

November 18, 2024

VIA E-FILING

Mr. William Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, MN 55101-2147

**Re: 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.
OAH Docket No. 28-2500-39436
MPUC Docket No. IP-7109/PPL-23-109**

Dear Mr. Seuffert:

Magellan Pipeline Company, L.P. (“Magellan”) respectfully submits this answer to the petitions for reconsideration.

This answer has been e-filed through www.edocket.state.mn.us. A copy of this filing is also being served upon the persons on the Official Service List of record.

Please let me know if you have any questions regarding this filing.

Sincerely,

FREDRIKSON & BYRON, P.A.



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**STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Katie Sieben
Hwikwon Ham
Valerie Means
Joseph Sullivan
John Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

**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**

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OAH Docket No. 28-2500-39436

**MAGELLAN PIPELINE COMPANY, L.P.'S
ANSWER TO PETITIONS FOR
RECONSIDERATION**

INTRODUCTION

Magellan Pipeline Company, L.P. (Magellan) submits this answer to the petitions for reconsideration (Petitions) of the Minnesota Public Utilities Commission's (Commission) October 22, 2024 Order Adopting the Administrative Law Judge Report as Modified, Issuing Route Permit, and Requiring Cultural and Archeological Survey (Order).¹ The Commission

¹ Petitions were filed by: the Yankton Sioux Tribe (Nov. 8, 2024); the Santee Sioux Nation (Nov. 12, 2024); the Lower Brule Sioux Tribe (Nov. 12, 2024); the Rosebud Sioux Tribe (Nov. 12, 2024); the Brave Heart Society (Nov. 12, 2024); the White Earth Nation (Nov. 12, 2024); the Lower Sioux Indian Community in the State of Minnesota (Nov. 12, 2024); and the Cheyenne River Sioux (Nov. 12, 2024); the Flandreau Santee Sioux Tribe (Nov. 13, 2024); United Tribes of North Dakota (Nov. 13, 2024); Great Plains Tribal Chairmen's Association (Nov. 13, 2024). Several commenters added resolutions and comments of support for the motion for reconsideration including the Standing Rock Sioux Tribe, the Shakopee Mdewakanton Sioux Community, the Otoe Missouria Tribe of Indians, the Prairie Island Indian Community, the Sierra Club North Star Chapter. *See also* Public Comments – Batch 1 (Nov. 7, 2024) (eDocket No. 202411-211722-01); Public Comment – Deanna Durben (Nov. 7, 2024) (eDocket No. 202411-211719-01); Public Comment – Hannah Mendoza (Nov. 7, 2024) (eDocket No. 202411-211715-01); Public Comment – Batch 1 (Nov. 12, 2024) (eDocket No. 202411-211820-01); Public Comment – Batch 2 (Nov. 12, 2024) (eDocket No. 202411-211820-02); Public Comment – Batch 3 (Nov. 12, 2024) (eDocket No. 202411-211820-03); Public Comment – Batch 4 (Nov. 12, 2024) (eDocket No. 202411-211820-04); Public Comment – Batch 5 (Nov. 12, 2024) (eDocket No. 202411-211820-05); Public

thoroughly considered the impact of the pipeline on the Pipestone National Monument and resources of importance to American Indians, including catlinite, or pipestone, before selecting a route and issuing a route permit. Indeed, the Commission’s Order thoughtfully and proactively addressed the issues raised in the Petitions based upon a robust record. Because the Petitions do not raise new issues, point to new evidence, or otherwise show that the Commission’s Order is unlawful or unreasonable, Magellan respectfully requests that the Petitions be denied.

LEGAL STANDARD

A petition for reconsideration must be timely filed and must specifically set forth the grounds for rehearing.² The Commission “may reverse, change, modify, or suspend” its original decision only if “the original decision, order, or determination is in any respect unlawful or unreasonable.”³ Generally, the Commission will review petitions for reconsideration to determine 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

Comment – Batch 1 (Nov. 12, 2024) (eDocket No. 202411-211842-01); Public Comment – Batch 2 (Nov. 12, 2024) (eDocket No. 202411-211842-02); Public Comment – Batch 3 (Nov. 12, 2024) (eDocket No. 202411-211842-03); Public Comment – Batch 4 (Nov. 12, 2024) (eDocket No. 202411-211842-04); Public Comment – Batch 5 (Nov. 12, 2024) (eDocket No. 202411-211842-05); Public Comment – Batch 6 (Nov. 12, 2024) (eDocket No. 202411-211842-06); Public Comment – Batch 8 (Nov. 12, 2024) (eDocket No. 202411-211842-07); Public Comment – Batch 7 (Nov. 12, 2024) (eDocket No. 202411-211842-08); Public Comment – Batch 9 (Nov. 12, 2024) (eDocket No. 202411-211842-09); Public Comment – Batch 10 (Nov. 12, 2024) (eDocket No. 202411-211842-10); Public Comment – Batch 11 (Nov. 12, 2024) (eDocket No. 202411-211843-01); Public Comment – Batch 1 (Nov. 12, 2024) (eDocket No. 202411-211807-01) (collectively, authors of these Petitions, Resolutions, and Comments are referred to as “Petitioners”).

² Minn. Stat. § 216B.27, subd. 2; *see also* Minn. R. 7829.3000, subp. 2.

³ Minn. Stat. § 216B.27, subd. 3; *see also* Minn. Stat. § 14.69 (providing that, on appeal, a reviewing court may affirm an agency decision unless, among other things, it is not supported by substantial evidence or is arbitrary or capricious).

should rethink its decision.⁴ The Commission may decide on a petition for reconsideration with or without a hearing and oral argument.⁵

DISCUSSION

In general, Petitioners focus on potential impacts on the Pipestone National Monument (the Monument), and American Indian cultural resources, including catlinite, that may be outside the Monument area.⁶ In many instances, Petitioners seek outcomes the Commission cannot legally reach. Nevertheless, the Commission thoroughly and consistently addressed these concerns throughout the proceeding, culminating in the Commission's Order, which carefully accounted for these concerns and is supported by substantial evidence in the record. Petitioners do not raise new issues or evidence, expose errors, or provide reasons to rethink the decision. Accordingly, the Commission should deny the Petitions.

I. ISSUANCE OF A ROUTE PERMIT IS LAWFUL AND SUPPORTED BY SUBSTANTIAL EVIDENCE.

Several Petitioners ask the Commission to reconsider and to ultimately deny the route permit. The statutes and rules governing route permits do not provide a basis for the Commission to deny a route permit. Minn. Stat. § 216G.02 governs routing of petroleum pipelines. It requires the Commission to:

provide a procedure that the commission will follow in issuing pipeline routing permits and require the commission to issue the permits within nine months after the permit application is received

⁴ See, e.g., *In the Matter of the Formal Complaint and Request for Relief by the Minnesota Solar Advocates*, MPUC Docket No. E-002/C-23-424, Order Denying Petition for Reconsideration at 1 (Apr. 26, 2024).

⁵ Minn. R. 7829.3000, subp. 6.

⁶ See PUC Order Adopting the Administrative Law Judge Report as Modified, Issuing Route Permit, and Requiring Cultural and Archeological Survey at 2–3 (Oct. 22, 2024) (eDocket Nos. 202410-211172-01) (hereinafter referred to as Order) (detailing history of the Monument).

by the commission, unless the commission extends this deadline for cause.

Minnesota Rules 7852.0100–4100 (the Routing Permit Chapter) similarly state that the purpose of the Routing Permit Chapter is “to aid in the selection of a pipeline route and to aid in the understanding of its impacts and how those impacts may be reduced or mitigated through the preparation and review of information contained in pipeline routing permit applications and environmental review documents.”⁷ Consistent with Minn. Stat. § 216G.02, Minn. R. 7852.0800 provides that the Commission “shall issue” a pipeline routing permit within the specified time period. In other words, the purpose of a route permit proceeding is to select a route.⁸

As the Commission stated, “[b]ecause Magellan is not required to obtain a certificate of need for the Project, the task before the Commission is consideration of the route for the Project based on the potential impacts of each route alternative and possible mitigation to minimize human and environmental impact.”⁹

The Commission’s decision to issue a route permit is fully supported by substantial evidence in the record - including a complete Administrative Law Judge (ALJ) Report, which the Commission adopted with limited modifications.¹⁰ As the Commission found, “all four route alternatives meet the requirements of Minn. Stat. §§ 216G.01–.12 and the Project is consistent with and reasonably required for the promotion of public health and welfare in light of the state’s

⁷ Minn. R. 7852.0200, subp 3.

⁸ In contrast, the statutes and rules governing a Certificate of Need (CN) provide for denial. A CN may be denied under Minn. Stat. § 216B.243, subd. 5, and Minn. R. 7853.0130, establishes criteria for a CN. But a CN is not required for this project. *See* Minn. Stat. § 216G.02, subd. 2 and Minn. Stat. § 216B.2421, subd. 2(4).

⁹ Order at 17.

¹⁰ Order at 17 and 19.

concern for the protection of its air, water, land, and other natural resources as expressed in the Minnesota Environmental Rights Act.”¹¹

Thus, to the extent that Petitioners assert that the pipeline is not needed or should not be constructed at all,¹² the Commission does not have authority to reach Petitioners’ desired result.¹³

¹¹ Order at 7. *See also* ALJ Report, Conclusion of Law 5 (July 17, 2024) (eDocket No. 20247-208705-01).

¹² Some Petitioners incorrectly assert that a final rule has not been adopted requiring the specialty fuel grades to be transported by the Project. This statement is incorrect. As the Commission recognized in the Order at fn. 5, the Gasoline RVP standards, 40 C.F.R. § 1090.215, have been adopted. Thus, the Commission found “...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.” Order at 3 (internal citations omitted).

¹³ *See* Yankton Sioux Tribe Business & Claims Committee, Petition for Opposition to Magellan Pipeline Reroute (Nov. 8, 2024) (eDocket No. 202411-211767-01) (“The Yankton Sioux Tribe calls upon the Minnesota PUC to refrain from issuing a permit for any of the four routes previously considered for the Magellan Pipeline.”); Santee Sioux Nation Reconsideration Resolution (Nov. 12, 2024) (eDocket No. 202411-211853-01); the Lower Brule Sioux Tribe (Nov. 12, 2024) (eDocket No. 202411-211849-01); the Rosebud Sioux Tribe (Nov. 12, 2024) (eDocket No. 202411-211828-01); the White Earth Nation (Nov. 12, 2024) (eDockets No. 202411-211796-01); the Lower Sioux Indian Community in the State of Minnesota (Nov. 12, 2024) (eDocket No. 202411-211784-01); the Cheyenne River Sioux Letter (Nov. 12, 2024) (eDocket No. 202411-211773-02); the Cheyenne River Sioux Resolution (eDocket No. 202411-211773-01 (Nov. 12, 2024). Commenters in support of reconsideration also requested that the Commission deny the permit. *See* Standing Rock Sioux Tribe Opposition Resolution (Nov. 8, 2024) (eDocket No. 202411-211727-01); Prairie Island Indian Community Comments – Opposition Letter (Nov. 12, 2024) (eDocket No. 202411-211798-01); Shakopee Mdewakanton Sioux Community Opposition (Nov. 12, 2024) (eDocket No. 202411-211856-01); Otoe Missouri Tribe of Indians – Letter (Nov. 12, 2024) (eDocket No. 202411-211855-02); Otoe Missouri Tribe of Indians- Resolution (Nov. 12, 2024) (eDocket No. 202411-211855-01); Flandreau Santee Sioux Tribe Reconsideration (Nov. 13, 2024) (eDocket Nos. 202411-211885-01, 202411-211885-02, 202411-211885-03, 202411-211885-04, 202411-211885-05, and 202411-211885-06); Yankton Sioux Tribe Comments (Nov. 13, 2024) (Nov. 13, 2024) (eDocket Nos. 202411-211879-01 and 202411-211879-02); United Tribes of North Dakota Reconsideration Resolution (Nov. 13, 2024) (eDocket No. 202411-211876-01); and Great Plains Tribal Chairmen’s Association, Public Comment (Nov. 13, 2024) (eDocket No. 202411-211867-01); *see also* Public Comment – Hannah Mendoza (Nov. 7, 2024) (eDocket No. 202411-211715-01); Standing Rock Sioux Resolution (Nov. 8, 2024) (eDocket No. 202411-211727-01); and Sierra Club North Star Chapter, Public Comments (Nov. 13, 2024) (eDocket No. 202411-211869-01).

Accordingly, the Petitions should be denied to the extent that the Petitioners seek an unlawful result.¹⁴

II. THE COMMISSION CANNOT ORDER NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REVIEW.

Several of the Petitions advance arguments that the Commission should reconsider its decision based upon the absence of NEPA review. These arguments are not new but were raised during the proceeding and addressed by the Commission and the ALJ.¹⁵ Were it required, NEPA review would take place, which is recognized in the Commission's Order. In any event, the Commission lacks authority to require or conduct NEPA review.¹⁶

¹⁴ See *In the Matter of the Application of Northern States Power Co. d/b/a Xcel Energy for a Site Permit for the Up to 250 MW Sherco 3 Solar Energy Generating System in Sherburne County*, MPUC Docket No. E-002/GS-32-217, Order Denying Petition for Reconsideration at 2 (Sept. 23, 2024) (denying petition for reconsideration in part because Commission lacked authority to order the relief petitioner sought).

¹⁵ See Yankton Sioux Tribe Business & Claims Committee, Official Tribal Comments Opposing the Magellan Pipeline Adjacent to 1858 Treaty Lands at Pipestone Monument Quarries (Apr. 5, 2024) (filed Nov. 8, 2024) (eDocket No. 202411-211767-03); Yankton Sioux Tribe, Reconsideration Support Document (Nov. 8, 2024) (eDocket No. 202411-211767-02); Yankton Sioux Tribe Business & Claims Committee, Petition for Opposition to Magellan Pipeline Reroute (Nov. 8, 2024) (eDocket No. 202411-211767-01); Santee Sioux Nation Reconsideration Resolution (Nov. 12, 2024) (eDocket No. 202411-211853-01); the Brave Heart Society, Formal Argument: Federal Nexus in the Pipestone Pipeline Project (Nov. 12, 2024) (eDocket No. 202411-211797-02); the Lower Sioux Indian Community in the State of Minnesota (Nov. 12, 2024) (eDocket No. 202411-211784-01); the Cheyenne River Sioux Resolution (Nov. 12, 2024) (eDocket No. 202411-211773-01); Flandreau Santee Sioux Tribe Reconsideration (Nov. 13, 2024) (eDocket Nos. 202411-211885-01, 202411-211885-02, 202411-211885-03, 202411-211885-04, 202411-211885-05, and 202411-211885-06); Yankton Sioux Tribe Comments (Nov. 13, 2024) (eDocket Nos. 202411-211879-01 and 202411-211879-02); United Tribes of North Dakota Reconsideration Resolution (Nov. 13, 2024) (eDocket No. 202411-211876-01); Great Plains Tribal Chairmen's Association, Public Comment (Nov. 13, 2024) (eDocket No. 202411-211867-01).

¹⁶ Similarly, presidential executive orders apply only to federal agencies, so to the extent that Petitioners cite to executive orders as a source of obligations, those orders do not govern this Commission proceeding. But they may apply to federal permits, as with NEPA review. See Yankton Sioux Support Document (Nov. 8, 2024) (eDocket No. 202411-211767-02) (citing E.O.

The Commission and the ALJ both addressed the absence of NEPA review during the route permit proceeding. 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.”¹⁷ In other words, if Magellan seeks federal permits or approvals, such as access road approval across federal lands, any permits under the Endangered Species Act, or permits for crossing rivers and wetlands,¹⁸ those permits will be subject to federal review or previously approved categorical exclusions. Moreover, as the ALJ observed, “[d]etermining whether there is a federal nexus requiring a review under NEPA is a federal decision, over which the Commission has no authority.”¹⁹ The Commission agreed with the ALJ’s findings and made no error in doing so.²⁰

Because Petitioners’ references to NEPA review do not raise a new issue nor a legal error, and are not otherwise a proper ground for reconsideration, the Commission should deny the motions for reconsideration to the extent that Petitioners seek NEPA review—an outcome the Commission cannot provide, but which, if applicable, will take place under federal law.²¹

13007); Standing Rock Sioux Tribe Opposition Resolution (Nov. 8, 2024) (eDocket No. 202411-211727-01) (citing E.O. 13175).

¹⁷ ALJ Report, Finding 371.

¹⁸ See e.g., Yankton Sioux Tribe Business & Claims Committee, Official Tribal Comments Opposing the Magellan Pipeline Adjacent to 1858 Treaty Lands at Pipestone Monument Quarries (Apr. 5, 2024) (filed Nov. 8, 2024) (eDocket No. 202411-211767-03).

¹⁹ ALJ Report, Finding 370 (citing Response Comments on the Comparative Environmental Analysis (CEA) at 77) (May 24, 2024) (eDocket No. 20245-207101-01).

²⁰ Order at 17.

²¹ See *In the Matter of the Application of Northern States Power Co. d/b/a Xcel Energy for a Site Permit for the Up to 250 MW Sherco 3 Solar Energy Generating System in Sherburne County*, MPUC Docket No. E-002/GS-23-217, Order Denying Petition for Reconsideration at 2

III. THE SELECTED ROUTE REFLECTS SIGNIFICANT WEIGHT PLACED ON THE PROXIMITY OF THE ROUTE TO CATLINITE AND OTHER CULTURAL RESOURCES.

As it has throughout the process, Magellan remains sensitive to the concerns raised by Petitioners and others regarding the potential to impact American Indian cultural resources, including catlinite. These concerns were addressed consistently in the route proceeding.²² And the selected route—RA-01—reflects the “significant weight” the Commission placed on the proximity of the route to catlinite resources. The Order states, “[b]ecause of the importance of the Monument and catlinite resources to American Indians, avoidance of impacts to those resources is a main priority of the Commission’s route selection.”²³

The record shows that Magellan, the Commission, and the Department of Commerce, Energy Environmental Review and Analysis unit (EERA) worked with Tribal Nations and representatives to identify and mitigate impacts to significant cultural resources, including catlinite. For example, the CEA notes that “Magellan invited tribes with an interest in the project to participate in the 2023 cultural resources survey and to monitor the removal of geotechnical cores where HDD²⁴ is planned.”²⁵ As the ALJ noted in his findings, “[c]oncurrent with the archaeological survey, a tribal survey was conducted to identify significant cultural resources.”²⁶

(Sept. 23, 2024) (denying petition for reconsideration in part because Commission lacked authority to order the relief petitioner sought).

²² See, e.g., Ex. DOC-20 at 75-100 and 142-145 (CEA Vol. I).

²³ Order at 17.

²⁴ HDD refers to horizontal directional drilling. See Ex. DOC-20 at 21-22 and 98 (CEA Vol. I).

²⁵ Ex. DOC-20 at 98 (CEA Vol. 1).

²⁶ ALJ Report, Finding 312. This particular survey was completed along RA-02, where landowner permission was granted. See Ex. MAG-10 at 7:12-13 (Direct Testimony of Patricia Trocki).

Similar surveys will be conducted along RA-01 prior to construction, as required by the Commission's Order.

The Commission's decision reflects that it prioritized minimizing potential impacts on catlinite and other cultural resources. The ALJ recommended that the Commission select RA-02.²⁷ But the Commission ultimately chose RA-01 because it was more protective of catlinite and other cultural resources. In its Order, the Commission observed:

The ALJ found that "consideration of overall impacts on lands of historical, archaeological, and cultural significance favors RA-01 and RA-03 over the APR and RA-02 because of the APR and RA-02's proximity to the Monument, the catlinite resources, and cemeteries, as well as the APR's proximity to an archaeological site."

Nonetheless, the ALJ recommended RA-02 because of the record evidence regarding avoidance and minimization of impacts to cultural resources.

But the Commission went further than the ALJ. The Commission placed "significant weight" on the ALJ's finding that overall impacts on lands of historical, archaeological, and cultural significance favored RA-01 or RA-03, "because it means that selecting RA-01 will have the lowest impact on the Monument and resources of importance to American Indians, including catlinite."²⁸ Then the Commission added that "RA-01 will also have the lowest impact on the natural environment, and it parallels existing rights-of-way for the entirety of the route, further reducing human and environmental impacts." The Commission selected RA-01 to minimize the potential impact of the route on the Monument, resources of importance to American Indians, including catlinite, the environment, and human impact.

²⁷ See ALJ Report at 3 and 67.

²⁸ Order at 17.

The impact of this route selection is not insignificant. On the one hand, RA-01 is more than 2.5 miles away from the Monument at its nearest location, well over the one-mile construction buffer requested by a Commenter.²⁹ On the other hand, RA-01 is approximately 13.1 miles long and crosses approximately 200 acres of land. RA-02 is approximately a quarter the length—at 3.4 miles long, crossing 54 acres.³⁰ Moreover, RA-01, costs more than three times as much as RA-02, with an estimated \$25,000,000 cost of construction.³¹ As required by applicable law, the Commission weighed these and other impacts, and ultimately chose a balance of the criteria that placed great weight on protecting American Indian resources of importance. In sum, the record reflects that the Commission’s selection of RA-01 was intended to prioritize protection of cultural resources.

In addition to prioritizing minimizing impacts with the selected route, the Commission’s Order ensures the Commission’s decision will be implemented in a way that achieves that protection. Specifically, the Commission imposed a condition that reflects the importance it placed on consultation with Tribal Nations. This condition was imposed in response to comments from a current Petitioner—Brave Heart Society—and designed to address many of the issues raised in the Petitions, as the Commission’s Order reflects:

The Commission appreciates the Brave Heart Society’s proposal for a cultural and archaeological survey prior to construction and believes this survey is necessary to further prevent impacts to cultural resources and ensure engagement with the Tribal Nations who have expressed concerns with the Project. The Commission will therefore require Magellan to 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

²⁹ See Standing Rock Sioux Tribe Opposition Resolution at 3 (Nov. 8, 2024) (eDocket No. 202411-211727-01).

³⁰ ALJ Report, Findings 73–77.

³¹ ALJ Report, Findings 330–31.

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.³²

Magellan is committed to completing this survey with Tribal Nations and will coordinate with Tribes during a cultural and archaeological survey before construction and in the event of any unanticipated discoveries during construction, consistent with the permit conditions.³³

Throughout the route permit process, Magellan and the Commission worked with Tribes and American Indian groups as they raised concerns—responding to and incorporating their comments throughout the process. The record reflects this careful consideration, and accordingly, the Commission does not need to reopen the record to reconsider the impacts on American Indian cultural resources, including catlinite.

IV. THE ROUTE PERMIT PROCESS THOROUGHLY CONSIDERED THE REMOTE POTENTIAL FOR A LEAK OR SPILL TO REACH CATLINITE, SURFACE WATER, AND GROUNDWATER.

Petitioners assert generally that in the event of a leak or spill, there is a risk of contamination to catlinite, streams, and groundwater.³⁴ The CEA and evidence submitted by

³² Order at 18.

³³ Route Permit, Conditions 9.1 and 9.2.

³⁴ See Yankton Sioux Tribe Business & Claims Committee, Official Tribal Comments Opposing the Magellan Pipeline Adjacent to 1858 Treaty Lands at Pipestone Monument Quarries (Apr. 5, 2024) (filed Nov. 8, 2024) (eDocket No. 202411-211767-03); Yankton Sioux Tribe, Reconsideration Support Document at 4–5 and 8–9 (Nov. 8, 2024) (eDocket No. 202411-211767-02); Yankton Sioux Tribe Business & Claims Committee, Petition for Opposition to Magellan Pipeline Reroute at 4 (Nov. 8, 2024) (eDocket No. 202411-211767-01); Santee Sioux Nation Reconsideration Resolution at 5 (Nov. 12, 2024) (eDocket No. 202411-211853-01); Lower Brule Sioux Tribe (Nov. 12, 2024) (eDocket No. 202411-211849-01); Rosebud Sioux Tribe (Nov. 12, 2024) (eDocket No. 202411-211828-01); the Brave Heart Society, Formal Argument: Federal Nexus in the Pipestone Pipeline Project at 4–5 and 8–9 (Nov. 12, 2024) (eDocket No. 202411-211797-02); White Earth Nation (Nov. 12, 2024) (eDocket No. 202411-211796-01); the Lower

Magellan thoroughly considered this possibility, as did the ALJ and the Commission. Accordingly, this is not ground for reconsideration.

The CEA observes that Magellan’s District Operation Safety Response Plan was prepared in accordance with governing regulations and meets industry standards to increase pipeline system integrity.³⁵ As the CEA explains, “Magellan’s first approach is to prevent any spill from occurring, with strict preventative and monitoring protocols.”³⁶ The project includes “sophisticated leak detection technology” and human aerial patrol flights.³⁷

As the CEA outlines, a soil spill a risk for this project, and Magellan has a response plan in the event of a soil spill that includes notifying the proper authorities, containment measures at or near the source to minimize the size of the cleanup area, site testing, and soil remediation.³⁸

Moreover, as the CEA observes:

Before remediation and mitigation of soils is undertaken in a spill or leak situation, Magellan will consult with Tribal Historic Preservation Offices and the MnSHPO to determine the likely impact to known archaeological resources within the spill or leak area. Representatives from the tribes will be given the opportunity to be present during remediation and mitigation efforts. If a previously unrecorded archaeological resource is discovered in a spill or leak area, further consultation among the various parties will

Sioux Indian Community in the State of Minnesota at 4 (Nov. 12, 2024) (eDocket No. 202411-211784-01); the Cheyenne River Sioux Resolution at 3 (Nov. 12, 2024) (eDocket No. 202411-211773-01); Flandreau Santee Sioux Tribe Reconsideration (Nov. 13, 2024) (eDocket Nos. 202411-211885-01, 202411-211885-02, 202411-211885-03, 202411-211885-04, 202411-211885-05, and 202411-211885-06); Yankton Sioux Tribe Comments (Nov. 13, 2024) (eDocket Nos. 202411-211879-01 & 202411-211879-02); United Tribes of North Dakota Reconsideration Resolution (Nov. 13, 2024) (eDocket No. 202411-211876-01); Great Plains Tribal Chairmen’s Association, Public Comment (Nov. 13, 2024) (eDocket No. 202411-211867-01).

³⁵ Ex. DOC-20 at 132 (CEA Vol. I).

³⁶ Ex. DOC-20 at 134 (CEA Vol. I).

³⁷ Ex. DOC-20 at 134 (CEA Vol. 1).

³⁸ Ex. DOC-20 at 135-136 (CEA Vol. 1).

be undertaken to lessen impacts associated with the mitigation and remediation.³⁹

The CEA notes that Magellan is committed to similar measures, as relevant, in the event of a surface or groundwater spill.⁴⁰

The CEA also considered the unlikely event that a spill does impact catlinite.⁴¹ In this event, “Magellan will coordinate with tribal officials and the [National Park Service (NPS)] Monument staff on a decontamination and clean-up plan to ensure the health and well-being of the quarry users and visitors and the integrity of the catlinite layer.”⁴² The CEA explained that “[t]wo types of impacts resulting from spills or leaks to this resource were identified during the initial public scoping for the project: contamination of the active quarries during a spill or leak associated with or occurring at the same as a flood and seepage into the catlinite layer of due to a spill or leak.”⁴³ As the CEA thoroughly details, Magellan has developed plans to (1) avoid, (2) minimize the impact of, and (3) respond appropriately to a leak.

Based on a review of the CEA, Magellan’s comments, and other comments in the record, the ALJ concluded that “Magellan has presented credible evidence that the Monument and the catlinite resources will not be at risk from a potential spill.”⁴⁴ And as discussed in the previous section, the Commission selected RA-01 after recognizing concerns about impacts of the pipeline, including a leak or spill. The Commission selected RA-01 because it determined RA-01 had the lowest potential to impact the Monument and resources of importance, including catlinite, if a spill

³⁹ Ex. DOC-20 at 144 (CEA Vol. 1).

⁴⁰ Ex. DOC-20 at 137-140 (CEA Vol. 1).

⁴¹ Ex. DOC-20 at 145 (CEA Vol. 1).

⁴² Ex. DOC-20 at 145 (CEA Vol. 1).

⁴³ Ex. DOC-20 at 145 (CEA Vol. 1).

⁴⁴ ALJ Report, Finding 381.

does occur.⁴⁵ The Commission also expressly adopted findings distinguishing that a clear drawback of RA-03 was that, unlike each of the other three alternatives, a leak from RA-03 had the potential to flow into the ditch system and eventually impact Pipestone Creek and flow into the Monument.⁴⁶ The Commission’s selection of RA-01, which is more than 2.5 miles away from the Monument and located in a watershed that flows westerly, away from the Monument, mitigates the risk of such impacts. The Commission also evaluated evidence from the Mille Lac Band of Ojibwe and the NPS indicating that RA-01 avoided areas of known catlinite resources.⁴⁷ Moreover, in addition to selecting a route further away than RA-02 from the Monument and known resources of importance, the full cultural and archaeological surveys that the Commission’s Order requires for RA-01 will identify and avoid impacts to resources, “including pipestone/catlinite deposits.”⁴⁸

Petitioners may still disagree with the ALJ’s and the Commission’s conclusions, but that disagreement does not raise new factual concerns or issues that were not previously discussed. Thus, to the extent that Petitioners raise concerns about impacts on catlinite and other cultural resources in soils, these concerns were raised in the proceeding, subjected to thorough review, accounted for in a carefully balanced decision-making process, further mitigated by the Commission’s Order, and do not warrant reconsideration.

⁴⁵ Order at 17.

⁴⁶ Order at 15.

⁴⁷ See Ex. MPUC-2 at 4 (MLBO Letter); see also Ex. DOC-20 at fn. 124 (CEA Vol. 1) (citing Graham J. 2017. *Pipestone National Monument Geologic Resources Inventory Report Natural Resource Report NPS/NRSS/GRD/NRR—2017/1512*. U.S. Department of the Interior, National Park Service, Natural Resource Stewardship and Science, Fort Collins, Colorado) Figure 17 at 27.

⁴⁸ Order at 18.

V. THE COMMISSION FULLY CONSIDERED AND ADDRESSED THE ENVIRONMENTAL JUSTICE ANALYSIS AND CONSULTATION WITH TRIBES.

Several of the Petitions assert there are inadequacies in EERA’s environmental justice analysis and in the Commission’s or Magellan’s consultation with Tribes.⁴⁹ These same issues were raised throughout the route permit process, including in comments on the CEA.⁵⁰ The record shows that Tribes were invited to consult, and Tribes’ input was considered throughout the process.

For example, the Yankton Sioux commented on the CEA to state that, “[t]he community for which environmental justice effects were considered is the town of Pipestone, which was established long after the Treaty of 1858, and the analysis ignores the large population of Native people that need Pipestone as a Sacred Site.”⁵¹ EERA staff responded to this comment, adding that the CEA does document the importance of Pipestone as a Sacred Site:

⁴⁹ See Yankton Sioux Tribe Business & Claims Committee, Official Tribal Comments Opposing the Magellan Pipeline Adjacent to 1858 Treaty Lands at Pipestone Monument Quarries (Apr. 5, 2024) (filed Nov. 8, 2024) (eDocket No. 202411-211767-03); Yankton Sioux Tribe, Reconsideration Support Document at 7–8 (Nov. 8, 2024) (eDocket No. 202411-211767-02); Yankton Sioux Tribe Business & Claims Committee, Petition for Opposition to Magellan Pipeline Reroute at 4 (Nov. 8, 2024) (eDocket No. 202411-211767-01); Santee Sioux Nation Reconsideration Resolution at 6 (Nov. 12, 2024) (eDocket No. 202411-211853-01); Lower Brule Sioux Tribe (Nov. 12, 2024) (eDocket No. 202411-211849-01); Rosebud Sioux Tribe (Nov. 12, 2024) (eDocket No. 202411-211828-01); the Brave Heart Society, Formal Argument: Federal Nexus in the Pipestone Pipeline Project at 7–8 (Nov. 12, 2024) (eDocket No. 202411-211797-02); the Lower Sioux Indian Community in the State of Minnesota at 4 (Nov. 12, 2024) (eDocket No. 202411-211784-01); the Cheyenne River Sioux Resolution at 4 (Nov. 12, 2024) (eDocket No. 202411-211773-01); Flandreau Santee Sioux Tribe Reconsideration (Nov. 13, 2024) (eDocket Nos. 202411-211885-01, 202411-211885-02, 202411-211885-03, 202411-211885-04, 202411-211885-05, and 202411-211885-06); Yankton Sioux Tribe Comments (Nov. 13, 2024) (eDocket Nos. 202411-211879-01 and 202411-211879-02); United Tribes of North Dakota Reconsideration Resolution (Nov. 13, 2024) (eDocket No. 202411-211876-01); Great Plains Tribal Chairmen’s Association, Public Comment (Nov. 13, 2024) (eDocket No. 202411-211867-01); *see also* Standing Rock Sioux Resolution at 3 (Nov. 8, 2024) (eDocket No. 202411-211727-01).

⁵⁰ Ex. DOC-137 (Comment of Yankton Sioux Tribe); Reply Comments of DOC EERA at 74-75 and 79 (May 24, 2024) (eDocket No. 20245-207101-01).

⁵¹ Ex. DOC-137 (Comment of Yankton Sioux Tribe).

Staff agrees that the environmental justice analysis discussion in Section 6.5.11 does not properly identify the Native Americans who use the Pipestone site as a sacred and ceremonial site, as a population for whom there are environmental justice concerns. The CEA notes that “Impacts to tribal members visiting the catlinite quarries could be considered impacts to a minority community” (CEA, Section 6.5.11.1). This text should indicate that impacts to tribal members using the catlinite quarries are impacts to a minority community. The CEA goes on to note that tribal community members expressed concerns about exposure of the catlinite to petroleum products in the event of a pipeline rupture. The CEA identifies route alternatives RA-1 and RA-3 as likely having fewer potential environmental justice impacts. Finally, the CEA refers the reader to Section 6.8 to better understand the cultural importance of the quarries and the Monument as an ethnographic landscape and traditional cultural property.⁵²

After a thoughtful comparison of the potential impacts of each route on environmental justice, the ALJ concluded that “[c]onsideration of environmental justice does not significantly favor or disfavor any of the route alternatives with respect to each other.”⁵³ In other words, the record shows that the ALJ and Commission considered impacts on tribal resources within its environmental justice analysis, including EERA’s specific response to this concern when raised in comments to the CEA.

Petitioners also raise general concerns that the Commission and/or Magellan failed to adequately consult with Tribes. As discussed above, the Commission consulted with Tribes, consistent with its Tribal Engagement/Consultation Policy.⁵⁴ Additionally, the Commission imposed specific permit conditions requiring additional coordination between Magellan and Tribes, and additional opportunities for Commission review. Magellan is committed to meeting

⁵² Reply Comments of DOC EERA at 79 (May 24, 2024) (eDocket No. 20245-207101-01).

⁵³ ALJ Report, Finding 198.

⁵⁴ Order at 5.

these requirements, including the obligation to share the “cultural and archaeological resources inventory of the route” with the affiliated Tribes, and to provide an opportunity for feedback on the survey.⁵⁵

Moreover, concerns about consultation were repeatedly raised throughout the route permit process. For example, the Yankton Sioux also raised similar concerns about consultation in comments on the CEA, stating that “[o]nly Minnesota Tribes were consulted, and there was no ‘good faith’ effort to reach other tribes, including affiliated and treaty tribes with an interest in or historical ties to the region.”⁵⁶ As EERA noted in its reply comments, EERA and the Commission made repeated efforts to reach Tribes with an interest in the Pipestone region. For example, “[n]otices for process steps in the environmental review and permitting process for the project were sent to stakeholders, including tribes outside of the state of the Minnesota, that might have interest in the Pipestone region.”⁵⁷ On April 4, 2024, EERA and Commission staff conducted an online meeting with the Yankton Sioux, at the Tribe’s request. And Magellan reached out to Tribes with a potential interest in the Pipestone region before submitting the route permit application.⁵⁸ The Commission, EERA, and Magellan consulted with Tribal Nations and American Indian groups throughout the process, and Magellan is committed to continuing to work with Tribal Nations and American Indian groups to complete the requirements of the route permit and to work

⁵⁵ Order at 19; Route Permit Condition 9.1.

⁵⁶ Ex. DOC-137 (Comment of Yankton Sioux Tribe). Note that these comments are identical to one of the Yankton Sioux “Reconsideration” Resolutions filed on Nov. 8, 2024. *See* Yankton Sioux Tribe Business & Claims Committee, Official Tribal Comments Opposing the Magellan Pipeline Adjacent to 1858 Treaty Lands at Pipestone Monument Quarries (Apr. 5, 2024) (filed Nov. 8, 2024) (eDocket No. 202411-211767-03).

⁵⁷ Reply Comments of DOC EERA at 74 (May 24, 2024) (eDocket No. 20245-207101-01).

⁵⁸ Reply Comments of DOC EERA at 75 (May 24, 2024) (eDocket No. 20245-207101-01).

together throughout construction. The Commission's Order appropriately addressed these issues, and there are no new issues related to environmental justice or consultation that justify reconsideration.

CONCLUSION

Petitioners do not raise new issues that warrant reconsideration. Accordingly, Magellan respectfully asks the Commission to deny the Petitions.

Dated: November 18, 2024

Respectfully submitted,

/s/ Christina K. Brusven

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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.

**OAH Docket No. 28-2500-39436
MPUC Docket No. IP-7109/PPL-23-109**

CERTIFICATE OF SERVICE

Maia Martinez certifies that on the 18th day of November, 2024, she e-filed true and correct copy of the answer to the petitions for reconsideration on behalf of Magellan Pipeline Company, L.P. via eDockets (www.edockets.state.mn.us):

Said documents were also served as designated on the Official Service Lists on file with the Minnesota Public Utilities Commission and as attached hereto.

Executed on: November 18, 2024

Signed: /s/ Maia Martinez

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