

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: **March 16, 2017** Agenda Item #6**

Company: Minnesota Pipeline Company, LLC

Docket No. PL-5/PPL-05-2003

In the Matter of the Application to the Minnesota Public Utilities Commission for a Pipeline Routing Permit for a Crude Oil Pipeline and Associated Aboveground Facilities

Issue(s): Should the Commission accept or reject Minnesota Pipeline Company, LLC's certification of completion or take some other action?

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Background Documents

Minnesota Pipeline Company, LLC January 24, 2017

PUC: Public Comment..... February 27, 2017

DOC EERA: Extension/Variance Request February 27, 2017

Minn. Statute 216G

Minn. Rule 7852

The attached materials are work papers of the Commission staff. They are intended for use by the Minnesota Public Utilities Commission (Commission) and are based upon information already in the record unless noted otherwise.

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I. Statement of the Issues

Should the Commission accept or reject Minnesota Pipeline Company, LLC's certification of completion or take some other action?

II. Statute and Rule

Pursuant to Minn. Rule 7852.3900, an entity which has obtained a pipeline route permit from the Commission shall file with the Commission a written certification that pipeline construction has been completed and restoration is complete. Due to pipeline restoration taking several seasons (or years) post-construction, the Commission has not seen many of these filings and has not processed any to date. The Commission has never actively pursued obtaining these confirmations from project developers as not doing so retains the Commission's jurisdiction over future issues related to ground settling and other pipeline construction issues that may not be apparent for years after pipeline construction.

**Minn. Rule 7852.3900 PIPELINE CONSTRUCTION COMPLETION
CERTIFICATION.**

Permittees shall file with the commission a written certification that the permitted pipeline construction has been completed in compliance with all permit conditions. The certification shall be considered by the commission within 60 days of its filing. The commission shall accept or reject the certification of completion and make a final determination regarding cost or reimbursements due. If the commission rejects the certification, it shall inform the permittee in writing which deficiencies, if corrected, will allow the certification to be accepted. When corrections to the deficiencies are completed, the permittee shall notify the commission, and the commission shall reconsider the certification at its next regularly scheduled meeting, provided the notification is received at least 20 days before the meeting. After acceptance of the certification by the commission, the commission's jurisdiction over the permittee's pipeline routing permit shall be terminated.

III. Overview

On April 13, 2007, the Minnesota Public Utilities Commission (Commission) issued Minnesota Pipeline Company, LLC (MPL) a route permit to construct and operate approximately 303 miles of new 24 inch outside diameter pipeline beginning in Clearbrook, Minnesota and terminating at the Flint Hills Resources Refinery in Rosemount, Minnesota, in Dakota County.

In 2008, MPL finished construction and continued to file monthly complaint reports, as required by their route permit. No complaints have been received since 2011.¹

On January 20, 2017, MPL filed a letter indicating completion of construction pursuant to Minn. Rule 7852.3900. Staff issued a notice of comment period on the request and to determine whether any costs or reimbursements are due on the project.

On February 21, 2017, the Commission received a letter from an attorney on behalf of clients, Roger and Joyce Tupy, regarding alleged unresolved drain tile issues on their property caused by the MPL/MinnCan pipeline (Tupy Complaint).

As a result, on February 27, 2017, the Department of Commerce Energy Environmental Review and Analysis (EERA) staff filed a request for an extension to March 20, 2017 in order to further investigate the Tupy Complaint. The EERA is working with MPL and has noted that a response to the Tupy Complaint will be filed by MPL on or before March 15, 2017.

IV. Recommendation

Minn. Rule 7852.3900 required that the Commission consider a certification request within 60 days to accept or reject the certification of completion. If rejected, the Commission shall inform the permittee in writing of the deficiencies, and if they are subsequently corrected, the Commission shall allow the certification to be accepted.

Staff believes there are two options the Commission could pursue; first, the Commission could reject the request for certification and jurisdiction termination due to the outstanding Tupy Complaint and allow MPL to refile once the information has been corrected. Or, second, the Commission may vary the rule to allow more time to consider the certification request. Staff recommends the latter option.

The Commission can grant variances to its rules in circumstances when three requirements are met (pursuant to [Minn. Rule 7829.3200](#)):

- 1) Enforcement of the rule would not impose an excessive burden upon the applicant or others affected by the rule;
- 2) Granting the variance would not adversely affect the public interest; and,
- 3) Granting the variance would not conflict with standards imposed by law.

Staff evaluates each requirements in turn:

Enforcement of the rule would not impose an excessive burden upon the applicant or others affected by the rule

Allowing more time to consider the Tupy Complaint should not impose an excessive burden upon the applicant or others. Inversely, it is not expected to add burden but instead, it would

¹ Staff only confirmed absence of complaints back through Dec. 2011.

allow the continued evaluation of the completion certification request and the single issue that has arisen, the Tupy Complaint.

Granting the variance would not adversely affect the public interest

The public interest would be *better* served if a variance would was granted as it would allow for the consideration of the Tupy Complaint as well as continued examination of the certification request. If the Commission were to reject the certification request, it would require a rejection, a new filing by MPL, and a new comment period. If varied, the Commission could continue on this same request, assuming a resolution to the complaint is found and it is under the Commission's jurisdiction.

Staff will review the issues that have arisen and if the complaint is not resolvable in the near term, or not under the Commission's jurisdiction, staff can recommend denial at a future date.

Granting the variance would not conflict with standards imposed by law

Staff is not aware of any laws that would conflict with the variance of this rule. The provision for the approval of a certification of completion request is only in rule. [Minn. Stat. 216G.02](#) only requires that the Commission establish rules related to restoration and payments.

V. Commission Decision Alternatives

A. Certification of Completion Request

1. Accept MPL's Certificate of Completion.
2. Deny MPL's Certificate of Completion and outline the reason for rejection.
3. Vary Minn. Rule 7852.3900 to allow more time to consider the request and allow for resolution, if possible, of the Tupy Complaint.
4. Take some other action.

Staff Recommendation: A3.