Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date:	October 28, 2016.....Agenda Item *2
Company:	North Dakota Pipeline Company LLC
Docket No.	PL-6668/CN-13-473 In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota 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:	▪ Whether the Commission should consider imposing conditions on North Dakota Pipeline Company's request to withdraw its certificate of need and route permit applications for its proposed Sandpiper Pipeline Project.
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Relevant Documents

Application for a Certificate of Need.....November 8, 2013
Application for a Routing Permit.....November 8, 2013
North Dakota Pipeline Company Petition to Withdraw Certificate of Need and Route Permit Applications ..... September 1, 2016
Erie-Bourdeaux Family Trust and the Donna J. Andersen Trust Comments ... September 12, 2016
Office of Administrative Hearings Order Suspending Contested Case Proceedings and Certifying Issues to the Commission..... September 29, 2016

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 ISSUES

- Whether the Commission should consider imposing conditions on North Dakota Pipeline Company's request to withdraw its certificate of need and route permit applications for its proposed Sandpiper Pipeline Project.

II. PROJECT DESCRIPTION

North Dakota Pipeline Company LLC's (NDPC) proposed Sandpiper Pipeline Project is described as a new 616-mile long pipeline originating at NDPC's Beaver Lodge Station south of Tioga, North Dakota, extending to a new terminal facility in Clearbrook, Minnesota, and terminating at an NDPC affiliated terminal and tank farm facility in Superior, Wisconsin. Approximately 302 miles of the proposed pipeline would be located within Minnesota.

III. PROCEDURAL HISTORY

On November 8, 2013, NDPC filed an application for a certificate of need and an application for a pipeline route permit along with an environmental information report for its proposed Sandpiper Pipeline Project.

On February 11, 2014, the Commission issued an order accepting the certificate of need application as substantially complete pending the submittal of additional information. In a separate order, the Commission accepted the pipeline route permit application as complete. Both matters were referred to the Office of Administrative Hearings (OAH) for combined contested case proceedings.

Between February 2014 and August 2016, the Commission and the Department of Commerce (Department) completed several application review procedural and process steps.[1] The most recent of those steps included: 1) the Commission procedurally rejoining the certificate of need and route permit proceedings and requiring preparation of a combined environmental impact statement (EIS); and 2) the Department completing the required public information and EIS scoping meetings and filing the final proposed EIS scoping decision document for Commission consideration.

On September 1, 2016, NDPC filed a petition that requested the withdrawal of its certificate of need and route permit applications for the Sandpiper Pipeline Project, and the suspension of all activities related to the preparation of the combined EIS. The petition also included a motion

[1] See the official record of the Sandpiper Pipeline Project certificate of need and route permit proceedings on the Commission's eDocket System at: PL-6668/CN-13-473 (Certificate of Need) and PL-6668/PPL-13-474 (Pipeline Route Permit).

requesting that the administrative law judge suspend the contested case proceedings and certify the issue to the Commission for its consideration. Pursuant to Minn. R. 7829.0430 and Minn. R. 1400.6660, the petition identified the deadlines for parties to respond to the withdrawal petition (14 calendar days from filing), and to the motion to suspend contested case proceedings (10 working days from filing).

On September 12, 2016, comments were filed in this matter by Carol A. Overland on behalf of the Erie-Bourdeaux Family Trust and the Donna J. Andersen Trust (the Trusts). This was the only comment received on the matter. The Trusts requested that the Commission:

- Grant NDPC's request for withdrawal of the Sandpiper Pipeline Project certificate of need and route permit applications with prejudice.

- Alternatively grant withdrawal of the applications conditioned upon: 1) the preservation of the existing administrative records in these matters; and 2) withdrawal of all transmission line projects dependent on construction of the Sandpiper Pipeline Project, including the Clearbrook West 115 kilovolt and the Menahga 115 kilovolt transmission line projects.[2]

On September 29, 2016, the administrative law judge assigned to these matters issued an order that: 1) granted NDPC's motion to suspend the contested case proceedings until the Commission has made a decision on the petition to withdraw the certificate of need and route permit applications; and 2) certified the withdrawal petition to the Commission. The administrative law judge indicated that no parties filed objections to the petition or motion with the exception of the Trusts.

IV. STATUTES AND RULES

Withdrawal of Filings. Under Minn. R. 7829.0430, subp. 1, if the party seeking withdrawal of its filing serves notice of its withdrawal request on the persons on the official service list for the filed matter and (i) no person opposes withdrawal of the filing within 14 days of service of the notice, and (ii) no Commissioner or Commission staff person has identified a reason that the matter should not be withdrawn, the Executive Secretary has the authority to approve the withdrawal.

Under subp. 2 of Minn. R. 7829.0430, if any person opposes the withdrawal request within the requisite 14- day period for doing so, the Commission will allow the filing to be withdrawn upon determining that the proposed withdrawal:

[2] Commission dockets (Clearbrook) TL-14-665 and (Menahga) CN-14-787 and TL-14-797.

- does not contravene the public interest;
- does not prejudice any party; and
- does not concern a filing that raises issues requiring commission action.

If the Commission determines that withdrawal would contravene the public interest or prejudice a party, the Commission may permit withdrawal only subject to conditions that mitigate the harm identified.

Termination of Project. Under Minn. 4410.6200, subp. 5, if the proposer decides not to proceed with the proposed project while the EIS is under preparation, the proposer shall immediately notify the responsible government unit (RGU) in writing. The RGU shall immediately cease expending and obligating the proposer's funds for the preparation of the EIS. If the cash payments previously made by the proposer exceed the RGU's expenditures or irrevocable obligations at the time of the notification, the RGU shall refund the remaining funds within 30 days. If the previous cash payments are less than the RGU's expenditures or irrevocable obligations at the time of notification, the RGU shall notify the proposer of the balance due within ten days of the notice. The proposer shall pay the balance due within 30 days.

V. STAFF DISCUSSION

A. Withdrawal of the Filing

While the Trusts propose conditions on NDPC's request to withdraw its certificate of need and route permit applications, they do not oppose the withdrawal request. The withdrawal request therefore meets the conditions set forth under Minn. R. 7829.0430, subp. 1, and the Executive Secretary can grant approval of NDPC's withdrawal request.

B. Withdrawal Conditions

Staff believes that the question of whether any conditions should be imposed on the withdrawal is one that must be answered by the Commission. In the event the Commission is inclined to consider whether any conditions should be imposed at all, staff recommends against the conditions proposed by the Trusts.

The first proposed condition is that the Commission deem the withdrawal to be "with prejudice." However, the Trusts have not explained why the Commission should preclude NDPC from ever proposing a future pipeline project with the same or substantially similar attributes as the Sandpiper Pipeline Project, and in the absence of a justification staff does not believe this condition should be imposed.

In the alternative, the Trusts propose the condition that the existing administrative record on the Sandpiper Project be maintained, presumably for use in the event NDPC were to propose a Sandpiper-like project in the future. But any such future project would require new certificate of need and route permit applications, which would in turn require development of an administrative record focused on the new applications, not reliance on the existing administrative record for the Sandpiper Pipeline applications.

Finally, the Trusts propose that the Commission condition NDPC's withdrawal request on the withdrawals of all other projects whose construction depends on the construction of the Sandpiper Project. Staff believes such a condition is unnecessary because if a project depends on the Sandpiper project for its construction, that project will not move forward.

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COMMISSION DECISION ALTERNATIVES

1. Do not consider imposing any conditions on NDPC's withdrawal request.

2. Place conditions on NDPC's withdrawal request:

    a. Order that the Executive Secretary grant approval of NDPC's withdrawal request with prejudice.

    b. Order that the existing administrative record of the Sandpiper Pipeline Project be preserved for purposes of evaluating any subsequent Sandpiper-like project proposed by NDPC.

    c. Order the withdrawal of the route permit applications for the Clearbrook West 115 kilovolt and the Menahga 115 kilovolt transmission line projects.

    d. Order some other condition deemed appropriate.

Staff Recommendation: 1