MPL satisfied its burden of proof under the CN criteria for a large petroleum pipeline. Minn. Stat. § 216B.243, subd. 3 (2014); Minn. R. 7853.0130 (2013); however, the Department and MPL differ on whether the Commission has the authority to place conditions on a CN. As MPL wrote in its initial brief: “Indeed, nothing in Minnesota law provides authority for the Commission to require additional actions by an applicant once that applicant has already established that its project passes muster under the Commission’s criteria for granting a CON.” MPL Initial Br. at 47. As discussed in more detail, below, MPL is simply not correct.

The Minnesota legislature conferred the authority to approve applications for CNs for large energy facilities to the Commission. *See* Minn. Stat. § 216B.243 (2014). Among other things, the legislature required the Commission to adopt criteria to assist it in evaluating a CN application, and “[n]o large energy facility shall be sited or constructed” without a CN. *Id.*, subd. 1, 2. Regarding large petroleum pipelines, such as in this proceeding, the Commission adopted the assessment criteria found in Minnesota Rules Chapter 7853. Minn. R. 7853.0130 (2013).

The CN criteria, itself, speaks of making “suitable modifications” to a proposed project in multiple criteria, in order to evaluate if or how a proposed project may meet an objective. *See* Minn. R. 7853.0130(A)(5), (C)(1)–(4) (2013). It follows that the Commission has the authority to make a suitable modification to a proposed project in order to make the “consequences to society . . . more favorable than the consequences of denying the certificate” Minn. R. 7853.0130(C).

Moreover, regarding the Department's recommended conditions, the following components of the criteria require consideration of the effects of the proposed facility on the environment:

7853.0130 B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant, considering . . . (3) the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives;

...

7853.0130 C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering . . .

(2): the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility; [and]

(4): socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality.

The conditions recommended by the Department, in this proceeding, minimize the negative effects of the proposed project on the natural and socioeconomic environments and modify the proposed Project to enhance environmental quality.

In addition, regarding conditioning the issuance of a CN, the Commission's position that it possesses such authority could not be more clear: "Issuance of a certificate may be made contingent upon modifications required by the commission." Minn. R. 7853.0800, subp. 1 (2013). Under this subpart, aptly named "authority of the commission," MPL's argument that the Commission does not have authority to condition issuance of a CN in this matter on adoption of the Department's neutral footprint policy is unfounded. Importantly, this authority to condition the issuance of a CN is consistent with the substantial authority the legislature has

vested in the Commission in matters involving public utilities and large energy facilities. *See* Minn. Stat. §§ 216B.08, 216B.2421, 216B.243 (2014).

II. THE DEPARTMENT’S RECOMMENDATION IS CONSISTENT WITH STATE ENVIRONMENTAL POLICY PLANNING AND GOALS

It is the policy of this state to encourage energy conservation and the use of renewable energy:

The legislature finds and declares that continued growth and demand for energy will cause severe social and economic dislocations, and that the state has a vital interest in providing for: increased efficiency in energy consumption, the development and use of renewable energy resources wherever possible, and the creation of an effective energy forecasting, planning, and education program.

Minn. Stat. § 216C.05, subd. 1 (2014). The Department has the authority to enforce state energy and conservation policies. Minn. Stat. § 216C.08 (2014). Moreover, the Department is “responsible for the enforcement of chapters 216A, 216B and 237 and the orders of the commission issued pursuant to those chapters.” Minn. Stat. § 216A.07, subd. 2 (2014). In this role, the Department represents the overall public interest and makes recommendations to serve all members of the public. The Department also has the authority to “intervene as a party in all proceedings before the commission.” Minn. Stat. § 216A.07, subd. 3 (2014). To the extent that energy use on the MPL System increases, the Department’s recommendation in this matter furthers important state-policy goals and, as indicated above, the Commission has the authority to adopt it.

The record supports the Department’s recommendation, as presented in its Initial Brief, and the Department recommends its adoption.

CONCLUSION

As indicated in its Initial Brief, the Department concludes, after analysis of the record under Minnesota Rules part 7853.0130 and Minnesota Statutes section 216B.243, subdivision 3, that the proposed Project is needed in Minnesota, neighboring states, and the region and that a more reasonable and prudent alternative has not been demonstrated. Therefore, the Department recommends that the Commission approve the proposed Project and grant MPL a CN. In addition, the Department recommends that to the extent energy use on the MPL System increases, the Commission should condition its approval on requiring MPL to generate a kWh of renewable energy for every incremental kWh of energy consumed by the project. MPL can do so by purchasing green power or RECs that are tracked and retired through MRETS, or participating in other programs to offset the incremental energy it consumes at the Project's pump stations. In addition, the Commission should require MPL to conserve an acre for every acre of natural habitat protected, plant a tree for every tree that must be removed to build new facilities.

Dated: April 23, 2015

Respectfully submitted,

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