

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101-2147**

**In the Matter of the Application of
Minnesota Pipe Line Company, LLC
for a Certificate of Need for the
Minnesota Pipe Line Reliability Project**

**OAH Docket No. 68-2500-31889
MPUC Docket No. PL-5/CN-14-320**

**MINNESOTA PIPE LINE COMPANY, LLC
REPLY BRIEF**

April 23, 2015

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INTRODUCTION

Minnesota Pipe Line Company, LLC (“MPL” or “Company”) files this Reply Brief in response to the Initial Brief filed by the Department of Commerce – Division of Energy Resources (“Department” or “DOC-DER”) and the Comments filed by the Department of Commerce – Energy Environmental Review and Analysis (“DOC-EERA”) regarding the Minnesota Pipe Line Reliability Project (“Project”).

Throughout its Initial Brief, DOC-DER affirms that MPL has met all legal requirements for the granting of a Certificate of Need (“CON”). In doing so, DOC-DER notes that DOC-EERA found that “the best way to meet the stated need with the fewest environmental impacts would be through the proposed Project.” Nonetheless, the DOC-DER recommends that the Commission require MPL to “generate a kWh of renewable energy for every incremental kWh of energy consumed by the Project . . . require MPL to conserve an acre for every acre of natural habitat protected and [require MPL to] plant a tree for every tree that must be removed.” MPL agrees with the DOC-DER that the record demonstrates the need for the Project. However, the Company disagrees that the Commission can or should impose additional requirements on MPL as part of the CON.

The DOC-EERA Comments responded to the public comment letters filed on March 20, 2015 by the Minnesota Pollution Control Agency (“MPCA”) and Department of Natural Resources (“DNR”) (collectively, the “Letters”). The DOC-EERA explained that the Comparative Environmental Review (“CER”) and other evidence in the record fully address the issues raised in the Letters. MPL agrees with the DOC-EERA Comments in this regard.

I. THE RECORD DEMONSTRATES THE NEED FOR THE PROJECT.

Two parties participated in this proceeding – MPL and DOC-DER. Both parties agree that the record establishes the need for the Project. The DOC-DER confirms multiple times that MPL has established the need for the Project, stating, for example:

- Through its analysis of the record, the Department concludes that MPL has met its burden of demonstrating that the proposed Project is needed under Minn. Stat. § 216B.243 (2014) and Minnesota Rules part 7853.0130 (2013).¹
- The Department recommends that the Commission approve MPL’s Application for a CN because the Department concludes that MPL has met its burden of demonstrating that the proposed Project is needed under the need criteria found in Minnesota Rules part 7853.0130 (2013).²
- The principal requirements for a large petroleum pipeline CN are set forth in Minnesota Statutes section 216B.243, subdivision 3 and Minnesota Rules parts 7853.0130A–D. Essentially, Minnesota law requires MPL to demonstrate that the proposed Project is needed and requires that “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” *See* Minn. Stat. § 216B.243, subd. 3; Minn. R. 7853.0130(B). As discussed further below, the Department concludes that MPL has met these legal requirements.³
- 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.⁴

The DOC-DER reached its conclusion that a CON should be granted after thoroughly analyzing and affirming that:

¹ DOC-DER Initial Brief (“DOC-DER Br.”), p. 1 (emphasis added).

² *Id.*, p. 4 (emphasis added).

³ *Id.*, p. 5 (emphasis added).

⁴ *Id.*, p. 28 (emphasis added).

- MPL’s forecast of demand, showing modest increases throughout the forecast period, is reasonable;⁵
- MPL’s current pipeline system (“MPL System”) operates at close to capacity, raising legitimate supply concerns when one or more pipelines must be taken out of service for planned or unplanned reasons;⁶
- Denial of the CON would adversely impact energy supply to the State and region, negatively impacting the people of Minnesota and surrounding states;⁷
- No alternative is preferable to the Project;⁸
- The “best way to meet the stated need with the fewest environmental impacts is through the proposed Project;”⁹
- The Project creates no negative consequences to overall State energy needs;¹⁰
- The Project will benefit State energy needs by ensuring a reliable crude oil supply, which in turn allows for a reliable supply of transportation fuels;¹¹
and
- The Company fully complies with all applicable environmental safety rules and regulations.¹²

⁵ *Id.*, pp. 6-10.

⁶ *Id.*, pp. 10-12.

⁷ *Id.*, pp. 12-13.

⁸ *Id.*, pp. 13-19.

⁹ *Id.*, p. 19, citing Ex. 200 (the CER) at 22.

¹⁰ *Id.*, p. 20.

¹¹ *Id.*

Given the results of its analysis, the DOC-DER properly concluded that MPL has met the legal requirements for granting a CON. As discussed in MPL’s Initial Brief, the record fully supports this conclusion.

II. HAVING SATISFIED ALL OF THE CRITERIA FOR THE GRANTING OF A CON, A CON MUST BE GRANTED FOR THE PROJECT.

Despite determining that MPL has met the legal requirements for the Commission to grant a CON for the Project, the DOC-DER recommends that the Commission require MPL to adopt a “neutral footprint” policy. This would require MPL to: (1) purchase renewable energy (or renewable energy credits) on a kilowatt hour by kilowatt hour basis, equivalent to the exact amount of any electric usage on the MPL System after completion of the Project that exceeds the total electric usage on the MPL System prior to construction of the Project; (2) “conserve an acre for every acre of natural habitat protected” (sic);¹³ and (3) plant a tree for every tree that must be removed to construct the Project. Minnesota law cannot support imposing such a requirement on MPL, nor can consideration of the record or sound public policy.

A. Minnesota Law Does Not Allow The State To Impose New Obligations On An Applicant When The Applicant Has Met All Of The Requirements For A CON As Set Forth In Statutes And Rules.

The DOC-DER fails to explain the legal authority for the State to impose a “neutral footprint” policy on MPL. As MPL discussed in its Initial Brief, Minnesota Statutes do not even require a CON for the Project, since the Project merely increases the

¹² *Id.*, pp. 24-26.

¹³ The DOC-DER Brief repeats the language used in Ms. Otis’ testimony each of the three times it discusses this aspect of the DOC-DER recommendation. *See* DOC-DER Br., pp. 23, 29 and Ex. 102, pp. 5, 11. Given its repeated use of this phrase, MPL is unsure what the DOC-DER intends by its recommendation.

pumping capacity of a current pipeline.¹⁴ However, Minnesota Rules 7853.0300 (D) expands the statutory definition of a “large energy facility” to include undertakings such as the Project, which involve adding pump stations to an existing facility. Rather than objecting to this Rule as exceeding the statutory requirements, MPL filed for a CON for the Project under Minnesota Rules Chapter 7853 (“CON Rules”).

Both MPL and DOC-DER agree that the CON Rules, at part 7853.0130, set forth the criteria used to determine whether to grant a CON for the Project.¹⁵ That Rule directly and unambiguously states that “a certificate of need shall be granted to the applicant on determining that” each of the four criteria set forth in the Rule have been satisfied.

MPL and DOC-DER also agree that the record establishes that MPL has met each of the four criteria in this case. As such, a CON “shall be granted” to MPL and MPL cannot be compelled to go above and beyond the requirements duly established in Minnesota law.

To the extent that the DOC-DER believes that all *future* CON applicants should be required to adopt a “neutral footprint” policy, the DOC-DER has alternatives available to put such a new requirement in place – it can seek legislative changes to the CON Statutes imposing such an obligation or, if it believes the Commission already has the requisite

¹⁴ See MPL Initial Brief (“MPL Br.”), pp. 10-11. It is well established that the Commission, “as a creature of statute, only has the authority given to it by the legislature.” *Minnegasco v. Minnesota Public Utilities Commission*, 549 N.W.2d 904, 907 (Minn. 1996). The Commission has arguably already exceeded its legislative authority by “requiring” a CON for endeavors such as the Project when the Legislature has not so required.

¹⁵ MPL Br., pp. 12-14; DOC-DER Br., p. 5.

authority, it can request the Commission to amend its CON Rules. However, the ALJ and Commission cannot simply adopt such a sweeping new policy in the context of this CON proceeding.¹⁶

B. The Line 67 Docket Does Not Support Imposing A “Neutral Footprint” Policy On MPL In The Current Docket.

Even if the ALJ and Commission believed that the Commission could lawfully require MPL to adopt a “neutral footprint” policy, the Commission should not do so in this case. The DOC-DER argues that imposing the “neutral footprint” policy on MPL is reasonable since the Commission included such language in a different docket, for a different applicant – the Line 67 Docket, involving Enbridge Energy.¹⁷ The DOC-DER claims that the instant docket “is similar” to the Line 67 Docket, justifying imposition of the “neutral footprint” requirement on the Project. However, as MPL discussed at length in its Initial Brief, Enbridge’s Line 67 upgrade and the Project are quite *dissimilar* projects.¹⁸ Among the key differences in the projects, and in the records developed in the two proceedings, are:

- The Enbridge Line 67 upgrade was pursued to meet significantly increased demand and to transport more crude oil through Minnesota to out-of-state

¹⁶ See *Dullard v. Minnesota Department of Human Services*, 529 N.W.2d 438, 445 (Minn. App. 1995) (noting the requirement of agencies to follow the Minnesota Administrative Procedure Act and engage in rulemaking when adopting broad policies to be applied prospectively).

¹⁷ See DOC-DER Br., p. 23, citing *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project – Phase 2 – in Marshall, Clearwater, Itasca, Kittson, Red Lake, Cass, and St. Louis Counties*, Order Granting Certificate of Need, p. 32, Docket No. PL-9/CN-13-153 (Nov. 7, 2014) (the “Line 67 Order”).

¹⁸ MPL Br., pp. 47-50.

destinations,¹⁹ while the Project is being pursued to increase the reliability and efficiency of the MPL System, serving only the two Minnesota refineries and with only modest increases in demand forecasted;

- The Commission concluded in the Line 67 Docket that the upgrade “will have environmental consequences”²⁰ and Enbridge acknowledged that its upgrade would create certain negative impacts.²¹ In contrast, the Project has been demonstrated to be the “best way to meet the stated need with the fewest environmental impacts;”²²
- In the Line 67 Docket, Enbridge sought to minimize dispute and to “offset [the] environmental harms” caused by the upgrade by voluntarily promoting a “neutral footprint” policy it had adopted as a company goal.²³ In contrast, no party in this docket opposes the granting of a CON and MPL has discussed other efforts it has voluntarily pursued to enhance and protect Minnesota’s natural environment;²⁴ and
- The DOC-DER could not attest to the likely impact of the Line 67 upgrade (including the transportation of significantly higher volumes of crude oil) on Enbridge’s total energy usage,²⁵ although it seems logical to conclude more electric energy will be consumed. In contrast, the Project is expected

¹⁹ Line 67 Order, pp. 5-7.

²⁰ *Id.*, p. 29.

²¹ *Id.*, p. 23.

²² *See* DOC-DER Br., p. 19; Ex. 200, p. 22.

²³ Line 67 Order, pp. 6, 23.

²⁴ *See* Ex. 31, pp. 2-3 (Baker Rebuttal).

²⁵ Evidentiary Hearing Transcript (“Tr.”), pp. 45-46 (Otis).

to result in an overall *reduction* in electric energy usage on the MPL System.²⁶

The DOC-DER Initial Brief attempts to minimize the differences between the Line 67 upgrade and the Project in two ways. First, DOC-DER speculates that MPL “*may* increase its electricity use, as well as increase the amount of crude oil the MPL ships from Clearbrook to the Twin Cities” and that “a scenario where shipper activity causes the MPL System to use more energy than it does today *is not unlikely*.”²⁷ The record cannot support this speculation. There is no dispute in the record that barrels shipped on MPL Line 4 reduce per barrel electric usage by 37 percent compared to being shipped on MPL Lines 1, 2 and 3.²⁸ Moreover, the DOC-DER confirmed the reasonableness of MPL’s forecast, showing an average increase in shipper demand of under 1.9 percent in the forecast period.²⁹ Thus, as DOC-DER witness Ms. Otis acknowledged: “I would agree that if Line 4 is more efficient than the other lines, then, yes, it would be reasonable to expect electric use to decrease.”³⁰

Second, DOC-DER claims that both the Line 67 upgrade and the Project “are designed to allow a crude oil pipeline to operate at its maximum-designed capacity.”³¹ However, the record demonstrates that the Line 67 upgrade was designed to enable

²⁶ Tr., pp. 29-30 (Baker).

²⁷ DOC-DER Br., p. 22 (emphasis added).

²⁸ Ex. 2, p. 9; Ex. 24, pp. 4-5 (Baker Direct); Tr. Vol. 1, pp. 29-30 (Baker).

²⁹ DOC-DER Br., p. 8.

³⁰ Tr., p. 46 (Otis) (emphasis added).

³¹ DOC-DER Br., p. 23.

Enbridge “to ship an additional 230,000 barrels of crude per day through Minnesota.”³²

As the Line 67 Order makes clear, the purpose of the Line 67 upgrade was to meet increasing overall demand by significantly increasing the total shipments of crude oil over the Enbridge system.³³ Nothing in the record of that proceeding suggests that the increase in shipments over Line 67 would be balanced by a reduction in shipments on less efficient pipelines in the Enbridge system.

In contrast, the record of the current proceeding makes clear that the driving force behind the Project is a desire to increase the reliability and efficiency of the MPL System by giving MPL the flexibility to shift volumes off of MPL Lines 1, 2 and 3 in the event of planned or unplanned outages or for other operational reasons. The purpose of the Project is not to meet increased demand by significantly increasing the total shipments of crude oil over the MPL System.

Even if the Commission had legal authority to impose a “neutral footprint” policy on a CON applicant, the substantial differences between the Line 67 upgrade and the Project and the record of this proceeding do not support the imposition of a “neutral footprint” policy on MPL as a condition of proceeding with the Project.

C. Consideration Of Sound Public Policy Cannot Support Imposing A “Neutral Footprint” Policy On MPL.

The DOC-DER does not discuss the broader implications of its “neutral footprint” policy recommendation beyond its claim that “this condition will directly benefit the

³² Tr., pp. 28-29 (Baker).

³³ See Line 67 Order, pp. 14-19.

natural and socioeconomic environments.”³⁴ However, such a condition may *not* benefit the natural and socioeconomic environments, as MPL discussed in its Initial Brief.³⁵ In fact, such a condition could chill development of necessary new infrastructure and could ultimately harm the natural and socioeconomic environments. As MPL has discussed, imposing the neutral footprint policy on new large energy facilities could dramatically increase the cost of such projects or even render such projects infeasible. If a proposer determines that a neutral footprint is either infeasible or prohibitively expensive, needed infrastructure may never be built, adversely impacting the State and the public. Instead, energy companies may choose to pursue other, more environmentally or socioeconomically harmful alternatives that do not require a CON from the Commission. In the case of pipeline projects, for example, a company could avoid the “neutral footprint” requirement by pursuing trucking or rail alternatives – alternatives that DOC-EERA and DOC-DER agree would have greater negative impacts on the natural and socioeconomic environments than the Project.

III. THE RECORD FULLY ADDRESSES THE ISSUES RAISED IN THE LETTERS.

MPL has addressed the issues raised in the MPCA and DNR Letters in its Initial Brief.³⁶ As MPL described, neither the MPCA nor DNR participated in this proceeding until filing the Letters on March 20, 2015, and the Letters reflect a lack of familiarity with the Project and the extensive record developed in this case. MPL’s Initial Brief

³⁴ DOC-DER Br., pp. 23-24.

³⁵ MPL Br., pp. 51-53.

³⁶ MPL Br., pp. 7-10.

discussed the issues raised in the Letters and summarized the evidence that addresses those issues.

The DOC-EERA Comments also examine the issues mentioned by both DNR and MPCA. As the DOC-EERA explains, the CER and other record evidence already fully address the issues discussed in the Letters.³⁷ For example, regarding the DNR’s stated concern that the St. Patrick Station is “bounded by” Cedar Lake, DOC-EERA accurately points out that the St. Patrick pump station will be built adjacent to the pipeline, which is approximately 2,000 feet from the lake.³⁸ Similarly, in addressing DNR’s statements regarding spill prevention and response plans, DOC-EERA noted that MPL provided information on its spill prevention and spill response plans in its Application, as well as in testimony regarding safety and integrity programs, incident response plans, responder training programs and discussion of the Company’s practice of shutting down the entire pipeline when a release is discovered or abnormal event is detected by its monitoring system.³⁹ And as MPL discussed in its Initial Brief, the record also includes an Oil Spill Response Plan, Integrated Contingency Plan, and a Pipeline and Hazardous Materials Safety Administration (“PHMSA”) Response Plan.⁴⁰ Likewise, the record and the CER addressed the issues raised by the MPCA.⁴¹ In short, MPL agrees with DOC-EERA that the issues raised in the Letters are addressed in the record.

³⁷ DOC-EERA Comments, pp. 3-6.

³⁸ *Id.*, p. 5.

³⁹ *Id.*, p. 4.

⁴⁰ Exs. 103-105.

⁴¹ DOC-EERA Comments, p. 6.

CONCLUSION

As discussed above and in MPL's Initial Brief, the record of this proceeding demonstrates that MPL has met all of the criteria necessary for the granting of a CON. Having met those criteria, Minnesota Rules call for the Commission to grant a CON for the Project. Nothing in Minnesota Statutes or Rules provide for the State to attach additional requirements to the granting of a CON when the applicant has already met the duly established CON criteria. Moreover, neither the record of this proceeding nor sound public policy support attaching such requirements in this case. MPL therefore respectfully requests that the Administrative Law Judge recommend to the Commission and that the Commission grant MPL a Certificate of Need for the Minnesota Pipe Line Reliability Project.

Dated: April 23, 2015

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