



Minnesota Pollution  
Control Agency



April 28, 2015

Mr. Scott Ek  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101-2147

Re: In the Matter of the Application of North Dakota Pipeline Company, LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota  
MPUC Docket No. PL-6668/CN13-473  
OAH Docket No. 8-2500-31260

Dear Mr. Ek:

The Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Natural Resources (DNR) offer the following comments on the Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation dated April 13, 2015 by Administrative Law Judge Eric Lipman in this matter (ALJ Report). The agencies are concerned that the pipeline route proposed by the applicant, (SA-Applicant) has the potential to impact some of the state's most pristine natural resources. The two agencies substantially disagree with many of the environmental findings of the ALJ in the ALJ Report. However, our comments below outline what we believe is the best path forward in the next phase of these proceedings to address the state's environmental and natural resource concerns and the energy needs of the state.

**1. The MPCA and the DNR request that the Commission confirm that System Alternative 03-Modified will continue as a route alternative when the route proceeding resumes.** In its August 25, 2014 Order issued before the Route and Need proceedings were bifurcated, the Commission accepted System Alternative 03- Modified (SA3-M) along with 53 other route alternatives, and forwarded it to the ALJ for consideration in the Route proceeding. The Commission did not forward SA-3M for consideration in the Need proceeding, but the ALJ Report nonetheless contains a number of findings of fact about SA3-M (Findings 384-397). The ALJ Report also contains a conclusion of law (Conclusion 5) that incorrectly lists SA3-M as a system alternative. The ALJ Report, in Finding of Fact 395, acknowledges that the Commission did not include SA-3M for review in the Certificate of Need (CN) Docket, but does not explain why the ALJ Report includes Findings on SA-3M. Because SA-3M was not included in the CN Docket, the agencies request that the Commission confirm that SA3-M remains a route alternative, consistent with the Commission's August 25, 2014 order.

2. **The MPCA and the DNR request that the ALJ's Findings of Fact and Conclusions of Law concerning SA 03-Modified in the ALJ Report be treated as dicta and not be granted deference in the Route proceeding.** Because SA3-M was not included by the Commission in the CN Docket, the findings and conclusions about SA3-M in the ALJ Report should be considered dicta and of no probative weight in the route proceeding. As noted above, Finding of Fact 395 in the ALJ Report states that SA3-M was not included in the CN docket and the EERA environmental study of system alternatives did not address SA3-M. The agencies request that the Commission clarify that any Findings and Conclusion concerning SA3-M are dicta and not entitled to deference, weight or consideration in the route proceeding.

3. **Commission Authority under the Minnesota Environmental Policy Act Requires a Close Evaluation of Environmental Alternatives.** The Commission has already acknowledged that this project is subject to review under Minnesota Environmental Policy Act (MEPA) to consider environmental effects and alternatives in its decision-making. (Commission Oct. 17, 2014 Order.) MEPA requires meaningful analysis of environmental effects and alternatives. For MEPA review to be meaningful, and to meet the requirement to evaluate feasible and prudent alternatives imposed by Minn. Stat. §116D.04, subd. 6, SA3-M should be analyzed in the routing phase. We understand that the Commission staff (Department of Commerce Energy Environmental Review and Analysis Unit) will prepare a Comparative Environmental Assessment under Minn. Rules 7852.1500 of the Applicant's route and all route alternatives. It is important that this study achieve the objectives of MEPA. The Commission should assure the careful evaluation of appropriate route alternatives in the Comparative Environmental Assessment, including SA-3M, so that it has a complete record to determine under MEPA whether there are any alternatives to avoid or mitigate environmental impacts of the project. This is particularly important here, where the route advanced in the ALJ Report, SA-Applicant, has the potential to impact some of Minnesota's most pristine natural resources. The Commission's MEPA authority and responsibilities provide a compelling basis to include SA-3M in the route phase, consistent with its earlier order.

Both the MPCA and DNR have already provided extensive environmental information on SA-3M as an alternative to the Applicant's route. (See MPCA's Oct. 29, 2014 comment identifying a specific route for SA-3M, and DNR's Jan. 23, 2014 comment letter). The MPCA and DNR intend to continue providing environmental expertise in advising the Commission on the environmental effects of the Applicant's route and route alternatives in this matter.

Thank you for consideration of these comments.

Sincerely,



John Linc Stine, Commissioner  
Minnesota Pollution Control Agency



Tom Landwehr, Commissioner  
Minnesota Department of Natural Resources